

THIRD SECTOR ACQUISITION OF SURPLUS FEDERAL HERITAGE BUILDINGS IN CANADA: CHALLENGES AND OPPORTUNITIES

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ABPT (*ENG*): Association of Building Preservation Trusts

ACHP (*USA*): Advisory Council on Historic Preservation

CASM (*CAN*): Canadian Air and Space Museum

CAT (*ENG*): Community Asset Transfer

CLC (*CAN*): Canada Lands Company Limited

DCMS (*ENG*): Department for Culture, Media and Sport

DND (*CAN*): Department of National Defense

EO (*USA*): Executive Order

FACCHC (*CAN*): Federal Advisory and Coordinating Committee on Heritage Conservation

FHBRO (*CAN*): Federal Heritage Building Review Office

GHEU (*ENG*): Government Historic Estate Unit

GSA (*USA*): General Services Administration

HPI (*CAN*): Historic Places Initiative

ICNO: International Classification of Non-profit Organizations

LMF (*USA*): Louisiana Museum Foundation

NHPA (*USA*): National Historic Preservation Act

NPS (*USA*): National Parks Service

NTHP (*USA*): National Trust for Historic Preservation

NRHP (*USA*): National Register of Historic Places

OGC (*ENG*): Office of Government Commerce

ONN (*CAN*): Ontario Nonprofit Network

P3: Public-Private Partnership

PBC (*USA*): Public Benefit Conveyance

PDP (*CAN*): Parc Downsview Park

PWGSC (*CAN*): Public Works and Government Services Canada

SHPO (*USA*): State Historic Preservation Office

SPNO (*CAN*): Social Planning Network of Ontario

CAN: Canada

ENG: England

USA: United States of America

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1.1 Problem Statement

The continued ownership and operation of heritage buildings by the Federal Government of Canada is at risk. Economic and political changes have mandated accountability and a focus on generating revenue while reducing expenditures. Rationalization (reorganization to achieve efficiencies, often through reductions) is increasingly being pursued, and the disposal of surplus real estate is one area in which reductions can not only decrease costs, but also generate revenue. Within this climate, a lack of regulations and oversight that might afford protection to designated federal heritage buildings within the disposal process places them at risk of inappropriate management. While the disposal reporting data for federal heritage buildings is neither readily available nor retained by the federal government, an increased rate of disposal of federal heritage buildings has been noted in government directives and reports,¹ as well as announcements concerning the large-scale disposal of use-specific heritage buildings.²

Concurrently, the third sector³ has been increasing its capacity, assuming responsibilities formerly held by the public sector and breaking into the private market through real estate acquisition, the pursuit of revenue generating activities, and increasing cooperation amongst organizations. Operating for the benefit of “civil society,” third sector organizations in Canada are viable community partners for both the public and private sector to engage. This thesis recognizes the third sector has having significant agency, understanding that it has the ability to be a proactive participant in heritage conservation processes.

The third sector can play an important role in the adaptive reuse of surplus public heritage buildings. As the private sector assumes greater responsibility in the provision of public services, many of the buildings that facilitated public service delivery are becoming obsolete. As noted by Susan Macdonald and Caroline Cheong, public sector rationalization is a significant challenge for both publicly and privately owned heritage buildings.⁴ The third sector can play an important stewardship role in both the short- and long-term for surplus federal heritage buildings, and can provide a means of ensuring community management is a part of the future-use planning of community assets.

This thesis seeks to position the third sector as a potential solution in the disposal of federal heritage buildings, proposing that the disposal process can be an opportunity to evidence how significant public benefit might be derived through third sector acquisition, should the right tools be made available. Federal heritage buildings are unique assets that have the potential to retain both financial and community value, and the third sector is singularly positioned to conserve these buildings as community landmarks that contribute to civil society while financially benefitting from their ownership and operation of the properties.

1 A PWGSC 2012-2013 report showed a decline from 233 crown-owned buildings within its custody in 2008 to 214 buildings in 2012. The report notes that federal heritage buildings have increased vacancy rates, increased operating and maintenance cost and decreased value compared to other assets.

2 In 2010 the Canadian Coast Guard declared 976 federally-owned lighthouses as surplus; In 2013 Canada Post stated net proceeds from disposal as \$164 million, with an additional \$30 million in assets held for sale.

3 The third sector refers to values-based and volunteer-driven organizations that are motivated by a desire to derive public benefit and contribute to civil society. The term is often interchangeably used with the voluntary or non-profit sector, depending on context.

4 Susan Macdonald and Caroline Cheong, *The Role of Public-Private Partnerships and the Third Sector in Conserving Heritage Buildings, Sites, and Historic Urban Areas* (Los Angeles, CA: The Getty Conservation Institute, 2014), 8.

1.2 Rationale

The rationale for undertaking the following research is rooted in a concern over the long-term preservation of federal heritage buildings in Canada, an apprehension shared by many in the Canadian heritage field that has yet to be mitigated. Statistics collected for this thesis indicate that, since the issuance of federal heritage building policy in 1982, 26% of designated federal heritage buildings have left the federal inventory, either through demolition or disposal.⁵ Since the Federal Heritage Building Review Office (FHBRO) has no oversight authority to ensure custodial federal departments report their disposals, there is a possibility that this information does not reflect the accurate number of federal heritage buildings that have been disposed of.

Concurrent with a concern over the conservation of federal heritage buildings is a desire on the part of this researcher to better correlate heritage conservation with other public benefits, such as the creation of affordable housing and cultural spaces, neighborhood regeneration, and community engagement. The following research attempts to illustrate how the process of heritage conservation can achieve conservation outcomes as well as other public benefits. The United States and England provided comparative policy frameworks and were mine for case studies that have increased third sector capacity, spurred local economic development, and lessened the burden placed upon the public sector by re-visioning the disposal process in support of third sector participation.

The interest in positioning the third sector – as opposed to the private sector – as a viable steward for surplus federal heritage buildings derives from this researcher's belief that it is increasingly becoming the responsibility of civil society⁶ to ensure the provision of public benefits. As the understanding of public benefit expands to encompass a variety of public interests, the expectation that the public sector will be able to ensure the provision of said benefits – including heritage conservation – is not realistic. In light of public sector cutbacks in Canada and elsewhere, the third sector is becoming all the more necessary, and, by acquiring greater authority and an increase in agency, the sector is in a position to have a significant impact upon the built and cultural environment. This thesis hopes to spark a conversation within Canada as to how heritage conservation might be better integrated within third sector activities so as to ensure its continued relevance in the face of decreased public sector stewardship.

This thesis will attempt to contribute to the heritage conservation field in Canada and internationally by positioning heritage conservation practice as a process that can be adopted by a variety of organizations with differing mandates, as opposed to a silo within which only those committed to heritage conservation outcomes can make an impact and derive benefit. It seeks to spur a broader conversation about the growing role that the third sector might play within heritage conservation, in particular through the assumption of responsibilities that were formerly provided or supported by the public sector. By illustrating the use of command and control and market-driven tools in the United States and England, this thesis seeks to evidence that the conservation of federal heritage buildings need not rely upon the public sector exclusively, and that long-term conservation can be bolstered through facilitating the participation of the third sector.

⁵ Documentation Centre, Heritage Conservation Branch, Parks Canada. *FHBRO Demolished_disposed*. October 21, 2014.

⁶ Civil society is widely understood to be the aggregate of non-state, non-profit, voluntary organizations that seek to derive positive impact within the broad social sphere.

1.3 Research Questions

The following research questions have informed the framework for this thesis:

Why (Background)

- Why is the federal government divesting of its heritage buildings?
- Why is the third sector an appropriate steward for surplus federal heritage buildings?

What (Challenges + Opportunities)

- What are the challenges faced by the third sector in acquiring surplus federal heritage buildings?
- What opportunities can be explored that might assist the third sector in acquiring surplus public heritage buildings?
- What are the strengths and weaknesses of these opportunities as they might apply to the Canadian context?

How (Recommendations)

- How might these opportunities benefit the public sector?
- How might these opportunities benefit the third sector?
- How best can the public sector engage the third sector in the disposal process?

1.4 Methodology

1.4.1 Policy Review

A thorough policy review was a preliminary step in this thesis, and provided a firm understanding of the policy obligations placed upon federal departments in Canada as they address the disposal of federal heritage buildings. A comparative analysis of disposal policy in the United States and England was also undertaken in order to support and inform an understanding of the programs and tools that have been researched.

The United States and England were chosen for review as, along with Canada, they have similar approaches to how heritage has been valorized, and all three countries have established frameworks for federal or central government participation in heritage conservation. Although the United States and England certainly face challenges in facilitating the acquisition of surplus public heritage buildings by third sector organizations, they differ from Canada in that they have taken positive steps to facilitate the process, and can therefore serve as examples that might be of use in the Canadian context.

1.4.2 Literature Review

A literature review of relevant articles, books, and reports addressing federal heritage buildings in Canada, the history of federal stewardship, and the third sector was done in tandem with the policy review. The review was incorporated into the background chapters of this thesis. It also informed the next steps identified in the conclusion, as it became apparent that there is a lack of information regarding the third sector's history of stewardship of surplus public heritage buildings in Canada.

1.4.3 Meetings + Correspondence

Meetings and correspondence were valuable sources of information, filling in information gaps discovered during the literature review and clarifying federal policy. Conversations with heritage professionals, third sector organizations, and government employees informed the background and challenges chapters, and contributed to the framework used for the recommendations. Correspondence with individuals associated with the case studies proved particularly challenging as information was not readily shared; however in those cases where communication and information exchange was facilitated the correspondence was invaluable.

1.4.4 Case Studies

Canadian case studies have been used in this thesis to illustrate the challenges faced by third sector organizations in the acquisition of surplus public buildings. Case studies from the United States and England have been used to illustrate the opportunities from which third sector organizations benefit from when pursuing similar activities.

These case studies serve to illustrate policies and programs in practice. Full case studies can be found in Appendix A; throughout the thesis, case studies have been included as pop-out boxes in order to supplement the opportunities and challenges as they are discussed.

The following criteria was used to select all case studies:

- a) The building/buildings must be formally recognized for their heritage value;
- b) the property is/was within public sector ownership; and
- c) there is/was third sector or community interest in the restoration of the building.

Case Study	Location	Challenge / Opportunity
Artscape Youngplace	Canada	Capacity Requirements
Canada Malting Co. Silos	Canada	Reliance on Public Sector Ownership Political Change
Downsview Park	Canada	Loopholes in Treasury Board Policy Conflicts in Treasury Board Policy
Niagara Military Museum	Canada	Reliance on Public Sector Ownership Capacity Requirements
Postal Station 'K'	Canada	Loopholes in Treasury Board Policy
The Theatre Centre	Canada	Time Requirements Capacity Requirements
Grove Arcade	United States	Public Benefit Conveyance
Old U.S. Mint	United States	Public Benefit Conveyance
Federal Archive Building	United States	Revolving Fund Public Private Partnership
Preservation North Carolina	United States	Revolving Fund
Battersea Arts Centre	England	Community Asset Transfer
The Landmarks Trust	England	Building Preservation Trust

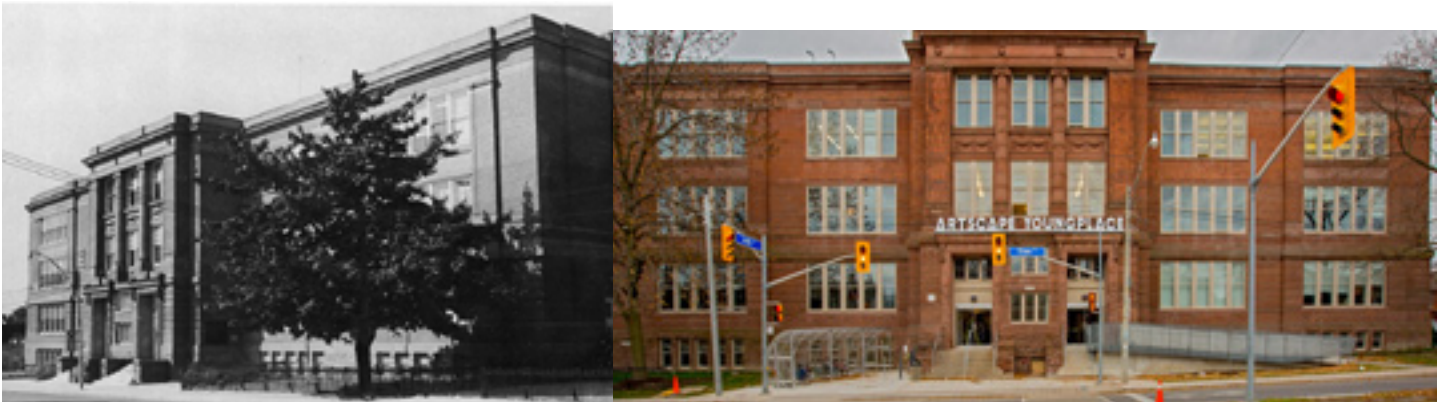
	Command and Control Tools
	Market-driven Tools

Figure 1 Case Study Table

Following research into a number of projects that met the case study criteria within Canada, the list of case studies was refined to only include those buildings within the Province of Ontario, and then sorted into two categories based upon the success or failure of the third sector in acquiring and restoring the building(s) in question.

The following case studies represent successful acquisitions of surplus public heritage buildings by the third sector:

Artscape Youngplace: This case study focuses on the adaptive reuse of a surplus public school into a cultural and community facility by a third sector organization that had prior experience with surplus public buildings. This case study illustrates a few of the capacity requirements placed upon third sector organizations in the acquisition of surplus public heritage buildings.



Figures 2-3 Shaw Street School (L), Artscape Youngplace (R). Sources: (L) Artscape Toronto Inc., <http://www.artscapediy.org/Case-Studies/Artscape-Youngplace> (L) Dalton. <http://www.daltonbuild.com/portfolio-project-details.php?id=135> (accessed May 4, 2015).

The Theatre Centre: This case study focuses on the adaptive reuse of a surplus public library into a theatre center by a third sector organization with no prior experience with surplus public buildings. This case study illustrates the substantial time required to accrue financing to pursue adaptive reuse project by small third sector organizations.



Figures 4-5 Queen and Lisgar Public Library Branch (L), The Theatre Centre (R) Sources: (L) Toronto Public Library. <http://static.torontopubliclibrary.ca/da/images/MC/pictures-r-6135.jpg>, (R) Corbin Smith, Torontoist, http://torontoist.com/wp-content/uploads/2014/03/20140315-The-Theatre-Centre-080-77-Photo_by_Corbin_Smith.jpg (accessed May 4, 2015).

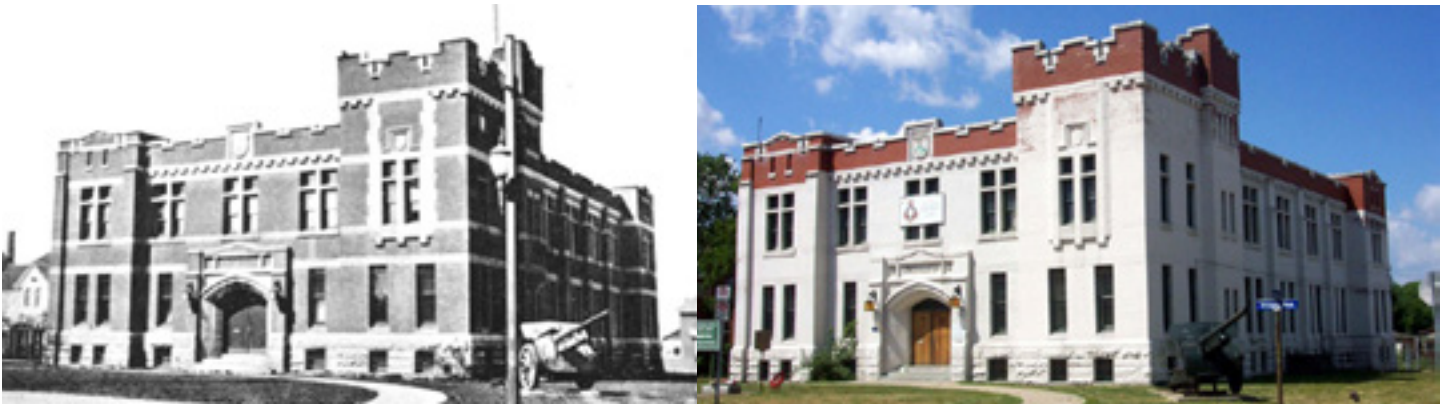
The following case studies are of projects where the third sector has been significantly challenged or unable to acquire surplus public heritage buildings:

Downsview Park: This case study focuses on two heritage building complexes; one that was disposed of and demolished, the other that is in the process of being adaptively reused by a crown corporation. This case study illustrates how conflicts and loopholes in policy can result in misinformation and the prioritization of certain policy objectives without public consultation or clarification. A lack of consultation and coordination hindered community participation, and excluded the third sector from participating in the disposal process.



Figures 6-7 Downsview Buildings 55&58 (L), Plant Complex #1 (R). Sources: (L) Spacing Toronto. <http://spacing.ca/toronto/2009/11/09/downsview-hangers-at-risk-of-demolition/>. (R) Canadian Air and Space Museum Archives. <http://ih.constantcontact.com/fs044/1101963666470/img/74.jpg> (accessed May 4, 2015).

Niagara Military Museum: This case study focuses on the acquisition of a surplus military building by a municipality on behalf of a third sector organization. This case study illustrates the challenges faced by the public sector in acquiring surplus federal heritage buildings for third sector organizations, and the lack of third sector capacity to own and maintain a surplus federal heritage building.



Figures 8-9 Niagara Falls Armoury (L), Niagara Military Museum(R). Source: Niagara Falls Public Library. <http://www.nflibrary.ca/> (accessed May 4, 2015)

Canada Malting Company Silos: This case study focuses on the acquisition of a surplus industrial building by a municipality without a third sector partner or prior partnership agreement in place. This case study illustrates the challenges faced by the third sector in formulating adaptive reuse plans following public sector acquisition, and the risk placed on surplus federal heritage buildings that are disposed of without adequate plans in place.



Figures 10-11 Canada Malting Co. Silos 19-- (L), 2012 (R). Sources: (L) City of Toronto Archives. <http://www.nflibrary.ca/> (R) twurde-mann. Flickr. <https://www.flickr.com/photos/68678468@N06/7182146717/> (accessed May 4, 2015)

Postal Station 'K': This case study focuses on the disposal of a surplus federal post office by a crown corporation. This case study illustrates how certain federally-owned heritage buildings bypass Treasury Board policy obligations.



Figures 12-13 Postal Station 'K', 19-- (L), 2006 (R). Sources: (L) City of Toronto Archives, via BlogTO, http://www.blogto.com/city/2012/10/can_public_square_proposal_save_postal_station_k/ (R) tobuilt.ca. http://www.tobuilt.ca/php/tobuildings_more.php?search_fd3=5787 (accessed May 4, 2015)

Illustrative case studies from the United States and England that were determined to have met the case study criteria have been used to support the market-driven and command and control tools explored in this thesis. Certain case studies have been used to illustrate how multiple tools have been used in tandem, and will appear multiple times throughout the thesis.

Grove Arcade (USA): This case study focuses on the adaptive reuse of a surplus public commercial building. The project was instigated and managed by a third sector organization with public and private partners. The project combined market-driven and command and control tools in order to facilitate third sector acquisition of a surplus federal historic building.



Figures 14-15 Grove Arcade, 19-- (L), 2006 (R). Sources: (L) National Ocean and Atmospheric Administration http://celebrating-200years.noaa.gov/foundations/climate_data/image3.html, (R) Grove Arcade Foundation, http://www.grovearcade.com/wp-content/uploads/2010/07/GA_Exterior.jpg (accessed May 4, 2015)

Old U.S. Mint (USA): This case study focuses on the acquisition of a surplus federal building by a state government for use as a museum and cultural space, with support from a third sector organization. This case study illustrates how the public sector can partner with the third sector in order to acquire community engagement and financing to support program delivery.



Figures 16-17 Old U.S. Mint, 1890 (L), 2007 (R). Sources: (L) HABS Survey, Library of Congress, <http://hd.housedivided.dickinson.edu/node/39052> (R) infrogmation, Wikimedia Commons, <http://commons.wikimedia.org/wiki/File:EsplanadeOldMintFlagpolemen.jpg> (accessed May 4, 2015)

Federal Archive Building (USA): This case study focuses on the adaptive reuse of a surplus public storage. The project was managed by a third sector organization with public and private partners. This case study illustrates how the public benefit conveyance program and a third sector heritage public-private partnership were used in tandem, and how initial financing for a third sector revolving fund was acquired.



Figure 18 Federal Archive Building. Source: Wally Gobetz, Flickr, https://c1.staticflickr.com/1/145/371167006_2a1f7f916c_b.jpg (accessed May 4, 2015)

Battersea Arts Centre (England): This case study focuses on the adaptive reuse of a surplus public civic building by a third sector organization. This case study illustrates the use of the community asset transfer program as a means to increase a third sector organization's capacity and access to financing.



Figures 19-20 Battersea Town Hall (L), Battersea Arts Centre(R) Sources: (L) Me Spotting, http://stopandspot.blogspot.com/2010/05/blog-post_08.html (R) Londonist, <http://londonist.com/2013/04/the-faded-grandeur-of-londons-old-town-halls.php/townhall-battersea> (accessed May 4, 2015)

Preservation North Carolina (USA): This case study focuses on a third sector revolving fund program that facilitates the purchase, restoration and adaptive reuse of surplus public heritage buildings. This case study illustrates both the financial and public benefits that can be derived from revolving funds through pursuing heritage conservation alongside other public benefits (affordable housing, community space, etc.).

The Landmarks Trust (England): This case study focuses on a third sector organization that pursues the purchase, restoration and adaptive reuse of surplus public buildings. This case study illustrates how a building preservation trust can finance long-term maintenance of heritage buildings through the operation of the buildings as commercial recreational properties.

1.5 Assumptions

A number of assumptions have been made through the course of developing this thesis in order to establish a firm foundation from which research could be conducted.

- The value of federal heritage buildings is not dependent upon continued federal ownership; surplus federal heritage buildings can retain their value through third sector ownership

Heritage conservation practice in Canada, and internationally, has generally advocated for the designation of buildings to be attached to title as opposed to ownership; this offers a means of better ensuring the long-term preservation of the asset, connecting significance to the physical structure. Heritage designation can be complicated when applied to publicly-owned heritage buildings; some advocate that it is within the public interest for these buildings to remain within public ownership, and that the public sector has a responsibility to maintain these buildings in the public trust. Designation attached to ownership (as is the case with federal heritage buildings) might be perceived as a means of valorizing public ownership of the structure. Economic and political realities considered, this thesis operates upon an assumption that demanding public ownership unrealistic, and that the transfer of ownership need not negatively impact the heritage value of the asset when a third sector organization is being engaged in the process.

- Third sector organizations derive benefit for civil society

The third sector, encompassing organizations with a social mandate unmotivated by profit, has been generalized in this thesis. While all third sector organizations seek to derive benefit for others, they can also come into conflict with individuals and with each other. Unlike the public sector, which generally strives for neutrality and must be accountable to the public at-large, third sector organizations' missions and mandates can at times disenfranchise groups and individuals. This thesis has assumed that the third sector as a whole benefits civil society, so as to avoid singling out specific types of organizations as being better suited to participate in the disposal process.

- The Federal Government of Canada is unlikely to enact heritage legislation

This thesis assumes that the Federal Government of Canada, in spite of its participation in heritage conservation activities throughout the 20th century, will not enact heritage legislation, and that given the current economic and political climate it is unlikely to do so in the near future. This assumption is necessary in order to define the scope of inquiry for this thesis; while heritage legislation in the United States and England are discussed within the context of the opportunities explored, they do not inform a final recommendation on implementing similar federal heritage legislation in Canada. Greater weight has been placed on market-driven and non-legislative opportunities as a result. This assumption, rather than being understood as a challenge, is perceived as an opportunity in that no entrenched infrastructure exists at the federal level, creating space for innovation.

- Third sector capacity is highly dependent upon regional location within Canada

The Canadian case studies used in this thesis are exclusively located within the Province of Ontario. This was a decision that was based upon the assumption that the capacity of third sector organizations to undertake heritage conservation activities varies by region, and is influenced by local demographics as well as the relationship between the third sector and their local and regional governments. Since property rights and heritage legislation are enacted at the provincial and territorial level in Canada, it has been assumed that the third sector's capacity to undertake heritage conservation projects varies; research into how the restrictions and opportunities that arise from provincial and territorial heritage legislation might impact third sector acquisition of surplus federal heritage buildings would be of benefit.

1.6 Limitations

- Limited selection of Canadian case studies arising from regional variations in heritage legislation and third sector capacity

As no shared federal heritage legislation exists in Canada, the Canadian case studies used for this thesis necessitated a familiarity with provincial and territorial regulations in order to understand the framework for each project and to derive common challenges. The time frame for this thesis prevented an analysis of all of the provincial and territorial regulations, and therefore limited the scope of case studies chosen to projects within Ontario, from where this researcher is from and has prior knowledge of provincial heritage legislation.

- Focus of international case studies has been skewed towards projects within the United States

The majority of international case studies used in this thesis are located within the United States. This reflects the preponderance of market-driven and command and control tools available to third sector organizations in the U.S. The emphasis on American case studies has also been influenced by this researcher's graduate studies being located at Columbia University in the City of New York, and the background knowledge of heritage conservation practice in the United States that has been accrued over the course of his degree program.

- Limited accessed to information on project financing and federal reporting data

A limitation that quickly developed was the limited accessibility of information from the public and private sectors. FHBRO is not required to provide information it receives from other federal departments to the public. Requests sent to departments went unanswered. A formal Access to Information Request placed with the Treasury Board Secretariat and forwarded to Parks Canada was received with confusion as to where information on both owned and disposed of federal heritage buildings might be located, whose responsibility it would be to disseminate, and how it might be acquired. In addition, private and third sector organizations were not always willing to share their sources of financing and project costs, which can be sensitive and potentially contain confidential information on donors.

- Generalized approached towards federal heritage buildings

The Federal Government of Canada owns an array of federal heritage buildings, including individual buildings, groups of buildings, and undeveloped land, constructed for any number of uses – lighthouses, courthouses, storage buildings, and single family homes, to name a few. These properties are located in urban and rural locations, and are in various states of repair. Federal heritage building designation has recognized heritage value in a variety of property types, each bringing with it unique opportunities and challenges. This thesis has in general focused on high-profile individual buildings located within urban or semi-urban settings, as these property types often present the greatest opportunities and draw more attention due to their high visibility. Further research on the positioning of the third sector as a viable steward for other federally-owned heritage buildings would help refine the applicability of the recommendations presented in this thesis, and to identify property types that might be disproportionately at risk.

The Federal Government of Canada has played an important leadership role in heritage conservation through securing nationally-significant historic sites, cultural landscapes and parks. The current government appears to be well aware of the importance of continued federal participation in heritage conservation; support for federally-owned National Historic Sites and National Parks, as well as the revision of the Standards and Guidelines for the Conservation of Historic Places, have been of benefit to heritage conservation policy and practice.

In spite of these positive steps, there are a number of impediments to federal participation in heritage conservation. Perhaps the most significant factor impacting the ability of the federal government to directly intervene in heritage conservation is Canada's federated and decentralized political system. Within this system, provincial governments are responsible for ensuring the property rights of individuals; this includes enacting regulations that limit property use, including restrictions on designated heritage buildings. This decentralized system also presents a challenge from the perspective of the federal government in ensuring standards are met and maintained by the thirteen provincial and territorial governments.⁷ Oversight is further complicated when the provinces and territories enable municipalities the right to carry out certain activities, such as providing incentives and designating heritage buildings.

This chapter will provide an overview of federal participation in heritage conservation in Canada. It will identify trends that suggest a decreased interest on the part of the federal government in the ownership of heritage buildings, and review the policy framework that guides the disposal of surplus federal heritage buildings. A thorough review of relevant Canadian policy and guidelines can be found in Appendix B.

2.1 Federal Involvement in Heritage Conservation

The federal government's real property portfolio includes an array of building and property types, ranging from tracts of undeveloped land, to contemporary office buildings, to historic forts. As a result, the approach taken towards property management varies, and it is often the responsibility of custodial department heads to determine the proper management strategy for each property. Broadly speaking, legislated heritage designation enacts strict processes for oversight to ensure adherence to the law, and demands that certain processes be followed – the establishment of the Advisory Council on Historic Preservation (ACHP) and Section 106 to support the National Historic Preservation Act (NHPA) in the United States are examples of processes that support legislation in the U.S. In Canada, federal heritage building designation is not a legislative imperative; it places policy obligations on the custodial department, and provides a framework for how federal departments should manage heritage buildings within their custody, however it does not carry legal weight or the risk of penalties.

⁷ V. Angel, personal interview, December 18, 2014.

The 1960s were a transformative period for heritage conservation policy and practice, both in Canada and internationally. The passing of the NHPA (1966) in the United States and the establishment of the International Council on Monuments and Sites (ICOMOS) with the publication of the Venice Charter (1964) were just two of the many important milestones on the international front that redefined what constitutes heritage, and how that heritage should be managed. In Canada, a re-evaluation of heritage conservation policy and practice coincided with a number of key restoration projects that attempted to reinterpret how heritage buildings were presented and how they might benefit both the government and communities.

Prior to the 1960s, the federal government, through the Historic Sites and Monuments Board of Canada, attached historic significance to associative value, and primarily recognized sites associated with military and political figures that were located in southern Ontario and Quebec.⁸ While designation as a National Historic Site did not afford these sites legislative protection, due to their ownership by the Dominion Parks Branch (now Parks Canada), they were de-facto protected as a result of the department's mandate to conserve heritage properties.

The Fortress of Louisbourg, the largest heritage reconstruction project undertaken in Canada, was begun in the early 1960s and marked an important transition in how the federal government understood its role as a heritage steward. Located in the province of Nova Scotia, Louisbourg was acquired by the federal government in order to protect the site's heritage value and to remedy the rising unemployment within the surrounding Cape Breton region, which was significantly impacted by a declining coal market. Akin to the New Deal in the United States, the Canadian federal government sought to create employment in cultural public works, finding the former miners' skills well-suited for the type of work required in the reconstruction of the fort. In addition to benefitting the regional economy, the Louisbourg reconstruction project was an important training ground for archaeologists, conservators, heritage architects and interpreters. The contributions this project had not only to the surrounding community but to heritage conservation on the national level were significant. It is representative of a period during which the Federal Government of Canada understood that it could derive public benefit through the ownership, restoration and operation of heritage sites, with heritage conservation understood as a process that could lead to multiple positive outcomes.

Coinciding with a re-evaluation within the federal government of how the ownership and operation of heritage buildings might derive public benefit was a reinterpretation of the criteria used to identify heritage value. This revaluation coincided with Canada's centennial celebration (1967). Building upon the 1951 Massey Commission report, which recommended that heritage value focus less on age and association and more on the values implicit within a site (aesthetic and cultural, e.g.)⁹ was an increased interest in the designation of a variety of building and property types. Non-Presbyterian churches, early industrial buildings, and aboriginal sites were increasingly being recognized as having heritage value.

Although the federal government was making headway with large reconstruction projects such as Louisbourg, and expanding the criteria so as to value diverse histories, it was not becoming involved in the conservation

⁸ Larry Ostola, "Parks Canada's National Historic Sites: Past, Present and Future," *The George Wright Forum* 27, no. 2 (2010): 163.

⁹ Gordon W. Fulton, "Policy Issues and Their Impact on Practice: Heritage Conservation in Canada," *APT Bulletin* 29, no 3 (1998): 14.

of private property through the provision of incentives or engagement with community organizations. In 1973, and with a \$12 million one-time endowment, the federal government established the Heritage Canada Foundation (now Heritage Canada the National Trust) as an independent arms-length non-profit that would act as a tool for the federal government to become involved in private property conservation, and to protect small to medium-sized heritage buildings that were of value to local communities but that might not warrant federal ownership.¹⁰ HCF began the first revolving fund for heritage conservation in Canada – the federal government transferred properties to the foundation, which was then tasked with their restoration and resale on the private market, the proceeds of which would assist in future projects and acquisitions. The establishment of HCF as an independent non-profit was a way in which the federal government could become active in the conservation of private property, a provincial concern, however without guaranteed long-term financing its interventions in the private property market were ultimately unsuccessful. It has been suggested that there was an expectation by the federal government that future funding would come from the private sector through philanthropy or from the provincial governments through grants, however this never materialized.¹¹ Although HCF did at one time operate as a revolving fund, the organization is now primarily devoted to heritage advocacy and education.

The federal government also established the Federal Advisory and Coordinating Committee on Heritage Conservation (FACCHC) in 1976 - the same year that Canada signed the World Heritage Convention - to broadly study heritage issues, one of which was the protection afforded to federally-owned heritage buildings. Although the FACCHC's proposal to develop and maintain a national register of heritage buildings was ultimately rejected by the Treasury Board, it was successful in producing the policy on federal heritage buildings, which passed in 1982.

- 1990s: Government as Facilitator

“The view that government should ‘steer’, not ‘row’, and minimize its position in the marketplace...migrated quickly to Canadian government at all levels.”¹²

The neo-liberal political shift in the 1990s had a serious impact on how heritage buildings were managed, the ramifications of which continue to play out two decades later. Perhaps a reaction to what might be considered the over-reaching and over-spending federal governments of the 1970s and '80s, the neo-liberal shift in Canadian politics resulted in significant cuts in funding to the cultural sector, as well as the reorganization of federal departments following a government-wide Program Review, an attempt to address the 1993 \$38.5 billion deficit. Following the review, the government reduced expenditures by \$17 billion, and cut approximately 45,000 jobs.¹³ The review mandated greater attention be paid to ensuring economic returns, accountability and sustainability.¹⁴ This resulted in the hiring of department managers with strong expertise in management, but less experience in the field for which they were now overseeing. Fritz Pannekoek stated:

10 Frits Pannekoek, “Canada’s Historic Sites: Reflections on a Quarter Century, 1980-2005,” *The Public Historian* 31, no. 1 (2009): 76.

11 Pannekoek, “Canada’s Historic Sites,” 77.

12 *ibid*, 72.

13 International Affairs, Trade and Finance Division, Parliamentary Information and Research Service, *Public Service Reductions in the 1990s: Background and Lessons Learned*, by Lydia Scratch, 2010-20-E (Ottawa, ON: Library of Parliament, 2010), 1.

14 Pannekoek, “Canada’s Historic Sites,” 71.

“A management process that calls for perpetual compromise, particularly involving a public that is contesting its past, must compromise the choice of what is preserved and, just as important, its interpretation.”¹⁵

While it might be challenging to draw connections between the changing approach to management and the increase in the disposal of federal heritage buildings without further research, it is often the case that government cutbacks have a greater impact upon cultural and heritage programs relative to other public sector programs.

Grant programs offered by the federal government through the Department of Canadian Heritage have helped mitigate the negative impacts that the budget cuts and management reorganization had upon heritage conservation in Canada. These grants also indicate where the federal government believes its contributions towards heritage conservation might be most effective. The Department of Canadian Heritage assists non-profit organizations as well as provincial and municipal governments through programs such as Building Communities through Arts and Heritage and the Canadian Cultural Investment Fund. The focus of these programs is to help organizations strengthen their administrative, organizational and financial capabilities; they are not to facilitate the acquisition of heritage buildings. The Canadian Cultural Spaces Fund will support the improvement, renovation and construction of arts and heritage facilities for non-profit organizations, provincial, territorial, and municipal governments. Since 2012, this fund has assisted 175 projects, providing funds ranging from \$3,000 to \$2.5 million.

2.2 Federal Heritage Buildings

Federal heritage buildings are assets within the federal real estate portfolio that have been recognized for their heritage value by the Minister of the Environment following recommendation by FHBRO. Unlike National Historic Sites, federal heritage buildings do not have to be of national significance; the value criterion looks to historical associations, architecture, and environment to derive significance.

Federal heritage buildings were recognized following the passage of the Federal Heritage Building Policy in 1982. The policy's goal was to afford a degree of protection to federally-owned heritage building that had not been designated or recognized as National Historic Sites. It was also intended to provide a framework for management to be employed by departmental managers. The policy established FHBRO, which was mandated with implementing the policy and providing support to government departments.

The 1982 policy was further articulated by the Treasury Board in 1987 and became part of the system of Directives within the Financial Administration Act. Following the adoption of the policy by the Treasury Board, federal departments became obligated to follow certain processes in regards to heritage buildings within their custody.¹⁶ While the new directive did not substantially change the contents of the policy, it was significant in that it “... gave FHBRO much more leverage to bring custodian departments to the discussion table on a more regular and more efficient basis.”¹⁷

¹⁵ Pannekoek, “Canada’s Historic Sites,” 71.

¹⁶ Henri Langlois, “Observations about the Federal Heritage Buildings Review Office,” (unpublished, 1993), 6.

¹⁷ *ibid*

While successive guidelines, explanatory documents, and policies such as FHBRO's Code of Practice (1996) and Parks Canada's Standards and Guidelines (2003, 2010) have attempted to more clearly illustrate the responsibilities of departmental heads as they relate to heritage conservation, a lack of legislation and (dis)incentives to hold responsible parties accountable continues to threaten federal heritage buildings. Departmental heads must answer directly to Parliament in cases where they have contradicted Treasury Board policy, however no minister has been held responsible for the mismanagement federal heritage buildings within his or her department.¹⁸ Treasury Board policy does not provide FHBRO with oversight authority to ensure compliance with the policy. The Auditor General of Canada has played an important role in calling-out departmental mismanagement in the 2003 and 2008 Auditor General reports, however these reports state that policy review and oversight (required in order to hold departments accountable for their actions) are not facilitated.

Unlike regulatory bodies, such as State Historic Preservation Offices (SHPOs) in the United States, FHBRO has no jurisdiction to enforce maintenance or conservation standards for federal heritage buildings, a significant weakness that has hindered the ability of FHBRO to ensure long-term conservation.¹⁹ In addition, federal heritage building policy has been applied on an "ad-hoc" basis²⁰ - while informally-recognized "monuments" of Canadian architecture that are federally-owned (Parliament Hill, e.g.) are considered to be secure as a result of their heritage value being well-understood by various departments, other, lesser-known buildings are at-risk of inappropriate management.

2.3 Disposal of Surplus Federal Heritage Buildings

2.3.1 Treasury Board Policy on the Management of Real Property

The Treasury Board of Canada establishes the amount of protection that should be afforded to federal heritage buildings, as well as the processes that should be followed in their disposal. Section 6.1.9 of the policy states that federal buildings 40 years of age or older must be evaluated by Parks Canada for their heritage character. Section 6.1.10 sets forth the disposal processes for Recognized and Classified federal heritage buildings: Recognized buildings must have the opinion of a conservation specialist should any changes be proposed, whereas Classified buildings must be reviewed by Parks Canada for comment.

The policy does not state that Parks Canada's or that the conservation specialists' opinions must be followed, just that departments must make best efforts to ensure that alternative uses are appropriate. Heritage considerations are comparatively weak in comparison to other due diligence objectives in the policy: departments *must* ensure the disposal process proceeds in an environmentally responsible manner, and they *must* determine surface and subsurface rights as they relate to aboriginal groups and natural resources, whereas they are only directed to make best efforts in regards to heritage buildings.

18 C. Cameron, personal interview, January 5, 2015.

19 V. Angel, personal interview, December 18, 2014.

20 Henri A. Langlois, "A Policy for the Conservation of Federal Heritage Buildings," *Bulletin of the Association for Preservation Technology* 18, no. 1 (1986): 48.

2.3.2 Treasury Board Guide to the Management of Real Property

The Treasury Board guide sets forth operational guidelines for the management of real property, informed by the policy. It incorporates best practices not included in the policy, including best practices for addressing heritage buildings and their disposal (Section 7.2.3). The guide reinforces the policy, reiterating that departments should consult FHBRO and that they should make best efforts when arranging alternative uses for heritage buildings. Best efforts are defined based on the type of designation:

- “in the case of a **classified heritage building**, taking steps to protect the building’s heritage character and specifying the nature and level of protection in any sale agreement - this could include attaching a heritage covenant, easement, or servitude registered on title that specifies the conservation requirements; or
- in the case of a **recognized heritage building**, deciding whether to continue to protect its heritage character, and specifying the nature and level of any heritage protection in any sale agreement.”

2.3.3 Treasury Board Directive on the Sale or Transfer of Surplus Real Property

The directive builds upon the Treasury Board policy and is supported by the Treasury Board guide as it addresses the policy obligations of custodial departments in the disposal of surplus real property. While it does not speak specifically to surplus heritage buildings, the directive specifies the two methods by which surplus buildings (including heritage buildings) might be disposed of: routine or strategic.

Routine disposals are the most common form of disposal. The custodial department must first offer the property to other federal departments, followed by provincial and municipal governments. Should no other government department express interest in the property, it is listed for public sale. Prior to the property leaving the federal inventory, FHBRO asks that departments prepare a heritage recording of the building and inform them of the disposal so as to update their database. FHBRO does not have any monitoring capacity to ensure departments inform them of disposals or record the building prior to disposal or demolition.

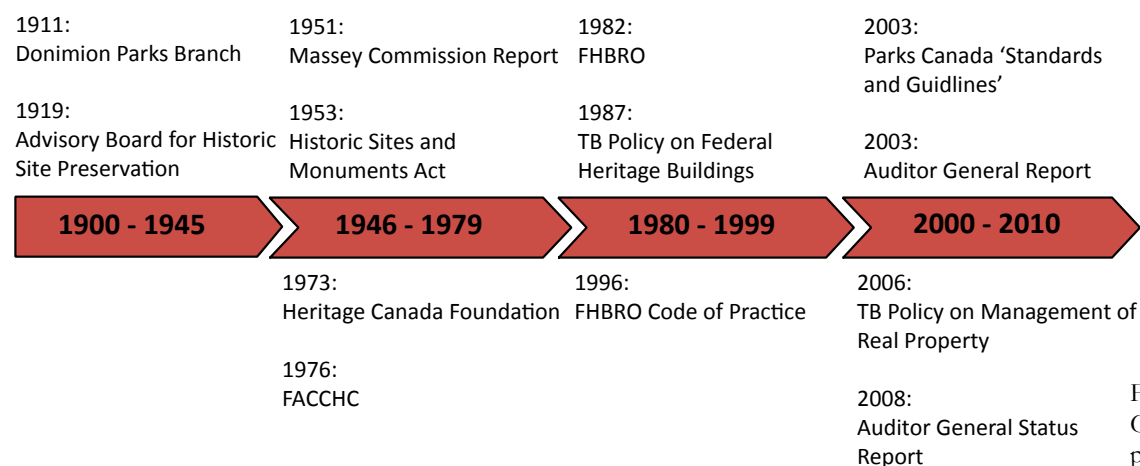


Figure 21 Timeline of Canadian heritage policy and program development

Strategic refers to the disposal of a building or a portfolio of properties where the value of the property might appreciate through rezoning, subdivision, or improvements. It also includes disposals where a partnership might return greater profits, or where sensitive policy issues exist. Strategic disposals are handled by Canada Lands Company Limited (CLC), a crown corporation that is *exempt* from Treasury Board policy, and, therefore, FHBRO. It should be noted, however, that a department's responsibilities to abide by Treasury Board policy can be transferred along with the property to CLC if they have yet to be satisfied, and that in some cases CLC has been found to develop creative and appropriate adaptive reuse proposals for surplus federal heritage buildings.²¹

2.4 Recent Events of Significance

2.4.1 Historic Places Initiative: Proposed Heritage Legislation and Incentives

The Historic Places Initiative (HPI) was a significant undertaking by Parks Canada at the turn of the 21st century that successfully engaged all levels of government in a dialogue concerning heritage conservation. The initiative arose from a "...desire to create a pan-Canadian approach to heritage management and conservation through "co-operative federalism"". ²² Through the initiative a number of key programs were established, although arguably two of the most significant programs – legislation and financial incentives – were ultimately unsuccessful.

The core mission of the HPI was to establish a national register, enact federal heritage legislation and provide financial incentives. Following discussions between Parks Canada and the Department of Finance, it was understood that financial incentives (commercial tax credits) could only be offered should there be the appropriate accountability mechanisms in place. Parks Canada therefore had to answer three questions, which subsequently informed the necessary support programs: what is a heritage property (necessitating the register); what qualifies as acceptable conservation work (requiring agreed upon standards and guidelines); and who is able to evaluate the work (certification officers).²³

The Canadian Register of Heritage Properties lists all buildings, properties, landscapes and sites that have been designated within Canada – this includes federal heritage buildings, national historic sites, archaeological sites, engineering sites, cultural landscapes, and all provincially and territorially designated buildings. The creation of the register was supported by funding provided by the federal government to provincial and territorial governments in order to increase their capacity to participate in the process, to designate buildings, and to maintain the register, which is still in use today.²⁴

The Standards and Guidelines for the Conservation of Historic Places in Canada (2003) was produced so as to ensure that, should the owner of a designated heritage property apply for commercial tax credits, they would have clear guidance on what would be considered eligible conservation work. Now in its second revision, the Standards and Guidelines has been a success in promoting a pan-Canadian approach towards heritage conservation work.

²¹ V. Angel, email correspondence, March 16, 2015.

²² John H. Stubbs and Emily G. Makas, *Architectural Conservation in Europe and the Americas* (Hoboken, NJ: John Wiley & Sons, 2011), 499.

²³ C. Cameron, personal interview, January 5, 2015.

²⁴ Harold Kalman, *Heritage Planning: Principles and Process* (London, UK: Routledge, 2014), 59.

The Canadian Historic Places Act was a piece of legislation that sought to clearly define the obligations of the federal government in regards to historic places within its jurisdiction. It also proposed a “heritage first” policy, that would have required federal departments to prioritize the use of heritage buildings prior to demolition, new construction or relocation. The act would have mandated that all buildings designated as Classified by FHBRO receive parliamentary consent prior to their demolition. It would have closed significant loopholes within Treasury Board policy, in particular by granting legal protection to important buildings such as Parliament Hill and the Supreme Court of Canada, as well as the hundreds of other heritage buildings within the federal portfolio. Facing significant opposition, in particular from departments reluctant to have the terms with which they occupy and maintain properties dictated to them,²⁵ the act never reached Parliament for approval.

The certification officer program was proposed in order to provide support to projects applying for federal tax incentives. The program was a federal-provincial-territorial joint project, wherein certification officers, trained in the application of the Standards and Guidelines, would prepare application reports on all conservation projects for final review by Parks Canada’s Historic Places Programs Branch.

The final component to HPI was the Commercial Heritage Properties Incentive Fund. The fund was proposed by Parks Canada as a means to facilitate the federal government’s intervention within the tax regime. The incentive was to provide a reimbursement of 20% for eligible work to properties listed on the register, up to a maximum of \$1 million. The fund faced significant resistance from within the federal government, which has preferred cost-sharing programs that place a cap on the net amount of funding they will provide in a given year.²⁶ The challenge identified by Parks Canada with cost-sharing for heritage buildings was that many commercial property owners were reluctant to receive grants, uneasy with their business being seen as having received a government “hand-out”. In contrast, tax credits are worked out privately and their recipients are not included in main estimates. In spite of internal disagreement, the federal government supported the fund, and over the course of the 6 years for which it was active (2001-2007) it contributed \$21.5 million to 49 projects, leveraging upwards of \$177.2 million in private sector investment.²⁷

2.4.2 Auditor General Reports: Identifying Federal Mismanagement

- 2003

The 2003 Auditor General of Canada’s report drew national attention to the poor condition of federal heritage buildings and identified trends that, if not mitigated, would result in the rapid deterioration and potential loss of Canadian cultural heritage.

The report is frank in laying the blame on federal management procedures, in particular calling out deficient means of protection and the decrease in federal funding for heritage conservation. It also notes that policy review is not facilitated, hindering parliamentary oversight and preventing long-term management strategies.

²⁵ C. Cameron, personal interview, January 5, 2015.

²⁶ ibid

²⁷ “Federal Financial Incentives,” *Heritage Canada the National Trust*, <https://www.heritagecanada.org/en/issues-campaigns/financial-incentives/federal> (accessed January 26, 2015).

The report identifies the deteriorating stock of federal heritage buildings as a significant concern, arising from a lack of legal protection due to variations in department management strategies informed by disparate missions and mandates. Only when a department's mandate is to protect heritage do these buildings receive significant protection, as is the case with Parks Canada.

In its recommendations, the report notes the development of the HPI as a positive step towards greater accountability, in particular the development of the Canadian Register of Historic Places. It also commends efforts to draft a bill that would regulate federal heritage buildings (Historic Places Act). The recommendations call on the federal government to critically evaluate what resources it can devote to heritage, and to identify how partnerships with other heritage organizations and the private sector might assist them in meeting their obligations.

- 2008

In 2008 the Auditor General re-visited the conservation of federal built heritage in Canada, following-up on the 2003 report. The report noted the success of Parks Canada in improving the management of National Historic Sites, as well as an overall increase in maintenance standards within the federal portfolio.

In contrast to the 2003 report, the 2008 report identified the Treasury Board Heritage Buildings Policy as the lead factor in the poor maintenance of federal heritage buildings. The policy is called out for having significant gaps that enable variations in departmental approaches to the management of heritage buildings, resulting in poor maintenance standards, a lack of accountability, and subsequently hindering policy review. The Auditor General found that departments do not consult with FHBRO for a variety of reasons:

- they cite their own, in-house expertise;
- they perceive that proposed work is similar to previously approved work and therefore does not require additional consultation;
- they need to act quickly in order to use available funds and do not have time to consult FHBRO;
- they consider work to be routine maintenance and not of threat to heritage character.

In particular, the 2008 report criticized the ambiguity of Treasury Board policy as it applies to the disposal process. It noted that a significant weakness lay in the wording of the policy, which states that departments must make best efforts to find new and appropriate owners and uses for surplus buildings, but that without mandated oversight, buildings risk being disposed of regardless of whether best efforts have been met.

The report concluded by re-stating challenges raised in 2003; a lack of regulations, inconsistent application of Treasury Board policy, and no correlation between federal heritage building designation and long-term conservation. The report recommended the government strengthen its conservation efforts, and that departments set more stringent conservation objectives for themselves.

2.4.3 Current Disposal Numbers

“The federal government’s decision to privatize or dispose of numerous properties will mean some designated buildings will leave the protection of [FHBRO].”²⁸

As of January 2015, FHBRO’s Directory of Federal Heritage Designations listed 1311 buildings; 270 Classified and 1041 Recognized. Since October 2014, when the first statistics were recorded for this thesis, 6 Recognized buildings have been disposed of.

As of November 2014, FHBRO had recorded 64 demolished and 256 disposed Recognized buildings, along with 4 demolished and 20 disposed Classified buildings. In total, 68 federal heritage buildings have been demolished (5% of current total) and 276 buildings have been disposed of (21% of current total). When combined, that means that over a quarter (26%) of all designated federal heritage buildings have left the federal inventory.

It should be noted that there is a possibility that this data does not reflect the true number of disposal and demolitions, due to the lack of mandatory reporting of building disposal by departments to FHBRO. As a result, FHBRO’s numbers only reflect the information that they are provided. In addition, if a building over 40 years of age is not submitted to FHBRO for review, the consultation process bypasses them entirely. When considering that 34% of buildings constructed prior to 1914 have been demolished or irreparably altered since the 1970s,²⁹ it is reasonable to assume that a significant number of federally-owned heritage buildings have been lost without review due to mismanagement arising from policy loopholes.

2.4.4 Conclusion

The contrast between the steward-approach of 1960s and the facilitator-approach of the 1990s establishes a trajectory for a decline in federal interest in heritage conservation projects. While the 2015 announcement of infrastructure financing being made available for the maintenance of National Historic Sites is promising, it would appear to be evident that the federal government will continue to dispose of heritage buildings within their portfolio.

Federal heritage buildings occupy a contested space within the federal government; the government has set forth within Treasury Board policy its expectations of custodial departments, however it has not enacted the necessary programs and processes to ensure those expectations are being met. In addition, the economic realities and the shift within the government from the role of steward to that of facilitator demands that the current policy be revisited, and new tools be explored to ensure that federal heritage buildings do not become casualties of rationalization. Instead, the federal government must understand that these buildings offer opportunities to engage communities, contribute to third sector capacity, and achieve public benefit through their adaptive reuse and new ownership.

²⁸ Fulton, “Policy Issues and Their Impact on Practice,” 15.

²⁹ Pannekoek, “Canada’s Historic Sites,” 79.

This chapter provides a comparative analysis of the legislative and policy framework for heritage conservation and disposal within the United States and England. The scope of analysis was defined by the review of policy in Canada, so as to illustrate where the United States and England have made positive steps towards facilitating the conveyance of publicly-owned heritage buildings to third sector organizations during the disposal process. This chapter briefly reviews the political and economic shifts that occurred in the United States and England during the 1990s, and posits how those shifts impacted the federal or central government's approach to heritage conservation and the disposal of publicly-owned heritage buildings.

3.1 Historic Preservation in the United States

3.1.1 Federal Participation in Historic Preservation

Historic preservation in the United States has benefited from heritage legislation and the provision of financial incentives, the combination of which has encouraged the development of a robust and thriving preservation economy. While the United States and Canada evolved side-by-side in how their respective federal governments understood their roles in historic preservation through the early 20th century, the passage of the NHPA in 1966 provided a new and robust framework for federal participation in the United States that established legislative obligations and committed the federal government to historic preservation. The NHPA invested the federal government in the preservation of all historic buildings - not only those within federal ownership, but also those outside their ownership but that might be impacted by federal actions.

The Federal Government of the United States began to intervene in the protection of historic properties at the turn of the 20th century with the passing of the Antiquities Act (1906). The act granted federal protection to public lands deemed to have historic and/or natural significance by designating them as National Monuments and placing them within federal ownership. A few of the earliest National Monuments include Devil's Tower in Wyoming, Navajo in Arizona, and the Statue of Liberty in New York.

The Historic Sites Act (1935) extended protection to federally-owned monuments and historic sites managed by the National Parks Service (NPS) and created National Historic Site designation which could be applied to both federally and privately-owned properties. The act expanded upon the Antiquities Act by stating that the preservation of historic properties is a federal obligation. In contrast to the Antiquities Act, which focused on natural and indigenous sites, historic properties designated as Historic Sites were primarily recognized for their associative value, often relating to significant figures in American history.

Historic preservation practice in the United States was redefined following the passage of the NHPA, a significant piece of legislation that committed the federal government to historic preservation more so than any prior legislation. The act was spurred by the publication of the report *With Heritage so Rich*, drafted jointly by the US Conference of Mayors, the National Trust for Historic Preservation (NTHP), the White House and certain members of Congress.³⁰ The act is significant for having not only institutionalized the profession of historic preservation

³⁰ Advisory Council on Historic Preservation, *Caring for the Past, Managing for the Future: Federal Stewardship and America's Historic Legacy* (2001), 6.

through creating regulatory processes that demand professional expertise, but also for mandating the federal government be an active participant in the preservation of historic properties as both a facilitator and a steward. The act established the ACHP as the federal ‘watchdog’, providing oversight on federal activities and holding government agencies accountable for their actions. The act also established mandatory community consultation processes in cases where federal actions might impact historic properties within or outside federal ownership. Since its passage the act has been amended to support the provision of federal tax incentives to encourage private sector stewardship.

3.1.2 Management of Federal Historic Buildings

- The National Historic Preservation Act

The NHPA has two sections that provide legislative protection to federally-owned historic buildings; Section 110 and Section 111. In addition, Section 106 provides protection by requiring oversight to any historic property that might be impacted by projects that use federal monies.

Section 106 of the NHPA mandates federal agencies undertake a thorough review and engage in a public consultation process should their actions potentially impact historic properties. This includes projects undertaken by federal agencies as well as projects being pursued by the private or third sector that are using federal monies. The Section 106 review process is overseen by the SHPO and administered by the ACHP, and can provide an important opportunity for community feedback on how federal actions might impact assets of community value.

Section 110 sets forth the responsibilities of federal agencies to designated historic properties within their custody. The section mandates that agency heads assume responsibility for the preservation of historic properties within their custody, and states that they are responsible for establishing internal preservation programs to identify, evaluate and nominate buildings to the National Register of Historic Places (NRHP). The section also includes a heritage first policy, requiring agency heads provide first consideration to historic buildings within their custody when additional space is required, prior to exploring other options. Should an agency determine that a historic property is in-excess of its needs, it must receive approval of the transferee from the Secretary of the Interior.

Section 111 outlines the responsibilities of federal agencies as they relate to the lease or exchange of surplus historic properties. The section allows federal agencies to sublet historic properties within their custody to private organizations and/or individuals, so long as the agency head determines that the action will insure the preservation of the property. The section encourages public-private partnerships (P3s), and mandates that the proceeds from any lease be reinvested in preservation activities, which can include ongoing maintenance and conservation work.

National Register Listed or Eligible Properties

The NRHP is the central register of historic districts, sites, buildings, structures and objects deemed to be of national historic significance in the United States. The NRHP is managed by NPS with the assistance of local SHPOs. The NRHP was established following the passage of the NHPA (1966), folding into its collection all federally-owned properties designated under the Antiquities Act (so long as they were designated for historic value) and the Historic Sites Act. The NRHP includes both privately and publicly owned properties, and currently lists over 88,000 historic places, or 1.4 million individual resources.

The NRHP does not provide legislative protection; its primary goal is to draw attention to significant historic properties, however unlike the Canadian register it is also used to identify properties that are eligible for federal tax incentives. In spite of the lack of legislative protection afforded by NRHP designation, federally-owned historic properties that are listed on the NRHP receive legislative protection as a result of the federal government's commitment to the NHPA, specifically Sections 106, 110, and 111.

- Executive Orders

In addition to the NHPA, the federal government has an obligation to abide by two Executive Orders (EOs) that address historic preservation. EOs are legally-binding orders that are issued by the President of the United States and are disseminated to federal agencies. They address issues relating to internal management, providing guidance and interpretation of legislation and policy.

- Executive Order 11593: Protection and Enhancement of the Cultural Environment

EO 11593 (1971) was passed by President Richard Nixon. Its purpose was to correlate the National Environmental Policy Act (1969), the NHPA (1966), the Historic Sites Act (1935) and the Antiquities Act (1906). EO 11593 reinforced the stewardship role of the federal government in the management of historic properties so as to ensure the preservation, restoration and on-going maintenance of federally-owned historic properties, mandating federal agencies inventory and nominate buildings to the NRHP. The EO was codified in the 1980 amendment to the NHPA, and informed the obligations set forth in Section 110.

- Executive Order 13287: Preserve America

EO 13287 (2003) was passed by President George W. Bush. This EO encourages federal agencies seek out partnership opportunities with state, tribal, and local governments. It also encourages agencies to engage in P3s in order to better ensure the efficient use of historic properties and to illustrate public benefit, specifically through their potential contribution to economic development. The EO obligates federal agencies to undertake internal reviews to ensure current policies support historic preservation P3s. It also established the "Preserve America" program, which provides grants to support the development of historic and cultural sites that encourage tourism.

3.1.3 The 1990s: Changes in Approach to Federal Participation in Historic Preservation

The United States, like Canada, experienced significant economic and political shifts in the 1990s which impacted how the federal government perceived of its role in historic preservation, as well as how it interacted with private and third sector organizations. Unlike Canada, where heritage conservation has historically and relied upon federal support, historic preservation in the United States has deep roots in private philanthropy, and through much of the 20th century relied upon private interest and support.

The 1990s saw increased economic constraints placed upon the Federal Government of the United States. As cutbacks worked their way into federal budgets, money and staff allocated to historic preservation programs decreased. These reductions exacerbated tensions between federal agencies' missions and the preservation mandates that they were obligated to follow.³¹ With many agencies operating with reduced budgets and increased oversight, their ability to allocate staff to oversee the inventory and nomination of potential historic properties to the NRHP was increasingly prohibitive.

In addition to cutbacks leveled at federal agencies, the government significantly decreased the financing it had been allocating to historic preservation grant programs that provided public monies to third sector organizations. Perhaps the most drastic cutback was in 1998, when the federal government withdrew all funding to the NTHP, forcing the organization to become self-reliant and explore new avenues for fund development outside the public sector.

The fiscal conservatism and small government movement in the 1980s and '90s, spurred by the global recession, had a significant impact not only on the provision of direct financing to historic preservation, but also on how the federal government approached partnerships with other levels of governments and the third sector; during this period the government embarked on a project of decentralization, delegating local decision making authority to state and tribal governments.³² Decentralization in the United States is still underway; in March 2015, the United States Senate voted to support an amendment to a budget resolution to "sell or give away" federal lands, except for national parks and monuments; these lands will then "...revert to the states or local governments or be auctioned off".³³

Decentralization and a drive to small government is not unique to the United States; state governments throughout much of the western world have begun to devolve responsibilities to local authorities as a means of realizing greater efficiencies and encouraging entrepreneurialism within an increasingly global environment. While decentralization and rationalization have been a shared global experience, the United States has stood out by indicating that it seeks to realize efficiencies through engaging the third and private sectors in partnerships that will ensure that historic properties benefit communities, supported by policies and directives such as EO 13287. These partnerships are complimented by legislation that supports community participation, such as Section 106, providing a sense of security to federally-owned historic properties that are subject to rationalization.

31 Advisory Council on Historic Preservation, *Caring for the Past*, 18.

32 Thompson Mayes, "Preservation Law and Public Policy: Balancing Priorities and Building an Ethic," in *A Richer Heritage: Historic Preservation in the Twenty-First Century*, ed. Robert E. Stipe (Chapel Hill, NC: University of North Carolina Press, 2003), 163.

33 Will Rogers, "Our Land, Up for Grabs." *New York Times*, April 2, 2015. http://www.nytimes.com/2015/04/02/opinion/our-land-up-for-grabs.html?_r=0. Accessed April 13, 2015.

3.2 Disposal of Surplus Federal Historic Buildings

The disposal of surplus federal historic buildings in the United States is guided by policies and legislation meant to ensure the long-term preservation of buildings leaving the federal inventory. In addition to documents that apply to all federal agencies, certain agencies have drafted their own internal policies and guidelines so as to streamline the process.

- 40 US Code 550 – disposal of real property for certain purposes

40 US Code 550 establishes the public benefit conveyance (PBC) program, enabling federal agencies to convey historic properties to state, tribal and local governments for public benefit. The ‘historic monument’ conveyance is used when a building listed on or eligible for listing on the NRHP is being disposed of. The conveyance is to be pursued without monetary consideration, so long as the new use will derive public benefit. Unlike homeless and self-help housing conveyances, historic monument conveyances cannot be directed towards non-profit organizations.

- National Historic Preservation Act

Although the NHPA mandates a heritage first policy, it also recognizes that federal agencies cannot always retain ownership of their historic properties. Standard 7, which sets forth the heritage first policy, also contains guidelines for how agencies should proceed when a historic property within their custody is determined to be surplus to their needs.

Guideline (g) states that when the retention of a historic property is not economically feasible, disposal should be considered. The decision to list a historic property as surplus should be informed by the agency’s mission, as well as an understanding of the public interest in historic preservation, the full costs associated with disposing of a historic property, and other public interest factors. Guideline (e) encourages agencies to first consider leases, exchanges and management agreements to retain federal ownership (re: Section 111). Guideline (f) encourages federal agencies to use the Historic Surplus Property Program (the NPS’ program that facilitates historic monument PBCs) for properties that are listed or eligible for listing on the NRHP.

- General Services Administration. Federal Management Regulation. Subchapter C – Real Property.

The Federal Management Regulation, issued by the General Services Administration (GSA), applies to executive and federal agencies, and contains regulatory policies that inform property management and related administrative processes. It contains directives on the management of personal property, real property, transportation, travel management, telecommunications and administrative programs; *Subchapter C (Real Property)*, *Part 102-75: Real Property Disposal* and *Part 102-78: Historic Preservation*, address the disposal of federal historic properties.

- *Subchapter C - Real Property. Part 102-75: Real Property Disposal* directs agencies on how to determine the most appropriate method of disposal, including the transfer of the property to other federal agencies and state or local governments. It permits agencies to make surplus properties available for sale through GSA, and encourages federal agencies to evaluate each property on a case-by-case basis. *Section 102-75.445* specifies that in the case of a historic monument PBC, monetary considerations should not influence the decision making process.

- *Subchapter C - Real Property. Part 102-78: Historic Preservation* establishes the responsibilities of federal agencies for managing historic properties. *Section 102-78.35* mandates federal agencies hold community consultation through public notification so as to abide by historic and cultural preservation laws and regulations (re: NHPA Section 106). *Section 102-78.65* encourages federal agencies to adaptively reuse surplus buildings prior to considering disposal, and that in the case of disposal the Secretary of the Interior must approve of the transferee's plans for the property so as to ensure the disposal will not have negative impacts upon the historic property (re: NHPA Section 110).

3.3 Heritage Conservation in England

3.3.1 Central Government Participation in Heritage Conservation

The British Government (central government) has firmly established its role as steward of historic buildings through the passage of three key pieces of legislation, pertaining to both publicly and privately owned buildings. These acts commit the central government to ensuring the preservation of designated historic buildings, and to be both a steward for buildings within its ownership as well as a facilitator for heritage conservation activities being pursued by the third and private sectors.

- *Ancient Monuments Act (1882, revised 1979)*

The Ancient Monuments Act was passed in 1882, and has undergone a number of amendments over the course of the 20th century. The act sets out regulations protecting Scheduled Monuments as well as other monuments determined by the Secretary of State to be of historic, architectural, traditional, artistic or archaeological interest. The program established by the act is administered by English Heritage (officially known as the Historic Buildings and Monuments Commission for England) and the Department of Culture, Media and Sport (DCMS).

The act makes criminal any action that might result in the demolition, destruction, or damage to a Scheduled Monument. It commits the central government to the stewardship (“guardianship”) of Scheduled Monuments, both within and outside public ownership. So as to be able to extend protection to privately-owned historic buildings, the act enables the central government to issue compulsory purchase orders on privately-owned monuments in cases where their historic value is determined to be at-risk. In addition, the act allows for private owners of Scheduled Monuments to deed stewardship of their property to the central government through the Secretary of State.

- *National Heritage Act (1983, revised 2002)*

The National Heritage Act was passed in 1980, with subsequent amendments in 1983, 1997, and most recently in 2002. The act is significant as it created the Historic Buildings and Monuments Commission for England (“English Heritage”), in addition to establishing a number of national museums.

Akin to the Ancient Monuments Act, the National Heritage Act affirms the central government’s interest in the stewardship of both publicly and privately owned historic buildings in England. The act mandates English Heritage to secure the preservation of historic buildings through a variety of means, including advocacy and education, the provision of financing, project consultation, and their documentation.

- *Planning (Listed Buildings and Conservation Areas) Act (1990)*

The Planning (Listed Buildings and Conservation Areas) Act is one of four related acts passed in 1990, and is subsidiary to the Town and Country Planning Act (“The Principal Act”). This act establishes the listing of special buildings (Listed Buildings) and sets forth the legislative obligations that must be followed in the management.

This act reinforces the central government’s role of steward as set forth in the prior acts. The act enables local authorities to approve changes to historic buildings, rather than mandating review be handled exclusively by the central government. The act mandates that approval be received for any works undertaken on Listed Buildings from local planning authorities; only after local approval has been received will final approval be sought from the Secretary of State. This act also enables the Secretary of State to appropriate privately-owned historic buildings that are not being properly preserved, and to retain or transfer ownership to a local authority.

Listed Buildings

Listed Buildings are properties that have been placed on the Statutory List of Buildings of Special Architectural or Historic Interest. The designation can be applied throughout the United Kingdom, with lists maintained by separate entities within each country (England, Scotland, Northern Ireland, and Wales). As of 2012, the list contained close to 400,000 buildings within England. Listed Buildings are evaluated by English Heritage and approved by the Secretary of State, and can be classified into one of three categories, or ‘grades’, depending upon their relative degree of importance. Any alteration to a Listed Building must receive permission from a Local Authority, with final approval from the Secretary of State.

3.3.2 The 1990s: Changes in Approach to Central Government Heritage Management

Unlike Canada or the United States, the economic and political shifts that occurred in England in the 1980s and 1990s did not result in decentralization or a decrease in financing for heritage conservation. Rather what occurred was the centralization of authority, based upon a belief that greater control would better ensure the enactment of policy pushing for small government.³⁴

³⁴ John Pendlebury, “Conservation, Conservatives and Consensus: The Success of Conservation under the Thatcher and Major Governments, 1979-1997,” *Planning Theory & Practice* 1, no. 1 (2000): 31.

The impact that centralization had upon heritage conservation was relatively minor. In fact, over the course of the 1980s and 1990s the number of Listed Buildings in England increased, with a general consensus that “... not only was conservation not the subject of the neo-liberal agenda, but positive measures were taken”.³⁵ English Heritage was established in 1984, and the Heritage Lottery Fund, which provided public monies to heritage conservation projects, began accepting applications in 1994. It has been suggested that heritage conservation was able to better integrate itself within neoliberal reforms due to the economic commodification of heritage in England; the central government invested in publicly-owned heritage buildings as a means of encouraging heritage tourism, preserving the buildings in order to generate revenue along with public benefit.³⁶

The devolution of certain government powers to local authorities began following the election of the Labour Party in the mid-1990s and picked up in the 2000s, culminating with the passage of the Localism Act in 2011. The act set forth legislation and programs that provide greater authority to local authorities, communities and individuals, primarily in matters concerning community development, the provision of public services, and community rights. The act departs from England’s long-established history of centralization, and is significant in having established community rights relating to the preservation of the built environment (amongst other rights).

The Localism Act seeks to achieve decentralization through six “essential actions”:³⁷

1. Lift the burden of bureaucracy
2. Empower communities to do things their way
3. Increase local control of public finance
4. diversify the supply of public services
5. Open up government to public scrutiny
6. Strengthen accountability to local people

These essential actions are reflective of goals identified by the Federal Government of the United States in the 1990s relating to the management of historic buildings. While the Localism Act sets forth programs and policies that provide various processes through which authority might be devolved to communities, two important programs can be applied to the disposal of surplus historic buildings: the community asset transfer (CAT) and the Right to Bid programs, both of which enable third sector organizations to express their interest in historic buildings and to potentially acquire them. While these programs do not apply to buildings held by the central government, they can be applied to other publicly-owned historic buildings. Parallels can be drawn between parts of the Localism Act and Section 111 (encouraging partnerships with the private sector) and EO 13287 (using historic properties for community development). The CAT program bears many similarities to the PBC program as well.

³⁵ Pendlebury, “Conservation, Conservatives and Consensus,” 41.

³⁶ Ibid., 46.

³⁷ Department for Communities and Local Government, HM Government, *Decentralisation and the Localism Bill: an essential guide* (2010), 3.

3.4 Disposal Policy in England

The disposal of surplus public heritage buildings picked up in England post-2000; central government policy that required greater transparency on asset management shed light on extensive internal mismanagement and the retention of surplus properties; as a result, the 2004 Spending Review committed the central government to dispose of public sector assets worth up to 30 billion pounds by 2010.³⁸ That the proceeds of disposal are retained by the custodial department incentivizes the process, however legislative and policy obligations afford a significant degree of protection to designated historic buildings through the disposal process, so as to better ensure that potentially negative impacts are mitigated. In addition, the pursuit of profit is understood to be secondary to ensuring the long-term conservation of the building.

- *Green Book, Government Accounting and OGC Protocol*

The disposal of surplus public buildings in England is guided by protocol established by the Office of Government Commerce (OGC), informed by Her Majesty's Treasury's *Green Book* (2003) and *Government Accounting* (2000). The emphasis of the protocol is on expedient disposal that provides best overall value for money for the taxpayer.

In the guide to OGC protocol (2005), the disposal of historic buildings is included as a consideration, and custodial departments are referred to DCSM's guidance note, in addition to relevant heritage legislation, for direction. The guide encourages departments to consider the possibility of adaptive reuse, to understand the full costs associated with disposing of a historic building, and to explore options for disposal that will ensure appropriate ownership and use is secured for the long-term, even at the potential loss of sale revenue. Additional policy points within the guide encourage departments to place restrictive covenants and clawback provisions as a means to further ensure the long-term preservation of the asset once it has left public ownership.

- *The Disposal of Heritage Assets: guidance note for government departments and non-departmental public bodies*

In 2009, The Government Historic Estate Unit (GHEU) published *The Disposal of Heritage Assets: guidance note for government departments and non-departmental public bodies*. GHEU is an advisory unit within English Heritage that is mandated with assisting the central government with managing and caring for historic buildings. While not legislatively obligated to do so, GHEU requests that it be consulted through the course of the disposal process. The guidance note expands upon the protocol by elaborating on when different methods of disposal might be appropriate (competitive tender, sale and auction, e.g.). It also introduces the different purchasees for heritage buildings that might be considered - building preservation trusts, charitable trusts - and how an appropriate price for a heritage property might be arrived at.

In spite of the protections afforded to Listed Buildings and properties within the central government's portfolio, it has been noted that “..whilst valuable surplus assets can be sold on the market with little risk of loss or

³⁸ Green Balance and Grover Lewis Associates Ltd., *The Disposal of Heritage Assets by Public Bodies* (London, UK: The National Trust, 2006), 6.

damage, economically unattractive properties pose more of a challenge”.³⁹ Akin to the United States, the challenge to ensuring the long-term preservation of England’s surplus public historic buildings is a financial one, primarily faced by the would-be purchaser - all the more so when that purchaser is a third sector organization with limited capacity. Through CATs and the publicly-funded Heritage Lottery Fund, the central government has recognized that financial assistance might be necessary to ensure the long-term preservation of surplus public historic buildings, and has chosen to commit itself financially to assisting the third sector in activities that support this process.

3.5 Conclusion

Heritage conservation policy and legislation in the United States and England has extended protection to publicly-owned heritage buildings through the course of the disposal process, in contrast to the relative lack of protection provided to surplus federal heritage buildings in Canada. Preservation is not only better ensured through legislation and policy, however; ownership transfer programs (PBCs, CATs) allow for the third sector to assume an active role in securing the long-term preservation of surplus public heritage buildings that are of significance to communities, or that could contribute to the public benefit through adaptive reuse.

This comparative analysis indicates that, while all three countries experienced rationalization and decentralization following the economic shifts of the 1990s, the United States and England responded by identifying local community organizations as partners in preservation; the Canadian federal government’s response did not provide greater authority to the third sector, and yet it placed increased responsibility upon them as a result of government cutbacks. Capacity-building programs – such as the Localism Act in England, or ‘Preserve America’ (EO 13287) in the United States – provided tools for the third sector to more fully participate in the disposal process and ensure long-term preservation, tools that have not been made available within Canada.

³⁹ Green Balance, *The Disposal of Heritage Assets by Public Bodies*, 11.

The following introduction to the third sector should evidence the diversity of organizations that fall under the term, and the challenges they face in acquiring financing for capital projects, including the acquisition of real estate. While no thorough study of the third sector and their role in preserving and adaptively reusing surplus public heritage buildings exists, the sector would appear to be well-positioned to ensure that heritage buildings passing out of public ownership remain accessible and a part of the local community, in large part due to the third sector's mandate of seeking to derive public benefit. Third sector ownership of surplus public heritage buildings must be understood as long-term investments in the community; that any profit derived from the ownership and operation of surplus public heritage buildings is reinvested in the organization's mandate should be a significant incentive for their conveyance from the public sector to the third sector, and yet significant challenges hinder this process in Canada. By formalizing the conveyance of surplus federal heritage buildings to the third sector, the Federal Government of Canada would be presented with an opportunity to evidence how heritage conservation can be used as a tool through which various public benefits might be realized.

4.1 Definition

"Third sector" is an umbrella term applied to organizations that are values-based and volunteer-driven. The term is often interchangeably used with voluntary sector or non-profit sector. In "Defining and Theorizing the Third Sector," Olaf Corry suggests the first use of the term 'third sector' was in the sociologist Amitai Etzioni's book *The Third Sector and Domestic Missions* (1973). Etzioni defines the third sector as a grouping of organizations or parties that serve to balance the state and the market.⁴⁰ He positions the third sector somewhere between the public sector (driven by coercion and sanctions) and the private sector (motivated by reward and remuneration), suggesting that in contrast the third sector is characterized by value-driven action and commitment, motivated by "...symbolic rewards and deprivations, [based on] the power of persuasion and on appeals to shared values and idealism."⁴¹

The values-driven definition must be discussed in tandem with the unique organizational structure of many third sector organizations. Literature has begun to dissect the peculiarities of the third sector, finding common characteristics that bind its diverse member organizations. The International Classification of Non-profit Organizations (ICNO, 1997) identified five common characteristics often found within the third sector:⁴²

1. Organized (institutionalized and structured)
2. Nongovernmental
3. Non-profit-distributing (profits are reinvested in a social enterprise)
4. Self-governing (in control of their own activities)
5. Voluntary (or at least in part)

⁴⁰ Olaf Corry, "Defining and Theorizing the Third Sector," in *Third Sector Research*, ed. Rupert Taylor (New York, NY: Springer, 2010), 13.

⁴¹ David Lewis, *The Management of Non-Governmental Development Organizations* (New York, NY: Routledge, 2003), 238.

⁴² Corry, "Defining and Theorizing the Third Sector," 14.

These characteristics reflect and elaborate upon Etzioni's definition (voluntary, non-profit-distributing), and draw parallels with the private sector, such as the independence from government, self-governance and institutionalized structure. The ICNO recognizes 12 categories that third sector activities might fall into (Table 2). As can be seen, a wide range of activities can be accommodated, reflecting the sector's diversity.

Code	Field	Code	Field
1	Culture and Recreation	7	Civic and Advocacy
2	Education and Research	8	Philanthropic Intermediaries
3	Health	9	International
4	Social Services	10	Religious Congregations
5	Environment	11	Business and Professional, Unions
6	Development and Housing	12	Not elsewhere classified

Figure 22 The International Classification of Nonprofit Organizations

4.1.2 Alternative Definitions

As governments begin to understand the third sector as a key participant within the economic, social and cultural fields, they have adapted the definition of the third sector so as to better reflect local contexts. In the United Kingdom, the Central Government established the Office of the Third Sector (now the Office for Civil Society) to advance the interests of charities, social enterprises and voluntary organizations. The office defines the third sector as follows:

“...non-governmental organizations which are value-driven and which primarily reinvest their surpluses to further social, environmental or cultural objectives; it includes voluntary and community organizations, charities and social enterprises, cooperatives and mutual.”⁴³

This definition elaborates upon the formal organizational structure identified in the ICNO as well as the values-based characteristics noted by Etzioni. Importantly, it does not mandate that organizations be recognized charities, and accommodates an array of organizational types (cooperatives, charities, etc.). The focus is not on whether an organization is registered with the central government, but rather on what motivates its activities (the pursuit of public benefit), and what it does with any profits it might accrue. This definition permits the diversity of the third sector to be maintained while ensuring that the essential bond – a commitment to civil society – is retained.

The uncertainty arising from the economic and political shifts discussed in the previous chapters has pushed third sector organizations to more closely align their organizational structures and activities with the private sector, a means of establishing security while increasing their ability to be recognized as legitimate, characteristics that are often necessary to receive private financing. Through embracing new ‘hybrid’ organizational structures, third sector organizations will be able to realize improved performance and greater operating certainty while still receiving community support through the reinvestment of profits and the strategic use of assets for public benefit.⁴⁴

⁴³ National Audit Office, HM Government, *Building the Capacity of the Third Sector* (London, UK: The Stationery Office, 2009), 5.

⁴⁴ Susan Phillips and Tessa Hebb, “Financing the Third Sector: Introduction,” *Policy and Society* 29, no. 3 (2010): 182.

4.2 The Third Sector and Surplus Public Heritage Buildings

Little research exists that explores third sector ownership and operation of surplus public heritage buildings, or the benefits that might be accrued through the process. Within the American context, J. Myrick Howard notes the benefits that might be attained when a non-profit assumes ownership of a heritage building, especially the financial benefits that non-profit status can accrue when it comes to property ownership. Financing for the ownership, operation, and conservation of heritage buildings can be attained by the third sector through tax-deductible donations (philanthropy), while local, state and federal governments can offer property tax exemptions as well as sales tax refunds. The benefits of a third sector organization owning and operating a heritage building greatly increase if the building can be used to generate revenue, with the surplus profit being re-invested in the long term maintenance of the property as opposed to being distributed amongst private investors or employees, as might occur in a private organization.⁴⁵

Howard briefly explains the challenges and opportunities that arise in dealing with an institution – such as a level of government – that is disposing of a heritage building. Problems can often arise from un-clear power hierarchies - where one level of government defers to another - which can significantly stall the disposal and acquisition process.⁴⁶ Another challenge is that institutional mandates often trump an interest in historic preservation.⁴⁷ An opportunity that Howard identifies as benefiting non-profits in the process of working with institutions is that preservation offers a chance for the institution to ‘save face’ through sparing the demolition of a community asset, while simultaneously preventing vacancy and decay, appeasing the local community.⁴⁸

In *Nonprofits, Culture, and Community Renewal*, Robert McNulty advocates for increased collaboration between the third, public and private sectors, stating that the traditional division of responsibilities is no longer reflective of modern cities and communities.⁴⁹ Similar to Smith, McNulty notes that cutbacks in funding have hindered the ability of non-profits within the cultural sector to operate independently, resulting in an embrace of joint ventures and entrepreneurial activities that are parallel with the private sector.⁵⁰ Cultural resources (such as heritage buildings) can be understood as tools that can spur community development and contribute to social problem solving, and should be embraced by the third and private sectors for their ability to:

1. help engage new audiences;
2. serve as educational tools;
3. strengthen existing communities;
4. overcome prejudice; and
5. support economic initiatives.

45 J. Myrick Howard, *Buying Time for Heritage: How to Save an Endangered Historic Property* (Chapel Hill, NC: University of North Carolina Press, 2007), 77.

46 Ibid., 95.

47 Ibid.

48 Ibid.

49 Robert McNulty, “Nonprofits, Culture, and Community Renewal,” *National Civic Review* 85, no. 4 (Winter 1996): 30.

50 Ibid.

McNulty argues that cultural resources should be understood as advertisements for the community. He states that, in light of a decreased public sector role, it will be up to the third sector to embrace cultural resources so as to derive benefit for local communities. Heritage buildings are valuable cultural resources, and third sector organizations are in a position to ensure these resources continue to benefit local communities. The challenge that these organizations must overcome is in the acquisition of these cultural resources; the public sector needs to recognize third sector organizations are in the best position to derive community benefits from the ownership of surplus heritage buildings, and to then provide the tools necessary for those organizations to acquire the buildings.

4.3 The Third Sector in Canada

Declining public sector financing available for third sector organizations in Canada has prompted a review of the sector's contributions to the country's overall economic picture. Often referred to as the voluntary sector within Canada, the third sector is being championed as a necessary service provider, all the more so given government reorganization and what has been perceived to be a divestment in the provision of social services by the federal government.

Canada has the second largest third sector in the world, employing 11% of the country's economically active population.⁵¹ In 2003, when the last survey of the third sector was done, there were 43,360 non-profit organizations in Ontario alone, or 28% of all non-profits in Canada.⁵² The Ontario Nonprofit Network (ONN) places the number of third sector organizations in the province closer to 55,000. In comparison to Ontario's top industries, the third sector is almost as large as construction, and is larger than retail/trade and food manufacturing.⁵³

4.3.1 Third Sector Capacity

In 2003, Statistics Canada undertook the National Survey of Nonprofit and Voluntary Organizations. The survey informed a publication, *The Capacity to Serve*, which identified strengths and challenges faced by the third sector in Canada.

Third sector capacity was identified as a primary area of concern within the report. The report states that an organization's capacity can be understood as its ability to fulfill its mission and mandate, taking into consideration factors that constrain or impair its ability to do so. The report understands capacity to be fundamentally connected with capital, recognizing that an organization's ability to complete a particular objective relies upon the availability of finances.⁵⁴ Other important considerations when determining capacity are human resources, technology, skills, and knowledge,⁵⁵ however for the purposes of this thesis, financial capacity is the most pertinent.

51 David M. Lasby, Michael H. Hall, R. Mark Ventry and Denyse Guy, "A Portrait of the Ontario Social Economy," *Researching the Social Economy*, ed. Laurie Mook, Jack Quarter and Sherida Ryan (Toronto, ON: University of Toronto Press: 2010), 25.

52 Ibid

53 Ibid, 28.

54 Canadian Centre for Philanthropy et al, *The Capacity to Serve: A Qualitative Study of the Challenges Facing Canada's Nonprofit and Voluntary Organization*, (Toronto, ON: Canadian Centre for Philanthropy, 2003), 4.

55 Ibid, 3.

Fritz Pannekoek posits that community-level capacity, including that of the third sector and municipal governments, was intentionally increased by provincial and federal governments in the 1990s in order to encourage, support and sustain their ability to manage heritage activities.⁵⁶ The revision of the Ontario Heritage Act (2005), and the passing of both the Municipal and City of Toronto Acts (2001), can be seen as methods of encouraging or mandating a degree of self-management within Ontario communities. Pannekoek suggests that provincial civil servants intentionally stepped back from certain community decision-making processes, providing greater local authority in matters relating to the built environment and community development.⁵⁷ This mirrors the devolvement of certain powers to local governments and the third sector in England and the United States, however in Canada it was not accompanied supportive programs and policies; as a result, many third sector organizations and local governments have become burdened with the increased responsibilities placed upon them.

4.3.2 Third Sector Financing

The Federal Government of Canada has historically relied upon the third sector to deliver services to remote regions of the country, providing grants and contributions that were directed to charitable organizations through federal ministries. Since the 1990s there has been a change in how these federal funds can be used, as well as the implementation of new accountability processes that third sector organizations must follow when receiving federal financing. Under many of the current grant programs, special projects and activities are more likely to receive financing than capital projects, as they are more readily accounted for, and the impact of the funds can be clearly identified.⁵⁸

Financing for the third sector in Canada comes from three primary sources: earned income, the government, and gifts and donations. 46% of non-profits in 2010 received the majority of their funding from earned income, 32% from gifts and donations and 12% from government.⁵⁹ Following the 2008 recession, financing for the sector from the federal government decreased, which was concurrent with a rise in more stringent controls placed upon the use of public funds.

The Social Planning Network of Ontario (SPNO) noted the continued impact of the recession on financing for the third sector. SPNO identified a number of coping strategies that have been adopted by the third sector following reductions; while many of the coping strategies have had a negative impact on the delivery of services, others offer hope: in particular, third sector organizations are pursuing partnerships, collaborations, mergers and innovation.⁶⁰ In 2010, the Government of Ontario announced plans to re-envision its relationship with the non-profit sector. ONN, formed in 2007, is now a voice for 7,000 non-profits within the province, and has had success negotiating innovative policy to advance the goals of member organizations, in collaboration with public sector partners.

⁵⁶ Pannekoek, "Canada's Historic Sites," 72.

⁵⁷ Ibid.

⁵⁸ Andrew Graham, "Examining Means to Build Financial Sustainable Capacity in Canada's Voluntary Sector." In *The New Federal Policy Agenda and the Voluntary Sector: On the Cutting Edge*, ed. Rachel Laforest (Montreal, QC and Kingston, ON: McGill-Queen's University Press: 2009), 35.

⁵⁹ David M. Lasby, et al. "A Portrait of the Ontario Social Economy," 35.

⁶⁰ Social Planning Network of Ontario, *A Recovery-Free Zone: The Unyielding Impact of the Economic Downturn on Nonprofit Community Social Services in Ontario* (2010), 12.

4.3.3 The Third Sector and Surplus Public Heritage Buildings

Whether out of necessity or choice, third sector ownership and operation of heritage buildings is not uncommon in Canada; older buildings often provide inexpensive and flexible space in accessible locations that are integrated within the surrounding community. Reasons for why third sector organizations would locate themselves within heritage buildings might include a desire to be connected with a specific community through association with a local landmark, low sale or rental costs compared to new construction, the donation of the space, limited market availability, or an appreciation for the architecture or interior features and layout. For non-profits whose mission and mandate does not include heritage conservation, the conservation of the heritage value of a building is often secondary or tertiary to other concerns – in these cases, the financial implications of assuming ownership can often outweigh any considerations of the building's heritage value in the decision making process.

Heritage buildings constructed for the provision of public services are unique in that their significance might not only be derived from their architectural features, but also from their being understood as extensions of public space and as community landmarks. These buildings, when open to the public, often play an important role as sites of civic engagement, and are places where the government has engaged the community. Schools, post offices, court houses, recreational centers, libraries, and train stations are just a few of the building types that fit into this category. Public buildings that did not provide services but instead offered employment or those that represent an investment within a community by the federal government - such as military bases and industrial facilities - can have similar importance and hold value outside the traditional heritage value criteria. Listing as a community asset in England enables the valorization of such buildings, however no similar means of designation exists in Canada.

When federally-owned heritage buildings are disposed of, the impact is felt by local communities. The transfer of the building to a private owner, or the demolition of the building, risks barring access to what was a public building as well as to the land on which it sat. This fear was illustrated when the Canadian Coast Guard declared 970 lighthouses to be surplus in 2010, and most recently when the Toronto District School Board announced that upwards of 130 under-enrolled schools might be disposed of or amalgamated, the land upon which they sit at-risk of being sold to private developers. In both cases, redundancy and high maintenance costs were cited as reasons for disposal. While a program for the acquisition of surplus heritage lighthouses by third sector organizations has been established (see Section 6.1.2), no such program exists for schools.

Provincial heritage designation is a tool that is often looked to by communities as a means of extending protection to surplus federal buildings being disposed of. This is a short term solution, however; heritage designation is not a means of finding a suitable new owner, and it does not take into consideration the financial reality of the federal government. If the building is determined not to qualify for heritage designation under provincial criteria, the process risks not only straining staff resources, but it can lead to confusion and disappointment within the community as to what heritage designation is meant to protect, if not assets of community value.

4.4 The Third Sector in the United States

The ownership and operation of historic buildings by the third sector in the United States is rooted in a legacy of private citizen initiative. Unlike Canada, where heritage conservation struggled to capture the attention and pocketbooks of wealthy benefactors, Americans have since at least the Civil War devoted significant resources to preserving their architectural heritage. After individual property owners, private non-profits have played the largest role in historic preservation in America in identifying and securing heritage buildings.⁶¹ While the mandates of these private non-profits vary greatly, the number of buildings that have been preserved by third sector organizations, and the resources accrued to do so, have resulted in the preservation of a significant cultural heritage.

Early third sector participation in the preservation of historic buildings through ownership followed the model set forth by the Mount Vernon Ladies Association, who in 1859 purchased Mount Vernon, the home of former United States President George Washington. Other women's groups that adopted similar ownership-as-preservation models include the National Society of the Colonial Dames of America and the Daughters of the American Revolution. Through the early to mid-twentieth century, dozens of local women's associations and social clubs were able to accrue financing to preserve historic buildings within their communities that they identified to be of value.

Organizations with historic preservation mandates began to emerge following the First World War. These early third sector organizations continued the legacy of ownership-as-preservation, often converting the buildings into house museums and maintaining them through donations and entrance fees. Historic New England (formerly the Society for the Preservation of New England Antiquities, 1910), the Preservation Society of Charleston (1920) and the Society for the Preservation of Long Island Antiquities (1948) were all actively purchasing at-risk heritage buildings, relying almost exclusively upon private philanthropy to do so.

The old-guard of early 20th-century third sector organizations in the United States - defined by their focus on preserving sites associated with important politicians, businessmen, and military heroes - began to wane after World War II, with a new generation of preservationists assuming positions of leadership and promoting the use of forward-thinking tools to acquire and preserve historic buildings. Bolstered by the passage of the NHPA and the subsequent professionalization of historic preservation (Columbia University's historic preservation program, the first in the country, was established in 1965), many third sector organizations began to secure the preservation of at-risk buildings through non-traditional means. An early method used was the donation of easements, wherein a property owner voluntarily provided an organization with an easement on the exterior of their building. In the 1970s, third sector organizations began entering into partnerships with private developers, realtors and accountants, encouraged by the provision of federal preservation tax credits (1976) and a better understanding of how historic buildings can contribute to sustainable communities.⁶² These partnerships created strong bonds between third and private sector organizations, mutually beneficial relationships that enabled access to financing for third sector organizations, and access to tax credits for the private sector through syndication.⁶³

61 J. Myrick Howard, "Nonprofits in the American Preservation Movement," in *A Richer Heritage: Historic Preservation in the Twenty-First Century*, ed. Robert E. Stipe (Chapel Hill, NC: University of North Carolina Press, 2003), 313.

62 *ibid*, 319.

63 Tax credit syndication enables private investors to 'purchase' certain tax credits from developers (including the third sector) as a means of offsetting income tax liabilities. Tax credit syndication has been a significant driver in third sector activity in areas including low-income housing, historic preservation and renewable energy, providing a means of generating revenue using tax credits that are of no use to many third sector organizations, but are desirable to large corporations.

In the later part of the 20th century as third sector organizations became more comfortable with the ownership and redevelopment of heritage buildings many extended their reach beyond traditional preservation mandates in order to achieve additional public benefits. The Pittsburgh History and Landmarks Foundation and the Savannah Landmark Rehabilitation Project were early pioneers in the restoration of historic buildings in order to create or preserve affordable housing. The pursuit of a range of public interests alongside historic preservation would prove to be of assistance following the recession of the late 1980s and 1990s, when federal grants for historic preservation began to dry up, forcing third sector organizations to appeal for private sector partners. By being able to illustrate how the process of historic preservation was able to derive multiple benefits for communities, third sector organizations in the United States have been able to appeal to a diverse donor base and receive financing that would not be available otherwise.

4.5 The Third Sector in England

Since the 1700s, the English aristocracy and professional classes have invested heavily in heritage conservation, albeit primarily with an antiquarian interest. The rise of third sector organizations involved in the ownership of historic buildings was not until the late 19th century, coinciding with an increased focus on social reform and the development of charities that sought to address challenges that arose from increased urbanization and the plight of the working poor.

In the late 19th century the preservation of natural areas and historic buildings in England was bolstered with the establishment of the National Trust for Places of Historic Interest or Natural Beauty (1895). Now known as the National Trust, the private non-profit was founded by well-meaning and well-connected individuals whose interests ranged from social activism and landscape architecture to religion, underpinned by a belief that the conservation of nature and historic buildings would directly benefit civil society and contribute to a better quality of life for the poor and destitute.

The National Trust acquired a number of natural landscapes and historic buildings in its early years, often through donation. The decline of agriculture and the introduction of debilitating death duties (or inheritance tax) resulted in a surfeit of historic estates, the owners being more inclined to donate their properties to a charity rather than pay hefty taxes.⁶⁴ Many of these estates were subsequently opened to the public as museums, a similar model to that seen in the United States. Over the course of the 20th century, the National Trust has come into the ownership of a variety of properties, ranging from medieval chapels to mid-century houses. These properties vary in how they are maintained – while some operate as museums, others are tenanted out and open to visitors at specific times or by appointment only.

While the National Trust is an example of a third sector organization that operates at the national level, hundreds of building preservation trusts have successfully purchased, restored, sold, and maintained historic buildings at a much more local level. Represented nationally by the Association of Building Preservation Trusts (ABPT), building preservation trusts vary greatly in size and scope. Some trusts are established in order to protect a specific

⁶⁴ Jennifer Jenkins, "The Roots of the National Trust," *History Today* 45, No. 1 (1993): 8.

building, while others focus on collections of buildings, within specific towns, or entire regions. The ABPT traces the history of trusts back to the 1920s with the establishment of the Bath and Oxford Preservation Trusts, however the National Trust could be considered the earliest if included. Other well-known trusts involved in heritage conservation include the Landmarks Trust and the Prince's Regeneration Trust.

While private sector financing has assisted in the establishment of building preservation trusts, many have also received significant financing from the public sector. The Architectural Heritage Fund (1977) provides grants to building preservation trusts, financed in part by public money. Additionally, trusts can receive financing from the Heritage Lottery Fund, which distributes proceeds from the National Lottery to heritage conservation projects. In some cases, trusts have been conveyed ownership of privately-owned at-risk heritage buildings that have been expropriated by local authorities.

4.6 Conclusion

The third sector is increasingly occupying a position - voluntary or not - where it can assume greater responsibility for deriving public benefit. This position requires the third sector to maintain its focus on serving civil society, but it also places pressure upon the sector to operate in parallel with the private sector so as to achieve the capacity required to fulfill these new responsibilities. Within the field of heritage conservation, there is a growing desire to better integrate preservation goals with other public benefits, including the "...larger economic and social community, joining business, industry and culturally diverse groups".⁶⁵ Partnerships with other non-profits and the private sector have become a necessity in some cases, offering opportunities to increase capacity while breaking out of the silo of preservation that has in many ways restricted third sector activities by limiting their capacity and audience. The acquisition of surplus heritage buildings offers a means for third sector organizations - regardless of whether their mandate is preservation-based - to not only connect with the community and provide continued public access to the property, but to increase their own capacity by providing a source of long-term income, and a means to acquire alternative sources of financing.

⁶⁵ Diane Lea, "America's Preservation Ethos: A Tribute to Enduring Ideals," in *A Richer Heritage: Historic Preservation in the Twenty-First Century*, ed. Robert E. Stipe (Chapel Hill, NC: University of North Carolina Press, 2003), 18.

The third sector in Canada faces a number of challenges in the acquisition of surplus federal heritage buildings. Various methods for the categorization of the identified challenges were considered for the purposes of this thesis; the framework used was chosen as it reflects two overarching categories for how the challenges can be understood alongside the opportunities that are subsequently explored.

Third sector organizations in Canada lack the tools necessary to acquire surplus federal heritage buildings. This thesis proposes that heritage conservation be understood as a tool - that the process of disposing of a surplus federal heritage building to a third sector organization be recognized as a heritage conservation activity, with an understanding that, through the disposal process, heritage buildings might be better preserved than if it were to be sold to a private individual or organization.

The challenges have been categorized as “command and control” or “market-driven”. These two categories seek to recognize the primary source of the challenges, so as to better inform where potential opportunities might be sought. ‘Command and control’ is defined as:

“... policy that relies on regulation (permission, prohibition, standard setting and enforcement) as opposed to financial incentives, that is, economic instruments of cost internalization.”⁶⁶

The United States Environmental Protection Agency understands command and control policies as prescriptive standards, i.e. processes that are enforced, or those that are obligatory.⁶⁷ Canadian Treasury Board policy, and the obligations that it prescribes, can thus be understood a type of command and control tool.

In contrast to command and control challenges, market-driven challenges can be understood as those that arise from financial and organizational sources, influenced by free-market forces that are not subject to significant regulation. The provision of financial incentives, for example, is understood as a market-driven tool to encourage heritage conservation activities. Similarly, the enabling of the creation of financial arrangements or partnerships that assist third sector organizations in acquiring surplus public heritage buildings would be a market-driven approach; the creation by the public sector of a program would, in contrast, be command and control.

5.1 Command and Control Challenges

- Loopholes in Treasury Board policy

The exclusion of crown corporations from Treasury Board policy obligations places certain federally-owned heritage buildings at risk of inappropriate management and disposal. It prevents the review and designation of certain federally-owned heritage buildings by FHBRO, and therefore the obligation to consult with FHBRO and receive advice on proper management and disposal. In addition, federal departments are able to transfer designated federal heritage buildings to crown corporations, at which point the designation is lost. An exception is when the transfer is part of a strategic disposal to CLC; in this case, Treasury Board policy obligations are transferred along with the

⁶⁶ Glossary of Environment Statistics, Studies in Methods, Series F, No. 67, United Nations, New York, 1997.

⁶⁷ United States Environmental Protection Agency, “Regulatory and Non-Regulatory Approaches to Pollution Control,” *Guidelines for Preparing Economic Analyses* (2010): 4-1.

building. If this challenge is not resolved, any attempt to facilitate the acquisition of surplus federal heritage buildings by third sector organizations through policy will not apply to all federally-owned heritage buildings. That no list of disposed federal heritage buildings exists is a significant hindrance to extending protection to these buildings or providing access to new programs to designated federal heritage buildings that are federally-owned but held by crown corporations.

Downsview Park

The loss of federal heritage building status for Plant Complex 1 at Downsview Park reflects a significant flaw within the federal designation process. FHBRO reviewed and designated the complex, however following its transfer to Parc Downsview Park (PDP), a crown corporation, Treasury Board policy no longer applied and the designation was lost. That the complex remained on the official register until 2011 with no indication that it was no longer covered by Treasury Board policy has not been officially addressed, however it could have been a result of the fact that FHBRO is not responsible for monitoring the status of designated buildings; it is reliant upon custodial departments to provide updates and in this case, it was the responsibility of the Department of National Defense (DND) to report to FHBRO that the building had been transferred to PDP. While Treasury Board policy does not place legislative obligations upon federal departments, it does establish policy obligations, and designation as a federal heritage building provides a degree of security for communities. In the case of Plant Complex 1, any sense of security felt by the community and the third sector tenant that might have been derived from the complex's designation was in error.

Postal Station 'K'

Postal Station 'K' illustrates the risks that might be incurred due to the lack of heritage policy obligations applied to federally-owned heritage buildings within the custody of crown corporations. As Canada Post has no obligation to abide by Treasury Board policy, the disposal process for Postal Station 'K' (a National Historic Site) did not obligate consultation with FHBRO or a heritage professional. It fell to the City of Toronto to negotiate with the purchaser (a developer) to have the building preserved in some form; designation occurred concurrent with negotiations for site variances, providing the developer with leverage in the negotiation process. Due to the amount of time required to research and propose provincial designation - and the lack of any holding period applied to buildings under review - the developer's support for designation was essential. Should the developer not have been in support of designation, they would have had the opportunity to lawfully demolish the building prior to it being provincially designated.

Treasury Board policy 6.1.6 directs federal departments disposing of surplus buildings to seek market value, based upon highest and best use. This policy has the potential to be in conflict with policy 6.1.10, which states that best efforts be made to arrange for appropriate alternative uses for surplus federal heritage buildings. Appropriate alternative use does not guarantee the return of market value, especially if market value is assessed as the highest and best use of the property. While disposal policy in England and the United States explicitly states that the assurance of long-term preservation takes precedence over market return, Treasury Board policy does not.

Downsview Park

Buildings 55 & 58 at Downsview Park were two federal heritage buildings that were determined to be surplus by DND; Treasury Board policy supports the market valuation of the buildings without obligating DND attempt to locate appropriate alternative uses first. DND did agree to preserve the buildings through the transfer of ownership to a private developer for private and third sector use, however it was upon the condition that the department receive other land for development at no cost. A subsequent ‘compromise’ - that a third sector organization acquire and relocate the massive hangars to another site - was impractical, and should not be construed as best efforts as it would demand significant capacity on the part of the third sector. Following Treasury Board policy directives on how to determine highest and best value, DND valued the highest and best use of property over the significance of the heritage buildings, justified in doing so by unclear policy that obligates the pursuit of market value for surplus federal heritage buildings.

Third sector organizations are not the only ones that are hindered by Treasury Board policy in acquiring surplus federal heritage buildings; even when another level of government expresses interest in the property for public use, it is the responsibility of the custodial department head to evaluate whether that public purpose is the best decision “from a whole-of-government perspective,” taking into account the market value of the surplus property.⁶⁸

Following disposal, Treasury Board policy allows for the custodial department to share in the net proceeds of the sale; this risks placing custodial departments in a position of conflict, encouraging the maximization of profit above other concerns such as the assurance of long-term preservation or the disposal of the surplus federal heritage building to a third sector organization or other level of government for public benefit.

An additional disincentive to the provision of surplus federal heritage buildings to the third sector is when a property is processed as a strategic disposal. Strategic disposal is used for properties or portfolios that have the potential to be significantly enhanced in value, those that are highly sensitive, or a combination of both. Strategic disposals are handled by CLC, a crown corporation that is exempt from FHBRO policy. CLC has developed its own policy towards heritage, which states that FHBRO assessments will be considered, and that in most cases heritage considerations will be the responsibility of their active subsidiaries.

⁶⁸ Treasury Board of Canada, Directive on the Sale or Transfer of Surplus Real Property, Section 6.7(a).
Alexander Corey - 2015

- *Lack of community and third sector participation in the designation process; community value is not accounted for*

An important and currently under-recognized feature of federal heritage buildings is the value placed upon the building by the community within which it is located. Under the ‘environment’ criteria, a building’s status as ‘landmark’ (physical or symbolic) can be noted, however the environmental value statement often reflects the building’s use within the community (residential, commercial) and not the value placed upon the building, derived from community consultation. Without a process for communities to explicitly state their interests in public assets, third sector organizations are prevented from informing the federal government and custodial agencies of a desire within the community to have the building continue to contribute to public benefit prior to the disposal process.

The inability to state community interest in federal heritage buildings is exacerbated by the hierarchical heritage designation system, wherein provinces and territories are unable to designate and provide legislative protection to federally-owned buildings. This risks exposing federal heritage buildings to threats during or immediately after the disposal process, and can result in rushed negotiations between receiving public entities and the private sector purchaser in order to find a compromise following the disposal of the building.

5.2 Market-driven Challenges

The acquisition of surplus federal heritage buildings can be financially difficult for the third sector without some form of assistance from the public or private sectors. ONN understands the importance of ensuring surplus public buildings remain part of the local community following disposal, stating:

“If government lands can be sold to [not-for-profit] organizations providing public benefit in communities, it will achieve a double return – market and social return and contribute to building community wealth for future generations.”⁶⁹

Third sector organizations are well positioned to ensure a social return from the ownership of surplus public heritage buildings, however they are often hindered by their lack of financial capacity. Oftentimes, market return is often expected of federal custodial departments, with social return being a secondary consideration, if considered at all.

What is needed are tools that can provide financial assistance to third sector organizations, either through direct financing or strategic partnerships. Direct financing can enable third sector organizations to be competitive with private sector organizations, while simultaneously providing them with a degree of autonomy as to how the funds might be allocated. When a surplus heritage building is too large in size, or the scope of work too expensive, strategic partnerships with private sector organizations have been a means of accruing public benefit alongside the generation of revenue.

The following challenges have been understood as market-driven as they relate to issues of acquiring the necessary financing; the opportunities that might address these challenges are those that engage market forces and private initiative, as opposed to state action and regulation.

⁶⁹ Ontario Nonprofit Network, *Not-for-Profit Sector Priorities for Ontario: Business Sector Strategy*, (2012), 8.

- Time Requirements

Third sector organizations often require a longer timeframe than private sector organizations to assemble the financing necessary to purchase and operate surplus public heritage buildings. Factors that extend the time frame include internal approval processes, fundraising campaigns, and the necessity of finding appropriate partner organizations. Without government policy that accounts for this extended time frame, either through advance notification programs or the placement of a moratorium on properties which have been identified by the third sector as buildings of community interest, it is challenging for many third sector organizations to mobilize financing in order to be competitive with other interested parties. ONNs 'Nonprofit Registry for Public Benefit Lands' accounts for this delay at the provincial level, but no equivalent federal program exists.

The Theatre Centre

The successful adaptive reuse of the former Queen and Lisgar Branch Library by the Theatre Centre was dependent upon the significant time frame afforded to the third sector organization, supported by the need to find a suitable new home for the existing tenant, as well as the political negotiating required in order to secure development funds and a lease agreement. In this particular case study the extended time frame greatly benefitted the small organization, providing sufficient time to fundraise, apply for grants, undertake feasibility studies, and rally community and private sector support. In other projects, however, such a time frame could prove to be prohibitive to an organization, potentially resulting in the loss of community interest and the expiration of time-sensitive grants.

- Financial capacity requirements

Third sector organizations occupy a variety of building types, from historic commercial to new construction residential. The ability of the third sector to acquire or maintain existing facilities is challenged, especially within urban centers, in part due to high real estate prices as well as a widely-held belief that the pursuit of new or improved facilities is secondary or 'non-essential' to their social mission. While some third sector organizations have avoided having to engage the property market by receiving donated buildings, others struggle to expand their programs and operations, constrained by their limited space. The challenge as it relates to capacity is cyclical; these organizations lack the capacity to acquire space, which (if acquired) would enable them to increase their capacity through expanding their mission and potentially providing new sources of revenue and leverage.

The decrease in public sector financing for third sector organizations, coupled with strict oversight as to how public funds are used, has contributed to increased financial instability within the third sector. Many third sector organizations have begun to engage in revenue-generating activities to create a more predictable cash flow. Ticketed events and programs, sub-leasing, and sales and marketing have been important means of filling the financial gap arising from public sector cutbacks, however they are often not enough to support the variety of programs undertaken by these organizations, and certainly not enough to support the acquisition of surplus federal heritage buildings. Unlike philanthropy and grants, however, this new cash flow is often less restricted in how it might be used, opening the possibility for greater investment in building acquisition.

In addition to grants, loans, donations, and program revenue, another important source of financing for the third sector can be tax rebates or credits. The Federal Government of Canada does not provide tax rebates for heritage conservation work, and those that are available from local and provincial governments vary in the amount of tax rebate available, and how the rebate is calculated. In Ontario, registered charities are eligible for a property tax rebate of up to 40%; this can be combined with municipal heritage tax rebates, which vary from 20-40% of taxes paid (calculated after other rebates are applied), but are often capped at a percentage of eligible maintenance and conservation costs, or a dollar amount. Since many third sector organizations pay little to no tax, tax rebates are not of assistance. In the United States, however, the third sector has the option to syndicate with private sector organizations and effectively ‘sell’ the heritage tax credits they receive, however that option is not provided to third sector organizations in Canada.

Niagara Military Museum

The Niagara Military Museum has been unable to acquire the finances required to maintain and restore the Niagara Falls Armoury. The museum is volunteer-driven and donations-based; it did not receive registered charitable status (which would allow it to issue tax receipts) until 2014. Its assets are primarily donated objects and memorabilia; it has not assumed ownership of the armoury. Without registered charity status, a substantial donor base, or significant assets, the museum lacked the capacity required to assume the ownership of a surplus federal heritage building, and required the public sector to do so. A formal agreement between the public and third sector partners, as well as the participation of a private sector partner, might have provided an opportunity to establish goals and develop a long-term business plan. Due to community pressure and a lack of policy requiring long-term plans be presented prior to conveyance, the building is underutilized and the city remains responsible for its maintenance costs.

The Theatre Centre

Few of the sources of financing used to acquire and adaptively reuse the Queen and Lisgar Branch Library were taken for granted, and they do not establish a replicable financial model for third sector organizations looking to acquire surplus public heritage buildings. A number of the grants used in the project have been cancelled, and while sources (such as Section 37 development funds) were derived from a negotiation process, and vary in how much money is provided. Unlike large third sector organizations which can tap into provincial infrastructure loans, grants or subsidies, organizations such as the Theatre Centre require a significant amount of time to build a base of financing from the ground up. Were it not for the extended timeframe afforded to the Theatre Centre, their successful acquisition and adaptive reuse of the former library would be uncertain. Since acquiring the property, the Theatre Centre has experienced a significant increase in its financial capacity when compared to 2005. In 2014, the Theatre Centre reported revenue of \$705,570, expenses of \$710,312 and assets worth \$6.284 million.¹ This new financial leverage, critical to the organization’s capacity, will undoubtedly assist the Theatre Centre in its future growth, and provides a solid foundation to support both programming and building maintenance.

¹ Canada Revenue Agency, Form T3010, (Ottawa, ON: 2014).

Artscape Youngplace

Artscape's successful acquisition and adaptive reuse of the Shaw Street School was dependent upon the organization's capacity to undertake a large-scale project, capacity that is not available to the majority of third sector organizations. With 5 prior projects that involved the adaptive reuse of heritage buildings, Artscape had both the organizational and financial capacity necessary to take on the adaptive reuse of the Shaw Street School. A combination of secure assets, established revenue streams, a pre-existing relationship with the city, and a donor base enabled Artscape to undertake a project that would not be feasible for the majority of third sector organizations without significant assistance, either in the form of public financing or private partnerships.

- Reliance on public sector ownership

Communities and third sector organizations in Canada often look to municipal and provincial governments to acquire buildings on their behalf. The expectation that other levels of government should assume ownership of surplus federal heritage buildings at the time of disposal is an unsustainable solution, however, and does not take into consideration the financial challenges faced by all levels of government. While successful cases of surplus federal heritage building transfer exist, in many cases these buildings have only served to burden municipal and provincial governments, through whose ownership new challenges will inevitably arise. The long-term preservation of the building for public benefit is not guaranteed, and the root challenges in third sector acquisition of are not addressed.

Niagara Military Museum

The City of Niagara Falls acquired the Niagara Falls Armoury from DND in 2004, 6 years after it was declared surplus and following extensive community outcry to have the building saved through municipal ownership. In spite of Niagara City Council's stated intention in 2009 that it would not assume financial responsibility for the armoury, 6 years later the City of Niagara Falls remains responsible for operations and maintenance costs, paying approximately \$13,500 annually. The Niagara Military Museum is the sole tenant, and has thus far been unable to accrue the financing necessary to assume financial responsibility for the building, nor to expand their footprint within the space. As a result, a significant amount of the space within the building is underutilized and the structure has yet to be restored. The museum's desire to be the sole tenant of the building and to have autonomy in decisions relating to their use of the space is complicated by municipal ownership.

Canada Malting Co. Silos

The Canada Malting Co. Silos, a former industrial building that had been expropriated by the federal government and designated a federal heritage building, was transferred to the City of Toronto in 1993. The city intended that the silos be used for public purposes, however at the time of acquisition no public purpose had yet been agreed upon, and no third sector partner had been formally engaged. A request for expressions of interest was issued in 1993, which ultimately resulted in the leasing of the property to a third sector organization in 1999, however due to financial challenges the project was cut in 2002. Subsequent plans to redevelop the silos into a municipal museum faced similar challenges, as did plans to engage a private sector partner to facilitate the redevelopment. The building has been vacant for 28 years, with no future use planned and significant deterioration underway. Reliance upon public sector ownership, and a lack of any disposal policy obligations that would demand that public entities have plans in place prior to the conveyance of surplus federal heritage buildings, has resulted in a long and drawn out decay of a designated building, with its future preservation reliant upon political interest and continued community pressure.

- Political change

Political events and changes have the potential to both positively and negatively impact the process of third sector acquisition of surplus federal heritage buildings in Canada. While political support can assist third sector organizations in acquiring buildings through the provision of public funds and increased visibility, it can also place the acquisition process at risk of being stalled or cancelled as politicians pass-through office, and public priorities shift. Political change is a significant challenge when the third sector is solely reliant upon the support – particularly financial support - of local politicians. Policies and programs that limit political involvement to the beginning of the acquisition process can provide security to the long-term project. Without any such programs in Canada, the third sector is often reliant upon continued political support from the initiation of the disposal process through acquisition and project financing. Private sector partners can also help mitigate the potentially negative impacts of political change, however third sector heritage P3s have yet to make headway.

6.1 Command and Control Tools

“Community ownership⁷⁰ can bring people from different backgrounds together. It can foster a sense of belonging. It can play a role in enhancing the local environment, alleviating poverty and raising people’s aspirations. Fundamentally, it’s about giving local people a bigger stake in the future of their area.”⁷¹

Command and control tools most often refer to regulations, policies and programs that are prescribed by the state and which provide a set of instructions that must be followed for a given process. These regulations and obligations can carry significant weight and at times consequences should they not be followed. Section 106 review in the United States is an example of a command and control tool, one that mandates that federal agencies consider the impacts that their actions might have on historic properties. In Canada, the policy obligation requiring federal departments consult with Parks Canada during the disposal of Recognized federal heritage buildings can also be understood as an example of a command and control tool.

Command and control tools are of benefit to the third sector in that they place much of the onus upon the public sector to manage the program, enabling the third sector to spend time and energy on acquiring the necessary financing. Command and control tools are also of benefit in that they can take advantage of the public sector’s ability to place restrictions upon real property, such as easements or development restrictions, which can better protect the building in the long-term. Most significant, however, is that command and control tools can discount the price of the building, often based upon the understanding that public benefit will be derived from third sector ownership and management.

6.1.1 Ownership Transfer Programs

Two programs that facilitate the conveyance of ownership of historic buildings from the public sector to the third sector have been researched: the PBC program in the United States, and the CAT program in England. These tools have provided the opportunity for third sector organizations to acquire or access surplus public buildings at little to no cost. Both programs are predicated on an understanding that, through conveying buildings of historic or community value to the third sector, public benefit can be realized. They also account for the fact that the third sector often requires greater assistance than the private sector in acquiring these buildings due to their unique capacity challenges.

- Public Benefit Conveyance (USA)

The public benefit conveyance program (PBC) allows for the disposal of surplus federal real property to state or local governments and certain non-profits for public use at little to no cost. The program is administered by GSA

⁷⁰ Community ownership is understood as the ownership and management of assets by the community groups, which are part of the broader third sector.

⁷¹ Barry Quirk, *Making Assets Work: the Quirk Review of Community Management and Ownership of Public Assets* (London, UK: Department of Communities and Local Government, 2007), 1.

through the Office of Real Property Disposal, located within the Public Buildings Service. The disposal of surplus federal buildings for historic monument use was first introduced in the Surplus Property Act (1944) and affirmed in the Federal Property and Administrative Services Act (1949). While buildings disposed of as historic monuments cannot be directly conveyed to third sector organizations, the program has encouraged partnerships between various levels of government and the third sector. The PBC program has been a useful tool for the distribution of surplus federal buildings.

Once a federal custodial agency has determined a building to be in excess of its needs, GSA Property Utilization and Disposal is notified, and the property becomes the responsibility of GSA to dispose of. GSA then proceeds through three steps prior to the property being listed for public sale:

1. The property is screened against all federal agencies to find an internal use;
2. If no internal use is found, the property is declared surplus;
3. the property is then reviewed for its appropriateness as a PBC.

The PBC program categorizes surplus buildings depending on their use-type, allowing for certain PBCs to be crossed off fairly easily: a landlocked building could not be conveyed for port or maritime use, while a 10-year-old building will not qualify as a historic monument. Of the 11 public benefits for which buildings can be conveyed, homeless use takes priority, and each property is screened for its potential applicability for homeless use prior to any other public benefit consideration. Should no homeless use be identified, supervisory departments submit proposals of interest. GSA determines which proposed conveyance would derive the greatest public benefit, and partners with the successful supervisory department to proceed with the conveyance. To qualify for disposal as historic monument, the building must be listed or be eligible for listing on the NRHP; the Secretary of the Interior is the supervisory department for historic monument PBCs. When a property is conveyed as a historic monument, it enters the Historic Surplus Property Program, which is administered by NPS on behalf of the Secretary of the Interior.

Who can receive a PBC property depends upon the public benefit: educational use, homeless assistance, and self-help housing allow for non-profit organizations to receive properties, however historic monument conveyance only allows for the transfer properties to other levels of government. Should a non-profit organization identify a surplus federal historic building as being of interest, it must find a public entity willing to assume ownership and enter into an agreement with that entity. Public entities can enter into partnerships with third sector organizations to assist in the ownership and operation of buildings received through PBC, as seen with the Old U.S. Mint in New Orleans.

The Old U.S. Mint in New Orleans was conveyed to the State of Louisiana as a historic monument PBC in 1965. In 1981, the Mint was converted into a museum, and is part of the Louisiana State Museum.

The mint is owned by the state, while programming and projects are supported by The Louisiana Museum Foundation (LMF). LMF was established shortly after the mint was converted into a museum, and is a third sector partner whose mission is to fundraise, administer contributions, and acquire grants to support the programming of the museum. LMF is responsible for providing financial support for all public programming, while the state is responsible for salaries and maintenance. LMF also provides support for the New Orleans Mint Performing Arts Center, located within the Old U.S. Mint, a multi-purpose facility that hosts performance art and media programs. It can access public grant money that is not available to the state; it also benefits from being able to more readily solicit private donations. LMF holds annual fundraising events, undertakes appeals for special projects, and assists the State Museum with project coordination. The partnership between the museum and LMF has encouraged the development of an engaged community that provides financial support for the ongoing use of the historic building and its continued public benefit.

Through the Historic Surplus Properties Program, NPS allows for third and private sector use of historic surplus properties, so long as the deed is held by the public sector. Buildings disposed of through this program have been reused as offices, community centers, commercial facilities, and housing. Should the property be used to generate revenue, any surplus revenue must be applied to historic preservation activities, however as illustrated in the Grove Arcade and Federal Archive Building case studies, it would appear that private profit is allowed so long as *significant* investment in historic preservation is made as well. Properties disposed of through this program can also qualify for federal historic preservation tax incentives, which can encourage third sector heritage P3s, discussed in greater detail in section 6.2.

The PBC program provides access to surplus federal heritage buildings to the third sector without requiring the third sector purchase the property. It can also allow for revenue generating activities by allowing and encouraging third sector heritage P3s, greatly increasing third sector capacity with little to no direct investment from the public sector and minimal risk to the third sector. Finally, it can better ensure the continued protection of designated heritage buildings by mandating public ownership and attaching protective covenants to the property.

The Grove Arcade entered the PBC program through proactive campaigning on the part of the community and local politicians, as opposed to internal federal identification of the property as surplus. The building was conveyed as a historic monument to the city of Asheville for \$1, and included a number of restrictive covenants in order to ensure its long-term preservation. The city of Asheville is not permitted to sell the title or transfer ownership except to a public entity, and only following NPS approval. The conveyance also requires that the North Carolina SHPO and the Asheville City Council approve of any work done to the exterior of the building. As the owner of the building, the city must approve of the sale of lease rights by the non-profit and private sector partners; should lease rights be sold or transferred, they may only go to a registered non-profit. The final protective measure applied during the PBC was the conveyance of facade easements and the air rights of the property to Preservation North Carolina, effectively removing future development pressure from the property and decreasing its valuation based upon highest and best use.

- Community Asset Transfer (England)

The community asset transfer (CAT) program is similar to the PBC program in that it enables access to publicly owned buildings for third sector organizations, however there are two key differences between CATs and PBCs that should be noted. The first difference is in what constitutes an eligible property; while the PBC for historic monuments can only be used for buildings that have been formally designated or recognized as being eligible for the NRHP, the CAT program allows for the disposal of any building determined to be of *community value*. The second difference is that CATs allow for the conveyance of property directly to the third sector. Similar to the PBC program, the CAT program enables access to surplus public buildings at little to no cost, and is intended to be a public benefit program rather than profitable process for the public sector. As noted in the report *Making Assets Work*:

“...optimising the use of public assets is not the primary objective: the over-riding goal is community empowerment.”⁷²

While heritage buildings are not exclusively eligible for the CAT program, they have been transferred through the program to ultimately achieve the primary objective, community empowerment. Without explicitly stating so, the CAT program facilitates heritage conservation processes, and furthermore does so in tandem with achieving public benefit goals. If the CAT, and for that matter PBC, programs are to be understood as heritage conservation programs, then they are programs that look to achieve impacts beyond ensuring the continued use of a historic building; they seek to fully realize the benefit these buildings might have within their surrounding community.

Pre-dating the 2011 Localism Act, CATs were set-up by the central government so as to enable Local Authorities to dispose of public property at less than market value, arising from an understanding of the social, economic and cultural value that might be accrued through providing buildings to community organizations at little to no cost. The program is bolstered by the availability of central government funds that support restoration and adaptive reuse projects. The CAT program does not apply to central government buildings; surplus heritage build-

⁷² Barry Quirk, *Making Assets Work*, 1.

ings owned by the central government can be offered at less than market value, however no program exists through which this is facilitated.⁷³

Battersea Arts Centre

A former town hall, the Battersea Arts Centre has been in use by a third sector organization since 1980, structured upon a series of short-term leases. The transfer of the building to the Battersea Arts Centre as a community asset in 2008 was facilitated through a 120-year lease, which enabled the organization to embark on an ambitious £13.3 million (\$26.3 million USD) capital project. The project included the restoration of major public spaces, the construction of apartments for resident artists, infrastructure modernization and general refurbishment of the 12-year-old building. The project was substantially financed by the public sector; less than half a million pounds were raised from the private sector. Additional work continues to be undertaken in phases as financing is acquired and the needs of the arts center evolve and expand.

The CAT program is administered by local authorities, empowered by the Local Government Act (1972), and the subsidiary General Disposal Consent (2003). The structure of CATs differs by locality, influenced by the capacity of local third sector organizations and the future needs of the local authority. In addition to receiving the property deed, third sector organizations can also enter into long or short-term leaseholds, should the local authority desire to retain ownership of the property.

Many local authorities have drafted strategies for how they intend to manage their real estate portfolio, and how they will identify and dispose of surplus properties. Attention to the disposal process has increased following the passage of the Localism Act, and CATs have become more frequent; three quarters of local authorities have engaged in asset transfers, with one third having formal CAT strategies.⁷⁴ These strategies can state the authority's aims, principles and desired outcomes for engaging in CATs, as well as the standard process for how they manage applications for CATs. Some authorities have made lists of properties that they have identified as being appropriate for disposal through CATs, and actively solicit RFPs for qualified third sector organizations to assume the ownership or management of these properties.

6.1.2 Applying Ownership Transfer Programs to Canada

- Risks and Challenges

The PBC program relies upon the designation of the building attached to title, not ownership; many of the incentives that enable the third and private sector to undertake adaptive reuse projects depend on NRHP, designation, critical to the successful adaptive reuse of heritage buildings. That federal designation in Canada is lost following the transfer of federal heritage buildings from federal ownership, and that no incentives exist for federal heritage buildings, is a significant challenge when considering the applicability of the PBC program to Canada.

⁷³ English Heritage, *The Disposal of Heritage Assets: Guidance Note for Government Departments and Non-departmental Public Bodies*, (2010), 20.

⁷⁴ Locality et al., *Understanding Community Asset Transfer* (2015), 2.

Another challenge to the successful implementation of the PBC program is that it would require the identification of federal supervisory departments to manage the conveyance process, and for these departments to have relationships with third sector organizations. It would also mandate these departments ensure that the asset is being used appropriately over the long-term period. The position of Certification Officer that was established as part of the HPI would have been well suited for this responsibility, however this role was cut following the loss of federal funding for the initiative.

The final major challenge is that the PBC program depends on a central federal agency (GSA) to manage the disposal process for *all* surplus buildings, and that it is through this centralized management that the appropriateness for disposal through PBC is determined. While Public Works and Government Services Canada (PWGSC) is a central resource in the disposal of surplus buildings, it does not assume custody of all properties being disposed of; individual departments can dispose of properties without involving PWGSC should they choose to do so.

A significant risk in undertaking a PBC is that the asset can quickly become a liability for the receiving public sector entity should the third sector partner be unable to manage the property and cover operating and maintenance expenses. This risk is illustrated in the Niagara Military Museum case study, where the city's financial commitment to maintaining a conveyed federal heritage building has been extended beyond what was desired at the time of acquisition.

Both CATs and PBCs risk overburdening third sector organizations with the responsibility of assuming ownership of surplus federal heritage buildings should the program be perceived as a method of ensuring the long-term preservation of heritage buildings without adequate consideration of the operational demands. It is therefore essential that the government assess the sustainability of each conveyance and capacity of the receiving third sector organization to maintain the asset. The case study of the Niagara Military Museum illustrates the risks that might be incurred by the public sector should a third sector organization not have the required capacity to maintain the asset. Partnership agreements, which establish the responsibilities of each partner based upon current capacity, are one potential method of mitigating this risk. This risk can also be mitigated by undertaking a thorough capacity analysis of the receiving organization prior to completing the conveyance, and by distancing the conveyance program from political influence, better ensuring that decisions are based upon objective analysis.

- Rewards

A Canadian program modeled on the PBC program would be able to derive benefit for the public and third sectors in Canada should public benefit and long-term gains be valued over short-term profit. When the stewardship of a heritage building is given to a third sector organization it not only better ensures that the heritage values recognized by the community are conserved, but it provides a means of delivering local services through community-managed and controlled assets. This can be a valuable tool, especially for more isolated and remote communities, where these buildings are often important landmarks and represent a history of public service.

A benefit that might be realized from a CAT program would be a reevaluation of the criteria used to identify heritage value. By recognizing 'community value', the CAT program sidesteps the baggage that can often come

along with heritage designation, and expands the possibility for alternative values to be identified and subsequently protected. Such a program could better reflect the significance of surplus federal heritage buildings, along with the valorization of buildings that might not have been designated by FHBRO but that hold value for the community.

A PBC program would provide a means for the federal government to ensure the conservation of surplus federal heritage buildings through continued public sector ownership without requiring federal heritage legislation. While heritage designation that transferred with title would be of greater benefit, the transfer of the heritage asset to a provincial or municipal government partnered with a capable third sector organization might provide a higher degree of protection than would disposal to the private sector.

While a program similar to the PBC program would require that the federal government and custodial departments potentially reduce the receipt of market value for surplus federal heritage buildings, it could realize long-term revenue through negotiated leases wherein the government maintains partial occupancy of the property at little to no cost following the transfer of operation and maintenance costs to another level of government or third sector organization. Revenues could also be realized through profit-sharing agreements, with a percentage of the rental income redirected to the custodial department should the property be leased to private sector tenants at market rate. Once the property is within community ownership, means of financing previously unavailable to the public sector can become available, which can assist with restoration work that the public sector might not have been able to finance. The provision of the heritage building at less than market value should be understood as an indirect means of financing and capacity building for the third sector, one that could provide monetary and public benefit returns to the federal government in the long-term.

A Canadian PBC program would derive significant benefit for the third sector without placing third sector organizations in a position of financial risk or demanding they compete with the private sector to obtain the property. It would also provide a means of enabling federal, provincial and municipal governments to better ensure the preservation of heritage buildings located on sites under significant development pressure by controlling the types of organizations that could receive ownership of the property. The case study of Postal Station 'K', where a federally-owned heritage building is being significantly demolished for residential development, would have benefitted from the availability of a PBC program. The Federal Archive Building illustrates the use of a PBC program in residential redevelopment, where the third sector played a managerial role in a third sector heritage P3 development. Private development and adaptive reuse was accommodated, however the process was informed and guided by a community partner who ensured the building was properly conserved, and that certain profits were reinvested for public benefit.

The disposal of surplus federal lighthouses is an example of a PBC program in Canada for a very specific building type. The program, which enables the conveyance of heritage lighthouses to community organizations, is a means of encouraging social enterprise and community cohesion, a goal of the CAT program and a frequent by-product of the PBC program. The Heritage Lighthouse Protection Act enables communities to petition the federal government to designate historic lighthouses, after which they can submit business plans with new use proposals.

6.1.3 Advance Notification Programs

Advance notification programs are those that provide an extended window of time for the third sector to assemble a competitive bid for a surplus public building of historic or community value. In contrast to ownership transfer programs, the following programs do not necessarily discount the price of the building, and therefore place greater responsibility on the third sector to find the financing necessary to potentially compete with other third and private sector organizations. The two programs reviewed - the Right to Bid program in England (2011), and the Ontario Land Benefit Registry in Canada (2012) - are relatively new in comparison to the ownership transfer programs. While this might reflect a greater awareness of the importance in providing access to surplus public buildings to the third sector, it also indicates a desire within the public sector to realize fair market value from the sale of their assets. Advance notification programs can be understood as a compromise, or a middle ground between the desire to attain profit and the understanding that these buildings can derive public benefit from third sector ownership.

-Right to Bid

The Right to Bid program was introduced in England in 2011, and is one of the key programs within the Localism Act. The program compliments the CAT program in that it enables community organizations to formally express interest in assets of community value, however unlike the CAT program these assets can be both publicly and privately-owned, excluding residential properties. A community asset is deemed to be one that contributes to the social, cultural, or recreational well-being of the local community; community asset designation has been used to recognize an array of building types, from village pubs to decommissioned military towers. While still in its infancy, the program has successfully engaged communities and local authorities in the process of evaluating and formally recognizing properties they consider to be of significance, leading to designations that reflect unique, local values.

Third sector organizations are enabled through the Localism Act to submit designations to the local authority when they identify an asset to be of community value. If the local authority determines that the nomination process has been dutifully followed, the asset is included on the “List of Assets of Community Value.” If the owner of a building included on the list decides to dispose of their property, the nominating community organization is informed, as is the general public, and if they express interest in purchasing the property for fair market value, a moratorium is placed upon the property. The moratorium is split into two cycles: once the property is listed for sale, a 6 week moratorium is put in place to allow the Local Authority to notify interested parties, and to provide time for third sector organization to decide if they are prepared to develop a competitive bid. If a third sector organization decide to pursue the purchase of the property, a six month moratorium is then placed on the sale of the property.

The Right to Bid program compliments the CAT program in that it provides access to privately-owned community assets without requiring the private owner sustain a loss on the sale. Private owners have the right to appeal the listing of their property, as well as a right to compensation for costs incurred arising from the moratorium period. The program does not mandate that the private owner accept a community organization’s bid; the decision of who to sell to remains a private one.

The Ontario Nonprofit Land Benefit Registry was established by ONN in partnership with Infrastructure Ontario in 2013. The registry enables early access to surplus provincial buildings to non-profit organizations registered with ONN, prior to their public listing. The registry is a list of vetted non-profits that are provided with advance notification of surplus public properties.

The registry was proposed by ONN with an understanding that, given their unique financial capacity challenges, non-profits are often unable to compete with the private sector on the open real estate market. The longer time period that is required to assemble a competitive bid is a significant challenge that might be overcome should enough time be permitted.⁷⁵ Similar to the moratorium enacted through the Right to Bid program, the registry is intended to provide the necessary window of time for non-profits to develop financial and business plans for the acquisition of surplus public property.

The registry enables access to the provincial government's Realty Circulation Publication website to registered non-profits at the same time as other governments and approved entities receive access. While all parties are made aware of the surplus property at the same time, the hierarchy of disposal remains the same as before: the provincial government must determine that no internal or other government entity requires the property prior to engaging a non-profit.

Once a non-profit expresses interest in a property, the property will be placed on 'hold' for a period of up to 6 months to allow for the non-profit to accrue financing and develop a business plan for the building's use. Along with having to be vetted by ONN to ensure both their commitment to purchasing the property and their ability to assemble the necessary financing, eligible non-profits must state how the property will be used in order to advance their mission, which must be in service of the public benefit. To date, no buildings have been conveyed through the registry, however two properties are on hold.⁷⁶

The registry provides early access to surplus public buildings and a window of opportunity to acquire financing, however its ultimate success relies upon the ability of non-profits to raise the necessary finances and to have the capacity to formulate long-term business plans. Non-profits can acquire funds for capital projects in a number of ways, which might include using existing capital reserve funds, selling assets, fundraising, and receiving grants.⁷⁷ Even with these sources, however, non-profits might struggle to acquire the financing necessary to pay market value. Through discussions with ONN, it has been understood that the sales price will not always be market value, but will rather be determined through the course of negotiations between IO and the non-profit.⁷⁸

⁷⁵ Ontario Nonprofit Network, *Not-for-Profit Sector Priorities for Ontario*, 8.

⁷⁶ Lynn Eakin, personal interview, December 17, 2014.

⁷⁷ Ibid.

⁷⁸ Ibid.

6.1.4 Applying Advance Notification Programs to Canada

- Risks and Challenges

A potential risk in the implementation of an advance notification program in Canada for the use of federal heritage buildings is how the program might be perceived or used as a tool to stall development. A program that places a mandatory moratorium on the sale of private property might risk being perceived as a way to delay private development on the part of concerned third sector organizations, and a means of circumventing municipal and provincial planning processes. In England there has been significant criticism of the Right to Bid program from the development industry, which has positioned the program as a tool that enables community organizations to unduly influence private sector activities. Should a similar program be implemented in Canada, all levels of government would be challenged to be vigilant in their objective assessment and monitoring of proposed community asset designations so as to ensure that when a moratorium is placed on a property the government has the requisite justification for doing so, based on a legitimate community interest in acquiring and repurposing the building.

The Right to Bid program in England is heavily supported by public sector grants and funding that assist the third sector in developing business plans, feasibility studies and acquisition. It would be unrealistic to think that the Federal Government of Canada would provide similar financial support. Advance notification programs, if implemented in Canada for surplus federal heritage buildings, would not address the lack of third sector financial capacity, and would therefore require complementary programs or tools that would assist in the acquisition of the building and its long-term preservation.

The Treasury Board Guide to Management of Real Property mentions that heritage organizations are included as 'priority purchasers' and can be considered for ownership transfer prior to public sale, however no program is in place to facilitate the process, and it is ultimately the responsibility of the custodial department to seek out heritage organizations for transfer.

- Rewards

An advance notification program would offer a number of rewards to the third sector at minimal cost to the federal government if used to provide a window of opportunity. The program would provide a safeguard to heritage buildings that are being disposed of by ensuring that when a transfer to a third sector organization is underway the receiving organization has already developed a verified business plan for the long-term management of the building. This not only encourages the third sector organization to critically evaluate the feasibility of the project, but would help mitigate the risk that the asset would become a public burden.

An advance notification program would also be of benefit to the public sector as it does not require that the asset be transferred at less than market value; should the custodial department be able to retain the building for the 6 month moratorium period, there is the possibility that they could profit from the sale of the building to the third sector. The moratorium period would also provide an opportunity for partnerships - such as third sector heritage P3s - to be developed, and for private sector financing to further bolster the third sector's bid.

6.2 Market-driven Tools

In contrast to command and control tools, market-driven tools are those that rely upon private sector initiative with minimal public sector regulation. A basic understanding of market-driven tools is that their use is dictated by supply and demand, influenced by market forces. While tied to market and private sector activities, market-driven tools do not exclude public sector participation. The historic preservation tax incentive program in the United States is an example of a market-driven tool, as the amount of the incentive provided is based upon private sector investment rather than state-set amounts. Market-driven tools can also be those that exist primarily if not entirely within the private sector, with minimal public sector participation. The redevelopment of heritage buildings by private developers with private financing is a market-driven process, for example, arising from a demand for historic adaptive reuse spaces and a lack of supply that in conjunction position the investment as financially attractive.

Market-driven tools have been sorted into two categories for this thesis: low-interest loans, and public-private partnerships. This reflects two different approaches that have been used in the United States and England to capitalize on market-driven process in order to facilitate the acquisition of surplus public heritage buildings by the third sector. While the primary motivation behind the command and control tools was to realize public benefit through the conveyance of surplus public heritage buildings to the third sector, market-driven tools are slightly more complex, as they demand the receipt of profit in order to be economically viable. In some cases public sector investment has been used to account the uncertainty associated with market-driven tools for heritage conservation projects so as to better ensure private sector participation. In a number of cases, however, market-driven tools have been able to generate a profit for investors and spur other projects, contributing to community economic development and encouraging additional private sector investment.

6.2.1 Low-Interest Loans: Revolving Funds and Building Preservation Trusts

Low-interest loans are most often used for small to medium heritage buildings that have been identified as assets of value by the third sector. They are often considered when a third sector organization has the capacity to operate the asset, but is unable to acquire traditional financing in order to undertake restoration work or to acquire the building. They have proven to be valuable tools in the United States and England, and have been of particular use to third sector organizations with a heritage conservation mandate. Low-interest loan programs can be independent, or they can be programs within a third sector organization's larger portfolio of programs and activities. While their scope may differ - some funds are set-up for a single building, others for regional application – the researched low-interest loans, in general, operate “...as charities whose [objectives] are or include the preservation of historic buildings *for the benefit of the public*.”⁷⁹ Although low-interest loans are a market-driven tool, their primary goal is not to generate revenue, but to derive public benefit; any revenue generated is reinvested for future use. For the purpose of clarity, revolving funds (United States) and building preservation trusts (England) will jointly be referred to as low-interest loans, unless details regarding their specific application are being discussed.

⁷⁹ James Moir, “How to Become a Building Preservation Trust and Facilitate the Asset Transfer Process,” lecture, http://www.historictownsforum.org/files/documents/presentations/London12_3/JamesMoir_web.pdf.

Low-interest loans for heritage conservation have had limited success in Canada; the most prominent program was established as a revolving fund by Heritage Canada the National Trust in the 1970s, when the organization acquired upwards of 70 properties - many of them surplus federally-owned heritage buildings - and attempted to restore and resell them. This proved to be financially impractical, in large part due to the Canadian context wherein philanthropy to support the fund was lacking, the tax regime was not favorable to charitable donations and heritage conservation projects, and public interest was minimal.⁸⁰

Low-interest loan programs most often take one of two forms when being applied to heritage projects:

- A. they can provide low-interest loans to individuals or organizations for restoration projects, or
- B. they directly acquire heritage buildings, restore and resell them.

In both cases, the program usually mandates that a protective heritage easement is placed on the property so as to better ensure its long-term preservation. Programs that are geared towards heritage conservation most often focus on buildings that are at-risk of demolition, or those that were unable to attract private sector interest.⁸¹

Third sector low-interest loan programs can acquire financing from a variety of sources, including private philanthropy, public sector grants, and other loan programs. They are often attractive to private donors as donations can be tax-deductible, and the contribution is understood to be ‘recycled’, as any revenue generated by the program’s activities are re-invested in future projects.⁸² Unlike donations to traditional heritage conservation organizations, low-interest loan programs are better positioned to illustrate where donation dollars are going, and the impact derived from the donation.

Federal Archive Building

In 1982, the Landmarks Conservancy set-up the Historic Properties Fund, initiated by the investment of proceeds from the redevelopment of the Federal Archive Building. The fund was capitalized based on a unique deal, wherein the developer paid \$10,000/unit over 15 years at 11% interest; 8% of gross commercial rent for 75 years; and 8% of any net proceeds from refinancing or co-op conversion over a specified amount. By 1999, the fund had remitted \$7 million; the payment received in 2014 from the fund’s allocation of the gross rent alone was over \$190,000. In order to satisfy the requirements of the PBC that provided access to the surplus federal heritage building to the third and private sector, the revolving fund provides below-market rate loans and project management services to lower and moderate-income individuals and non-profits pursuing historic preservation projects. Since 1982, the revolving fund has closed over \$25 million in loans, provided \$423,000 in grants and assisted over 240 properties within New York City. The revolving fund currently has over \$8 million in assets, with a cumulative default rate of close to zero.

⁸⁰ C. Cameron, personal interview, January 5, 2015.

⁸¹ James Moir, “How to Become a Building Preservation Trust.”

⁸² J. Myrick Howard, “Nonprofits in the American Preservation Movement,” 338.

In the United States, revolving funds have expanded beyond financing heritage projects to include other complementary activities, increasing their scope and in the process their potential donor base. The Pittsburgh History and Landmarks Foundation and the Providence Preservation Society Revolving Fund have been used to restore at-risk heritage buildings in tandem with constructing affordable housing. Many of the early American revolving funds (Historic Charleston Foundation, Historic Savannah Foundation, and Providence Preservation Society, e.g.) have since their inception capitalized on the combination of the affordable housing and historic preservation tax credits through syndication with private sector developers.

Certain building preservation trusts in England have aligned their heritage conservation goals with other social and economic public benefits in order to derive a greater impact and to solicit public interest and donations. The Prince's Regeneration Trust specifically seeks out heritage projects in areas that are economically depressed, in order to accrue the greatest possible benefit from their investment.

The Landmark Trust

The Landmark Trust was established to preserve small to medium sized buildings that were not of interest to the National Trust, however it has since come to acquire and reuse a variety of building types, from cottages, to castles, to mid-century apartments. The Appleton Water Tower in Norfolk is one of their more eclectic properties, and a former public heritage building. Constructed in 1877 to serve as a repository of safe drinking water for the royal estate of Sandringham, the ornate Byzantine-styled tower also included rooms for the royal family and their guests. It later came into the ownership of the Local Authority, and was declared surplus in 1973. The tower sat vacant and was at threat of demolition until its acquisition by the Landmark Trust, who restored it in 1977 as a vacation rental property. Benefitting from a steady and predictable stream of revenue, the tower has undergone multiple self-financed restoration projects. The predictable revenue stream from the use of the property for vacation rentals has been a model replicated at dozens of Landmark Trust properties. The Appleton Water Tower illustrates the long-term financial benefits that can be accrued from surplus heritage buildings that are restored and operated by building preservation trusts, benefits that might not have been realized should the property have been sold to a private owner following its restoration.

Building preservation trusts have organized themselves under the ABPT, creating a united voice with which they have been able to successfully lobby the public sector for support and elicit private sector donations. The ABPT has provided increased visibility for building preservation trusts, especially smaller, project-specific trusts that might struggle to attract private philanthropy otherwise. In addition, ABPT facilitates information exchange amongst member trusts, and assists in developing new trusts in under-served areas.

6.2.2 Applying Low-Interest Loans to Canada

- *Risks and Challenges*

Like any financial investment in a physical asset, low-interest loans can carry significant risk that will need to be mitigated should they be used in Canada. Third sector organizations can incur significant losses when operating low-interest loans, and therefore require a constant stream of revenue in order to mitigate potential losses. Market volatility and private sector competition can increase the risk factor. Risk can also be incurred if the low-interest loan program is made publicly available, increasing the risk of defaulting loans. Risk can also exist if unexpected expenses arise through the course of restoration.

The public sector can assist the third sector in mitigating the impacts of some of these risks through the provision of financial incentives and grants, and through the conveyance of the asset at little to no cost. Since the Federal Government of Canada does not offer tax incentives for heritage buildings, and there is no program that facilitates the conveyance of surplus heritage buildings at less than market value, alternative means of mitigating third sector risk will need to be explored.

The application of low-interest loans for heritage conservation in Canada will also need to overcome misconceptions as to the financial commitment required in order to secure a property. Rather than purchasing the property in full, some revolving funds in the United States have chosen to secure ‘options’ on a property, allowing enough time for the third sector organization to assess the investment, acquire financing, and undertake preliminary restoration work prior to making a commitment to purchase the property. In regards to how financing has been required, many revolving funds have developed relationships with ‘friendly’ banks, which can provide lines of capital when other banks fail to do so.⁸³ In some cases, initial financing has been acquired through the sale of donated property to the fund.

Preservation North Carolina

Preservation North Carolina runs the successful Endangered Properties Program revolving fund. Relying on private financing, the fund has benefitted from the donation of real estate, an attractive option for property owners looking to guarantee the preservation of their buildings, avoid capital gains tax on appreciated value, receive tax deductions and remove property value from estate tax.¹ The fund has benefitted from choosing to take options out on properties, allowing the organization to market the property to potential buyers prior to incurring significant financial costs.² The use of options is advantageous when a fund has a network of individuals or companies interested in historic properties, or when it is unable to hold the property for the extended period of time that might be required to find a purchaser, undertake a restoration and secure an easement.

1 J. Myrick Howard, *Gifts of Real Estate for Preservation North Carolina: Building North Carolina's Future by Saving its Past*, brochure, <http://www.mnpreservation.org/pdf/Myrick/Donated%20Prop%20Brochure%20-%20Pam%20design.pdf>

2 Olivia Mitchell, “An Evaluation of Historic Preservation Revolving Loan Funds, and Recommendations for the Establishment of Future Programs” (Msc thesis, University of Pennsylvania, 2011), 19.

⁸³ J. Myrick Howard, “Nonprofits in the American Preservation Movement,” 339.

In England and the United States, the challenge of acquiring initial financing is often dependent upon the local and national context, and there is no one-size-fits-all solution; future Canadian low-interest loans will have to find innovative means of acquiring their initial investment.

- *Rewards*

While the risks associated with low-interest loans are primarily borne by the third sector organization, the rewards are shared by the organization, the community, investors and the public sector. Third sector organizations looking for financing can benefit from receiving low-interest financing and accruing tax-free interest on loans. Investors benefit from tax deductions. The community benefits from the improvement of the streetscape and/or the creation of community space, and the public sector sheds the responsibility of maintaining a heritage building. In addition, James Moir notes that building preservation trusts have been able to contribute to broader sustainability initiatives:⁸⁴

- Environmental: low-impact solutions to neglected buildings
- Economic: regeneration, tourism, housing and skills training
- Social: creating community facilities / facilitating community engagement

Low-interest loans can be tools that assist in the acquisition of surplus public heritage buildings in tandem with building third sector capacity and contributing to sustainable community development. Given the improbability of federal financial support for such programs, however, their successful implementation in Canada will ultimately rely upon the ability of the third sector to generate private sector interest and secure investor confidence in their ability to manage low-interest loans as well as heritage buildings.

6.2.3 Public-Private Partnerships: Third Sector Heritage P3s

Public-private partnerships (P3s) are an appropriate tool for third sector use when engaging with medium to large heritage buildings that require significant financial investment, and that are too large for sole occupancy. They are useful when a third sector organization has identified the asset as being of value, but lacks the financial and organizational capacity necessary to undertake the restoration project. They are also of use when the public sector wants to retain ownership of the asset, but no longer has a viable use for it.

P3s are financial agreements that enable the sharing of costs, benefits, risks and profits amongst investors. P3s have traditionally been used by the public sector to finance, construct and operate large-scale infrastructure projects.⁸⁵ As the benefits and challenges of P3s are better understood, they are increasingly being used for a variety of project types, including residential and commercial development, recreational and community facilities, and heritage buildings.

P3s cannot address all of the challenges arising from decreasing public sector resources; due to their unique

⁸⁴ James Moir, "How to Become a Building Preservation Trust and Facilitate the Asset Transfer Process."

⁸⁵ Susan Macdonald and Caroline Cheong, *The Role of Public-Private Partnerships and the Third Sector in Conserving Heritage Buildings, Sites, and Historic Urban Areas* (Los Angeles, CA: The Getty Conservation Institute, 2014), 2.

organizational structure, associated costs, and their inclusion of the private sector in public sector projects, they should only be used when certain criteria have been met. As noted by Donovan Rypkema, of particular importance at the outset of any project is that the public sector evaluates the unmet or under-met demands within the local market, and determines whether the redevelopment of the heritage building could meet those demands.⁸⁶ Rypkema states that, when being considered for use on heritage buildings, P3s are of value when:⁸⁷

- public interest and benefit can be derived;
- private capital is available;
- risk can be shared;
- management expertise exists;
- there is a desire to enhance the value of the asset;
- there is innovation;
- ongoing public influence is desired; and
- there is an interest in the potential reversion of the site to the public sector.

Susan Macdonald and Caroline Cheong elaborate on when heritage P3s should be considered for use, stating that these partnership agreements often require above-average government oversight and specialized skillsets (real estate and conservation knowledge, e.g.).⁸⁸ Consistency in government oversight is critical in ensuring that heritage P3s are properly managed and abide by established standards and guidelines, respecting the surrounding community and the values that are associated with the asset.

Within a P3 it is necessary that each partner understands what they have to offer to the project, what is expected of them, and what risks and rewards might arise from their participation. In third sector heritage P3s involving surplus public heritage buildings, the clear communication of the roles and responsibilities of each partner is all the more necessary, as accountability to the taxpayer, respect for the local community and abidance by heritage regulations must be considered alongside the risks and rewards.

The following list briefly outlines the roles and responsibilities that each partner might be expected to assume in the course of a third sector heritage P3 involving a surplus public heritage building. The roles and responsibilities have been drawn from Rypkema,⁸⁹ Macdonald⁹⁰ and Cheong,⁹¹ who explore each role in greater detail.

Public Sector

⁸⁶ Macdonald and Cheong, *The Role of Public-Private Partnerships*, 33.

⁸⁷ Donovan Rypkema, "Public-Private Partnerships for Heritage Buildings" (presentation, International Conference on Knowledge Sharing and Capacity-Building on Promoting Successful Public-Private Partnerships in the UNECE Region, Tel Aviv, Israel, June 5-8, 2007).

⁸⁸ Macdonald and Cheong, *The Role of Public-Private Partnerships*, 33.

⁸⁹ Donovan Rypkema, "Heritage and Development: The Role of Public-Private Partnerships," in *Economics and Built Heritage – Towards New European Initiatives*, ed. Mikko Malkki, Raine Mantysalo, Kaisa Schmidt-Thome (Helsinki, FIN: Helsinki University of Technology Centre for Urban and Regional Studies, 2009), 142.

⁹⁰ Susan Macdonald, "Leveraging Heritage: public-private, and third-sector partnerships for the conservation of the historic urban environment" (paper, ICOMOS 17th General Assembly, 2011 Paris, France), 894-896.

⁹¹ Macdonald and Cheong, *The Role of Public-Private Partnerships*, 12.

- **Provides the asset;**
- Creates the **regulatory framework**; and
- provides **financial incentives**.

Private Sector

- Provides insight on the development process and **long-term asset management**
 - as well as development of long-term **profit stretching financial plans**;
- provides **public relations experience** and taps into existing media relationships;
- carries **political clout** with multiple levels of government;
- has **capital and fundraising skills**;
- contributes **technical expertise**; and
- is motivated to ensure **efficient delivery**.

Third Sector

- **Local knowledge**, concerns and interest;
- **applies pressure** on the public sector to act and to keep moving forward;
- **initiates the process** and pre-development analysis;
- provides a **public face**;
- assists in **marketing the project** to private partners;
- can more readily attain **grassroots funding**;
- knowledgeable on the values and demands of **day-to-day management**;
- contributes to **long term sustainability** through ownership/management;
- provides **heritage conservation expertise**, and
- is **a reference for later interventions**.

While these lists are not exhaustive and do not reflect the weight of each role, they indicate that the third sector can significantly contribute to heritage P3s. While in most cases the third sector's responsibility is to be a representative of the community in the pre-development phase, they have also been strategic partners in raising finances, and can participate in the development and execution of long-term management plans.

Grove Arcade

Following conveyance of the Grove Arcade to the City of Asheville, the city entered into a P3 to undertake the large-scale restoration project. The city retained ownership and provided city-issued bonds to raise finances. They also provided support to the private and third sector partners through the permitting process.

The Grove Arcade Public Market Foundation was brought on as the third sector partner and head lessee; they managed the restoration project and the leasing of the ground floor of the building. They were also responsible for securing project financing, and have retained management of the retail component of the building post-completion.

Duke Energy was the private sector partner, and holds the lease for the residential units. Aside from providing initial project financing, Duke Energy purchased the state and federal historic tax credits from the Grove Arcade Public Market Foundation, which as a non-profit had no tax to claim against. Through syndication, the foundation was able to turn the credits into cash, which could then be used to fund future restoration work.

- Third Sector Participation in Heritage P3s

The third sector can be a valuable partner in heritage P3s. In the United States and elsewhere private sector companies are recognizing the myriad of benefits that can arise from engaging in cultural projects, through both philanthropy and investment. Charles A. Riley III recognized the trend in the 1990s as public sector participation in heritage conservation began to wane, stating that:

“The interaction of corporations and culture is in an era of redefinition due in large part to the perception among business leaders that, rather than being simply a write-off for charitable contributions, cultural projects can be profitable.”⁹²

As the private sector becomes more involved in cultural and heritage projects, third sector organizations are playing a pivotal role in ensuring that the public good is accounted for and maintained. In some cases, the third sector has come to completely subsume the role of the public sector, engaging directly with the private sector in order to achieve conservation outcomes that can no longer be guaranteed by government stewards.

⁹² Charles A. Riley II, “When Public Meets Private,” in *Preserving the Built Heritage: Tools for Implementation*, ed. J. Mark Schuster, John de Monchaux, Charles A. Riley II (Hanover, NH: University Press of New England, 1997), 159.

Preservation North Carolina has participated in the restoration of a number of surplus public heritage buildings, including schools, hospitals, industrial and civic buildings. Benefitting from both the PBC program and a state program of a similar structure, Preservation NC had purchased and resold approximately 30 surplus public buildings, spurring over \$50 million in private investment.³ A significant number of these properties have been adaptively reused as community centers, museums, affordable housing and space for community organizations.

Following restoration, Preservation NC is able to sell the property at market value so long as a covenant is attached. For larger surplus public heritage buildings, such as schools and hospitals, Preservation NC has engaged in P3s with private developers and local governments, realizing the benefits that can arise from combining their experience in heritage redevelopment with the financial strength of private developers and the incentives offered by the public sector.

3 Preservation North Carolina, "Recycling Surplus Public Property in NC" (website, April 14, 2010).

6.2.4 Applying Third Sector Heritage P3s to Canada

- Risks and Challenges

The amount of risk experienced by each partner in third sector P3s involving surplus public heritage buildings will vary depending on the asset, each partner's financial investment, and the amount of community interest in the building. In general, however, risks associated with P3s are often unequally experienced by the private sector, especially when the sector is expected to provide the initial financing. Macdonald notes that private sector exposure to risk can be reduced in heritage projects by ensuring that there exists:⁹³

- clarity about features of significance, standards, and levels of acceptable change;
- certainty about the regulatory framework and timeframe;
- consistency in the application of those regulations; and
- consultation and open communication between all sectors.

For third sector heritage P3s to be successful in Canada, it will be essential that private sector risk is accounted for and mitigated. The Canadian public and third sectors will need to clearly understand the financial implications that might arise from their evaluation of features of significance, as well as the potential limitations that any regulation might place on the adaptive reuse of the asset. Since no regulations currently apply to surplus federal heritage buildings once they have left federal ownership, this risk is already minimized, however it will be essential that municipal and provincial regulations consider how they might constrict private sector participation in heritage P3s. In addition to the risks faced by each partner, it should also be noted that the community faces a risk, as access to the heritage building might be restricted through private sector participation. This risk should be evaluated and accounted for by all partners should public access be determined to be of significance.

93 Susan Macdonald, "Leveraging Heritage," 901.

While compromise might not be a desirable term amongst preservationists, it will be necessary for all parties to understand the risks and limitations their positions place upon others, and to attempt to mitigate or lessen those risks by prioritizing their own goals and expectations.

Federal Archive Building

A P3 with a third sector partner was an innovative tool used in the redevelopment of the Federal Archive Building to satisfy the requirements of the PBC. In this particular heritage P3, the state corporation retained ownership, the Landmarks Conservancy managed the RFP and the preconstruction process, and the private developer undertook construction and leasing, channeling an agreed upon percentage of net proceeds to the Landmarks Conservancy.

A challenge faced in the redevelopment was community discord; many were upset with the lack of affordable housing and held the belief that the process was leading to the privatization of a federal building for the benefit of a private developer. The state's response - to reorganize the disposal in order to avoid community disruption - did not help placate fears, however it should be noted that community space was and continues to be provided within the building at below-market rent.

Perhaps the most significant hurdle in advancing the use of third sector heritage P3s is the perception that it is the public sector's *responsibility* to own, maintain, operate and acquire at-risk heritage buildings.⁹⁴ In Canada this perception is rooted in a long history of government stewardship and financing of heritage properties; even in the United States, where private sector philanthropy is robust, this can be a significant challenge to overcome. It is at this juncture where the third sector can help mitigate community concern and assume public sector roles and responsibilities. The third sector is generally aligned with communities, occasionally more so than the public sector, and in many ways it is in a better position to advocate for the community in heritage P3s than the public sector. The inclusion of a third sector partner in heritage P3s offers an opportunity for public and private partners to assure communities that, in spite of a change in ownership or management, surplus federal heritage buildings will continue to be of public benefit, and that there will be a degree of oversight in lieu of federal heritage legislation.

- Rewards

A simplified understanding of heritage P3s would posit that each partner has a unique desired outcome: the public sector wants to decrease its financial commitment to the building; the private sector wants to maximize profit; and the third sector wants to maximize community benefit. In practice, these outcomes are not exclusive. The third sector might also want to financially profit and the public sector is often interested in benefitting local communities.

⁹⁴ Macdonald and Cheong, *The Role of Public-Private Partnerships*, 38.

Fox, Brakarz and Fano suggest five rewards that can be realized by all partners through engaging in third sector heritage P3s:⁹⁵

- Heritage P3s can **ensure accountability** in the development process;
- they can **acquire new sources of financing**;
- they can **uncover and capitalize on complementary activities**;
- they can **ensure continuity** in the face of political changes, and
- they can **maximize delivery** through integrated efforts (heritage and affordable housing, e.g.)

The benefits of engaging in third sector heritage P3s in Canada could extend beyond the project at-hand; they can also create long-lasting relationships between the private and third sector, decreasing reliance upon the public sector and responding to the larger issue of rationalization and public sector cutbacks in the process. They can also provide a much needed source of stability in the face of political change, a challenge that arose in a number of Canadian case studies where reliance on public ownership has been detrimental to the long-term preservation of the heritage building. Through including the private sector in the development process, financing for the project can be realized early on, it can provide support to the third sector in ensuring that the project reaches completion.

⁹⁵ Catherine Fox, Jose Brakarz, and Alejandro Cruz Fano, *Tripartite Partnerships: Recognizing the Third Sector: Five Case Studies of Urban Revitalization in Latin America* (Washington, DC: Inter-American Development Bank, 2005), 28-30.

7.1 Research Findings

7.1.1 Findings from Background Research

Research into Canadian policy, literature on heritage conservation, and cases studies informed the following challenges, discussed in detail in Chapter 5.

Loopholes in Treasury Board Policy: crown corporations are largely excluded from current Treasury Board policy obligations, preventing review and designation of certain federally-owned buildings by FHBRO. Although federal departments are mandated to consult FHBRO in the disposal process for designated buildings, discretion is afforded to department heads in deciding upon the final course of action.

Conflicts in Treasury Board Policy: Disposal policy and legislation in the United States and England states that securing the long-term conservation of surplus public heritage buildings takes precedence over the receipt of market value; current Canadian Treasury Board policy does not, placing surplus federal heritage buildings at-risk of inappropriate management and disposal.

Political Change/Reliance on Public Ownership: A lack of programs to transfer federal heritage buildings to third sector organizations at less than market value has resulted in other levels of government assuming buildings on behalf of the third sector without long-term maintenance plans. Local political changes risk influencing future plans for acquired buildings.

Community participation is facilitated in FHBRO designation: Federal heritage building designation does not include community participation in the identification of potential heritage buildings or their character defining features. This top-down approach of identification, research, and designation fails to recognize the potential value these buildings might have for their communities, and prevents the participation of the third sector in assuring those values are be preserved.

Time Requirements: In general, third sector organizations require more time to raise the finances necessary to acquire federal heritage buildings than private sector organizations.

Capacity Requirements: The financial and organizational capacity required to acquire and adaptively reuse a federal heritage building can be prohibitive to third sector organizations.

7.1.2 Findings from Opportunities Research

In contrast to the Canadian third sector's capacity to acquire surplus federal heritage buildings, the ability of the third sector in the United States and England to undertake similar activities has been significantly bolstered by the use of command and control and market-driven tools.

While the research shows that command and control tools – particularly conveyance programs – have provided opportunities for the third sector to acquire surplus public heritage buildings, it would appear to indicate that **market-driven tools have been of the most benefit to the third sector**. Through P3s and low-interest loans, the third sector can more readily access the financing needed to acquire surplus federal heritage buildings, without having to negotiate the often complex red tape associated with government programs. Preservation North Carolina, the Landmarks Trust, and the New York Landmarks Conservancy are three successful revolving fund programs that have excelled as third sector organizations undertaking activities that have traditionally been seen as private sector activities. In addition to providing a means of acquiring financing for the third sector, these programs can also derive benefit for other partners, appealing to private investors looking for tax deductible donations, and the public sector that is looking to divest of surplus real estate. Third sector heritage P3s are similarly only tools that provide new sources of financing; they capitalize on complimentary activities, provide stability in the face of political change, and ensure oversight through public, private and third sector participation. Importantly, they evidence that **heritage conservation can be a goal achieved in tandem with other public benefits and alongside what might be considered to be competing interests, such as the generation of revenue**.

Although market-driven opportunities have perhaps been of the greatest assistance to third sector organizations in the United States and England in the acquisition of surplus public heritage buildings, the fact that both countries have heritage legislation – a command and control tool - has been essential in creating a framework for the use of market-driven tools. In both countries, **command and control tools have therefore been essential in providing the standards that guide the use of market-driven tools**. Although market-driven tools such as tax credits respond to market forces, they are integrally connected with a command and control tool (NHPA, e.g.), which establishes the standards that must be met for qualifying work. Similarly, third sector heritage P3s often must abide by public sector heritage policies as well as internal regulations, another example of where market-driven and command and control tools work in tandem. Even without heritage legislation, Canadian third and private sector partners will ultimately need to contend with command and control regulations that will seek to guide and at times restrict their activities. As seen in the Federal Archive Building and Grove Arcade case studies, success was dependent upon the combination of tools from both categories, specifically the use of financial incentives that are regulated by command and control tools. **The provision of incentives will be essential in accounting for the potential risks associated with heritage conservation processes**.

The lack of command and control tools in Canada, specifically heritage legislation, can be understood as an opportunity, supported by reflections on how certain 'top-down' processes in the United States have presented a significant challenge to private and third sector organizations undertaking heritage conservation activities. The "entrenched infrastructure" of heritage legislation has certainly extended protection to community assets, however it has also been a barrier to activities that might not conform to established standards but that could potentially

achieve desirable results.⁹⁶ There exists an opportunity in Canada at the federal level to innovate in this area, to avoid entrenchment, and to respond to the unique context and challenges faced today, rather than imitate a model established 50 years ago. Engaging all partners in conversation – the public, private and third sector – has the potential to establish new opportunities, in place of traditional command and control tools, that might better serve public benefit while facilitating private and third sector stewardship and participation.

In contrast to the United States, England would appear to remain dependent upon public sector financing for third sector activities. In the case of the Battersea Arts Centre, nearly all of the financing for the restoration of the building came from public sources. It is unlikely that opportunities in England could serve as examples for similar programs in Canada, due to the extensive public financing they require.

The English case studies provide value for Canada as they illustrate that **communities can be empowered to participate in the disposal process through the proactive identification of community assets**. Community asset designation and the Right to Bid program have provided the opportunity for communities and third sector organizations to proactively express interest in buildings they consider to be of value to them, rather than relying upon the public sector to valorize buildings on their behalf. This should not only serve as an example for expanding the federal heritage building designation process, but for all designation processes in Canada, many of which continue to be heavily dependent upon staff resources, often to the detriment of the local community that is excluded from the identification, prioritization, and valorization process.

This research indicates that Canada will need to find its own path in providing the third sector with opportunities to acquire surplus federal heritage buildings. While parallels exist between the United States, England and Canada, **each country has its own unique political, economic and cultural history and context that has shaped the relationship between the public and third sectors**. Given the economic and political shifts occurring within Canada, the federal government must critically evaluate its relationship with the third sector, while the third sector must demonstrate to the federal government the public benefits it can derive, should the sector be provided with the right opportunities. Importantly, both the public and third sector need to reorient their understanding of heritage conservation, as has been done in the United States and England, such that heritage activities need not only derive benefit for those who are invested in public history. This research has shown that the process of heritage conservation has been able to derive substantial public benefit in the form of affordable housing, cultural and community engagement, and neighborhood revitalization, providing rewards for the third, public and private sectors.

⁹⁶ E. Avrami, personal conversation, April 25 2015.

7.2 Recommendations

The following recommendations are intended to inform the development of programs, policies, and partnerships that will assist third sector organizations in the acquisition of surplus federal heritage buildings in Canada. They have been informed by the analysis of opportunities in the United States and England that facilitate similar processes. Although based on international case studies and tools, the recommendations seek to reflect the unique economic, political, and cultural context of Canada. Importantly, they are intended to illustrate how heritage conservation might be used to increase the capacity of third sector organizations and contribute to community development initiatives without demanding significant public sector financing.

The recommendations have been divided into those geared towards the public sector and those that might inform third sector organizations. In general, the recommendations aimed at the public sector avoid calling for legislation, as they are meant to be more readily-integrated into existing policy and are based on the assumption that the federal government is not interested in pursuing heritage legislation. Programmatic recommendations would require both bureaucratic and political support, as well as further research in order to identify the processes that would be required for their implementation.

The following recommendations seek to a) provide greater protection for federal heritage buildings, and b) facilitate their acquisition by third sector organizations. In pursuing these recommendations, the federal government will be in a position to illustrate how various public benefits can be achieved through the acquisition of surplus federal heritage buildings by third sector organizations. From homeless assistance, to workplace education, to community development, there exists the potential for surplus federal heritage buildings to facilitate a variety of public benefits. Without requiring significant financial investment by the public sector, the following recommendations should be understood as ways in which the federal government might encourage the continued conservation of surplus federal heritage buildings alongside the realization of other public benefits.

7.2.1 Recommendations for the Public Sector

1) Obligate federal departments to consult with FHBRO on the disposal of both Classified and Recognized federal heritage buildings

Treasury Board policy could be reinforced through stating that all federal departments must consult FHBRO prior to the disposal of federal heritage buildings. Furthermore, consultation with FHBRO should not only address concerns regarding how department actions will impact the architectural value of the building; FHBRO has the potential to provide comment on how proposed actions might impact the cultural, social and economic values associated with the building. Looking to Section 106 review in the United States, the consultation process is a valuable opportunity to receive community perspective so as to more fully understand the potential impact of federal actions on heritage buildings. Akin to the role assumed by ACHP in the Section 106 process, FHBRO could be in a position to speak to the potential community impact arising from the disposal process, and should be empowered through Treasury Board policy to do so.

2) Facilitate and encourage crown corporations to abide by Treasury Board policy as it relates to heritage conservation and federal heritage buildings

The exclusion of buildings within the custody of crown corporations from review by FHBRO places certain federally-owned heritage buildings at risk. The public sector should explore non-legislative means of encouraging crown corporations to better align their internal policies with FHBRO. The government should encourage crown corporations to solicit FHBRO for their expertise in the drafting of internal policies for the proper management of heritage buildings in the disposal process in order to better ensure consistency across the federal government in the treatment of federally-owned heritage buildings.

3) Facilitate community participation by enabling public requests for federal heritage building designation

The lack of community involvement, interaction and participation in the designation process of federal heritage buildings prevents the opportunity to recognize these buildings as important assets within their respective communities, and relies solely upon FHBRO to determine if social or cultural values exist.

In the United States and England, communities have been empowered to recognize publicly-owned heritage buildings as being of value, and to identify values under broad criteria. Community asset designation in England, and NRHP designation in the United States, can be initiated by individuals and third sector organizations, recognizing that communities play an important role in valorizing places of significance. In both cases, discretion to approve the designation remains with the public sector. Federal heritage building designation has the potential to expand to enable similar process, the feasibility of which should be explored.

4) Expand Treasury Board policy to obligate the consideration of the potential social, cultural and environmental impacts arising from disposal alongside potential economic impacts.

The public sector should more clearly articulate in Treasury Board policy that financial return does not take precedent over potential social, cultural and environmental impacts (whether they be positive or negative). The potential impact that disposal will have on communities should be clearly understood early on in the process, at which time the evaluation as to whether the conveyance of the asset to a third sector organization should be undertaken.

In the United States and England, the evaluation of whether a surplus public heritage building might contribute to public benefit is a required step in the disposal process (facilitated through the PBC and CAT programs). This provides an opportunity to reflect on any identified or overlooked community values associated with the building. It is also a worthwhile exercise to achieve a better understanding of the future role the building might have within the local community.

5) Facilitate policy review by mandating federal departments provide FHBRO with annual reports on federal heritage buildings within their custody

The provision of information on currently owned and disposed of federal heritage buildings to the general public is not required by Treasury Board policy, and is not facilitated by Parks Canada, FHBRO, or the Treasury Board. The lack of transparency and reporting data prevents community participation in the designation and preservation of federal heritage buildings and potential community assets, and hinders policy review. Requests for information made for this thesis were redirected to noncomplying departments; inquiries made to determine what department is responsible for maintaining and disseminating a list of current and disposed of federal heritage buildings were met with confusion, and resulted in contradictory answers from various departments.

The federal government must provide a publicly accessible list of all federal heritage buildings, including those that have been disposed of, noting the custodial department, date of designation, and date of disposal, if applicable. This list must include the full designation reports, to ensure there is transparency on what values were recognized in the designation and how potentially detrimental impacts to these values were minimized during the disposal process.

6) Enable early access to the federal real estate online service to third sector organizations

The feasibility of creating a program similar to the Right to Bid program (England) or, closer to home, the Non-profit Registry for Public Benefit Lands in Ontario, should be explored for its applicability to surplus federal heritage buildings. In some cases early notification programs provide the opportunity that is needed for third sector organizations to assemble the financing required to acquire public heritage buildings. As surplus federal heritage buildings are first offered to other federal departments prior to listing on the open market – similar to surplus provincial buildings in Ontario – an opportunity already exists to create a program to engage third sector organizations.

The Guide to Management of Real Property mentions that priority purchasers (including ‘heritage organizations’) have a window of opportunity to acquire surplus federal heritage buildings. This policy point creates a foundation for the expansion of the program, which would require the federal government to maintain a list of eligible third sector organizations and to set-up a notification system. An alternative to having a federally-run advance notification program would be to engage provincial ministries that already have relationships with third sector organizations, or to find an umbrella third sector organization at the national level (similar to ONN) that could assume the responsibility of vetting eligible third sector organizations.

7) Explore the feasibility of creating a public benefit conveyance program for federal heritage buildings

Conveyance programs have proven to be valuable tools in the United States and England in bolstering third sector capacity, and reflect an understanding within the federal government that public benefit is as valuable if not more valuable than financial return in the disposal of federal heritage buildings. The creation of a conveyance program is a bold step, and does not guarantee a financial return. In the case studies used to illustrate conveyance programs

(Grove Arcade, Federal Archive Building, Battersea Arts Centre) it could be argued that long-term gains have made up for the initial loss, re-positioned as an investment. These conveyances spurred local economic development, encouraged private sector investment, and bolstered communities with new residents and new sources of employment. Without the conveyance at below-market value, the third sector would have been hard-pressed to play a leading role in the redevelopment process and achieve the end results.

The public sector should explore the feasibility of a conveyance program for surplus federal heritage buildings in tandem with recommendation 6. The conveyance program should be made available to eligible third sector organizations, dependent upon the provision of a viable business plan, and should encourage partnerships with private and other third sector organizations.

8) Assemble a case study database of disposed federal heritage buildings so as to inform the development of standard procedure, to facilitate policy review, and to note areas of improvement

A database of case studies illustrating the disposal process of federal heritage buildings would be a valuable tool for federal departments and third sector organizations to understand the different paths that might be taken in the process, and to clearly communicate what is obligated versus what is encouraged by Treasury Board policy. Case studies are important tools that illustrate policy in practice, that assist in the interpretation of policy, and that provide an opportunity to identify strengths and weaknesses within existing policy.

Should Treasury Board policy evolve to facilitate the acquisition of surplus federal heritage buildings by third sector organizations, the provision of case studies will be essential to prove the viability of conveyance to these organizations, and to illustrate the public benefits that might arise through the process.

7.2.2 Recommendations for the Third Sector

9) Establish revolving funds reserved for the acquisition and restoration of heritage buildings

The discontinuation of Heritage Canada the National Trust's revolving fund program 40 years ago should not dissuade the development of future heritage conservation revolving funds; in fact, in 2011 a heritage conservation revolving fund was established in Sydney, Nova Scotia. In addition, the Community Forward Fund offers a national loan program for third sector organizations to purchase real estate, illustrating that there is a need for low-interest loans from the sector.

Public and private support for third sector revolving funds will be necessary if they are to be successful in the long-term; innovative and context-specific sources of initial funding as well as on-going support will need to be sought out, whether through the donation of properties, the use of purchase options, or the use of incentives. In order for revolving funds to be successful in raising the necessary capital, third sector organizations will have to clearly identify the public benefits they seek to derive, and to potentially expand their own mandates so as to appeal to a larger audience.

10) Explore complimentary public benefits that might work in tandem with existing heritage conservation mandates and that might provide new sources of financing

Building on recommendation 9, third sector organizations in Canada should explore the potential for partnerships with other third sector organizations or the addition of complimentary public benefits to their core mission. Heritage conservation is an example of a complimentary public benefit that many third sector organizations could readily assume; when understood as a process and not a desired outcome, heritage conservation is a tool that can assist these organizations in achieving their goals. Discussions surrounding the disposal of federal heritage buildings similarly need to understand that, while long-term conservation of the building is desirable, it is the cumulative public benefit that might be derived from its adaptive reuse that should take precedent. Third sector organizations must clearly illustrate that through acquiring surplus federal heritage buildings they will not only conserve them, but that they will be able to use the buildings to positively impact the community.

In combining heritage conservation processes with the pursuit of other public benefits, third sector organizations will be better positioned to receive diverse sources of financing. Heritage conservation tax credits and provincial grants for heritage projects coupled with affordable housing and green building incentives could greatly assist third sector organizations in the redevelopment process. In the United States, the combination of the historic preservation and affordable housing tax credits has been a source of income for third sector organizations such as ArtPlace, which engages community partners in the redevelopment of heritage buildings for artist and affordable housing, and generates revenue through the syndication of tax credits.

11) Identify private sector partners with compatible objectives; proactively initiate partnerships with or without public sector coordination

Private sector organizations are becoming increasingly aware of the myriad of benefits that might arise from cultural investments. Whether through charitable donations (such as American Express' historic preservation initiatives) or through direct investment and participation in the business of culture and heritage, the private sector is a valuable contributor of financing, experience and organizational expertise.

Canadian third sector organizations should solicit interest from private sector partners, and make the case for their involvement in the acquisition of surplus federal heritage buildings. International case studies such as the Grove Arcade or the Landmark Trust show that heritage conservation can be a profitable endeavor in the long term should the initial financing be made available and appropriate partners be engaged in the process from the outset.

12) Evaluate if there are certain building types, sizes or characteristics that are necessary to make the project lucrative for private sector participation

The conditions necessary to encourage private sector participation in third sector acquisition of surplus federal heritage buildings must be better understood if the third sector is to appeal for private investment. Private sector participation can only be expected when the project has the potential to be lucrative enough to guarantee a return on investment; certain building types, sizes or characteristics might be better suited than others to ensure this guar-

antee. The Niagara Falls Armoury and Canada Malting Co. Silos might be better suited for private investment due to their size and location, whereas other federal building types – such as lighthouses – might face challenges arising from their use-type in attracting private investment.

Should private investment be desired, third sector organizations must evaluate the potential private sector uses that would be both compatible with their mandate and their desired use of the building, as well as with the identified heritage and community values associated with the structure.

13) Quantify the financial returns and public benefit that arise from third sector ownership and management of heritage buildings

Whether using market-driven or command and control tools, it will be crucial for third sector organizations in Canada to be able to illustrate the public benefit derived from their acquisition of surplus federal heritage buildings if they are to receive private sector investment and public sector support. They will be required to quantify the social and cultural benefits that will undoubtedly be weighted alongside economic concerns; the development of tools that attempt to quantify the impacts of heritage conservation processes is underway, however it will be up to individual third sector organization to apply those quantification tools to their local context and individual projects.

The challenge of quantifying the impacts of heritage conservation is one faced by the larger heritage conservation field, hampered in part due to the sheer number of areas within which heritage conservation derives value, requiring familiarity with an array of quantitative methods. The identification of indicators that enable the monetization of social and cultural impacts that arise from third sector ownership and management of surplus federal heritage buildings is a subset, however, and might be more readily tackled in isolation. The quantification of these activities will assist the third sector in not only appealing to public and private sector partners, but in advancing an understanding of heritage conservation as a process that can derive various public benefits.

7.3 Associated Challenges

A significant challenge that these recommendations pose to the third sector in Canada is that they ask what has largely been a volunteer-driven sector to assume the role of developer, a private sector activity that in many communities is associated with the pursuit of profit, often at the expense of public benefit. Lobbying for financial incentives, engaging in private partnerships, and the generation of revenue are not activities that the third sector is necessarily familiar with, and that some organizations and donors might be uncomfortable partaking in. The economic and political reality of the 21st century, however, must be considered, and as noted by Phillips and Hebb, embracing the ‘hybrid’ organizational structure does not have to result in a loss of community support; any profit generated remains within the community and contributes to the mission of the organization. Should the federal government make surplus federal heritage buildings available to third sector organizations, these buildings will provide an opportunity for the sector to evidence to communities, the public sector and private sector partners the strengths inherent within the Canadian third sector.

The federal government will be challenged in increasing the feasibility of third sector acquisitions as it currently lacks the means to obligate federal departments and crown corporations to participate in the process. Heritage legislation and EOs have been essential tools in the United States in ensuring federal agencies are complicit in the PBC program (NHPA Standard 7(f), US Code 550), P3s (EO 13287), and community consultation (NHPA Section 106), not to mention complimentary processes, such as heritage first policy and guidelines for disposal (NHPA Sections 110 & 111). Given that the Federal Government of Canada has failed to enact heritage legislation, it will need to identify alternative means of obligating federal departments to comply with any third sector acquisition programs it creates.

Both the Federal Government of Canada and the Canadian third sector will face challenges in re-orienting their perception of how financing for heritage building acquisition can be accrued. The notion that the public sector should be responsible for the maintenance of heritage buildings in Canada is unrealistic given the current economic and political context, however that does not imply that the public sector should not be expected to invest in heritage conservation activities. Rather, the public sector should identify other means of incentivizing heritage conservation aside from the provision of grants or ownership.

In “Preserving the Built Heritage: Tools for Implementation,” J. Mark Schuster posits that governments can participate in heritage conservation activities through direct involvement (i.e. ownership), regulation, property rights, the provision of (dis)incentives, and the dissemination of information. While ownership, property rights, and regulation may not be tools that the federal government will be willing to pursue the use of, the government can make progress in the provision of incentives and the dissemination of information. The third sector must place pressure on the government to provide those incentives, however, and determine what types of incentives – tax credits or low-interest loans, e.g. – would assist them in acquiring surplus federal heritage buildings. While heritage conservation in Canada has never been a guarantee, communities (through the third sector), the public sector and the private sector must understand that every heritage conservation project is ultimately a negotiation, and that concessions from each participant will be required in order to fully realize the public benefit of third sector acquisition of surplus federal heritage buildings.

7.4 Next Steps

This research hopes to spark a broader conversation about the role that the Canadian third sector can play in heritage conservation activities, both in how they might acquire surplus federal heritage buildings but also in relation to other at-risk heritage properties, such as surplus public schools and industrial buildings.

Further research into the types of third sector organizations that are better positioned to participate in heritage conservation processes is required in order to provide targeted recommendations. A limitation of this thesis was the lack of information on third sector participation in heritage conservation in Canada; a thorough historical survey would be of assistance in better understanding the role of the third sector in heritage conservation today.

Updated research on the Canadian public's interest in supporting heritage conservation activities would provide a more accurate understanding of what type of support interested third sector organizations might be able to expect when engaging in heritage conservation activities. Generalized surveys have shown an increase in the monetary and time donations made by Canadians, as well as the public benefits that are receiving this support,⁹⁷ however how much of this is going towards heritage conservation has not been discerned.

The size of Canada, and its cultural, social and economic diversity, would support the assumption that the capacity of third sector organizations varies significantly across regions; further research into how regional location impacts capacity is required, particularly as it relates to the ability to acquire surplus federal heritage buildings – or facilities in general. This research would also help to inform governments of where their limited financing and assistance for facility acquisition would be of the most benefit.

Finally, pressure must be applied to the federal government to publicly re-evaluate its understanding of heritage conservation given the economic, social, and cultural changes that have occurred since it first became involved in heritage conservation activities. Should it desire to continue in the role of facilitator, it must find an appropriate and transparent strategy of divesting of its stewardship responsibilities, including the ownership of federal heritage buildings. Rather than continue to accept loopholes and conflicts in Treasury Board policy that enable what are perhaps more convenient and profitable disposals, the federal government should approach the disposal of surplus federal heritage buildings as an opportunity to achieve public benefits and long-term gains in partnership with Canada's thriving and essential third sector.

⁹⁷ Statistics Canada, *General Social Survey: Giving, volunteering and participating*, 2013. Accessed April 2, 2015. <http://www.statcan.gc.ca/daily-quotidien/150130/dq150130b-eng.htm>.

A: Case Studies

Artscape Youngplace (Toronto, Canada)

Artscape Youngplace illustrates the processes and tools required to successfully adaptively reuse a historic surplus public school into a cultural and community facility by a large third sector organization. The case study evidences prior experience with smaller-sized projects, existing relationships with government departments, an established donor base, and reliable sources of income were of significant help in undertaking the project. These factors arise from the long-term development of the organization's capacity, and are not factors that are available or in many cases accessible to other third sector organizations.

The building

The Shaw Street School was constructed in 1914, located on the site of 3 previous schools, the earliest dating from 1848. The 76,000 square foot building was designed by C. H. Bishop, architect and Superintendent of Buildings for the Toronto Board of Education, and was in use from 1915 to its closure in 2000. As the surrounding neighborhood of 'Trinity-Bellwoods' demographics shifted as waves of Eastern European, Italian and Portuguese immigrants took root in the old bay-and-gable rowhouses that define the area, the building served as an important community center, with strong alumni associations and a deep connection to not only the building but to the location as a site of one of the earliest schools in the City of Toronto.

Declaration of surplus

Following metropolitan amalgamation in 1998, and the subsequent amalgamation of the respective school boards, the Province of Ontario pushed the Toronto District School Board (TDSB) to close schools that were below capacity, resulting in the shuttering of 10 schools, including the Shaw Street School, in 2000. The Shaw Street School was subsequently listed on the City of Toronto's Heritage Property Inventory, and remained largely empty until its purchase by Artscape in 2010.

The disposal process and new use

"As a long-established, community-based facility, the closure of the Shaw Street School represented a significant fraying of the neighbourhood's rich connective material."¹

The acquisition of the former Shaw Street School was Artscape's fourth project involving surplus public property, others being the reuse of the No. 6 Police Station (Parkdale Arts & Cultural Centre), the Toronto Transit Commission's St. Clair Carhouse (Artscape Wychwood Barns), and the Toronto Island Natural Science School (Artscape

¹ Artscape DIY, <http://www.artscapediy.org/Case-Studies/Artscape-Youngplace.aspx>, accessed February 10, 2015.

Gibraltar Point). Their restoration of the Toronto Island Natural Science School established a relationship with the TDSB, and when the Shaw Street School was determined to be surplus, the TDSB approached Artscape as a potential purchaser.

Artscape is a Toronto-based nonprofit organization with a focus on providing below-market, affordable space for artists and community organizations. The organization was established in 1986, and has since acquired through purchase or leases 8 properties within the City of Toronto, ranging in size and operational structure but with a common goal of serving as instigators of ‘creative placemaking’ activities. The organization has a history of adaptive reuse projects, however it has recently branched out to acquiring space within new developments.

At the time, the TDSB lacked a system of disposing of surplus lands, and a feasibility study for the new use of the building was not initiated by the TDSB until 2006. The feasibility study, undertaken by Teeple Architects in collaboration with Artscape, determined that the acquisition and base-building cost would be \$10.6 million, requiring a \$5.5 million mortgage and a feasibility study of fundraising following negotiations on a final price with the TDSB. The report indicates that Artscape would be exploring the creation of a Creative Capital Fund (a revolving fund) as a means to self-finance its capital project work, however this never materialized.

Detailed information on the financing structure used for the acquisition of the former school has not been readily available. The building was purchased for \$1.5 million dollars - fair market value - in 2010, facilitated by a lead gift of \$2 million.² The total project cost for the acquisition and adaptive reuse of Artscape Youngplace was \$17 million. Additional financing came from the sale of 27% of the building to artists and organizations, operating at a commercial condominium corporation with Artscape as majority holder. The 2011/2012 annual report for the organization indicates that 58% (\$4.7 million) of Artscape’s revenue is from property income, 32% from fundraising, 3% from a City Operating Grant and 5% from an affordable housing subsidy.

Importance of capacity in the acquisition process

Artscape’s successful acquisition and adaptive reuse of the Shaw Street School was dependent upon the organization’s capacity to undertake a large-scale project of this type, capacity that is not available to the majority of third sector organizations. Artscape has a successful track record of successful adaptive reuse projects of small to medium size heritage buildings. With 5 prior projects that involved the adaptive reuse of heritage buildings complete, Artscape had both the organizational and financial capacity necessary to take on the adaptive reuse of the Shaw Street School. A combination of secure assets, revenue streams, a pre-existing relationship with the city, and an established donor base enabled Artscape to undertake a project that would not be feasible for the majority of third sector organizations without significant assistance, either in the form of public financing or private partnerships.

² Melissa Routley, personal correspondence, February 4, 2015.

The Theatre Centre (Toronto, Canada)

The Theatre Centre case study illustrates the adaptive reuse of a historic surplus public library into an arts hub by a small third sector organization with no prior experience in surplus public reuse projects. This case study evidences the challenges faced by many third sector organizations in undertaken similar projects, most notably the substantial amount of time required to lobby, fundraise, and navigate the permitting process. As will be shown, the successful adaptive reuse of the building was largely due to the flexibility in time afforded to the organization by the disposing public entity.

The Building

The former Queen and Lisgar Branch Library was designed by City of Toronto architect Robert McCallum in 1909. The library was built using grant funds provided by Andrew Carnegie, who provided the city with \$350,000 in 1903 to construct four new library buildings. The Queen and Lisgar Branch served the city's burgeoning west end; the Riverdale Branch (1910) served the east end, the Yorkville Branch (1907) served the north and the Central Branch (1909) was the primary reference library in Toronto.

The library was in operation until 1964, when its collection was consolidated at the newly-built Parkdale Branch Library. It was subsequently used by the City of Toronto Public Health Department for office space and community outreach. The library was listed on the city's Inventory of Heritage Properties in 1973.

Over the course of the 1960s to 1990s, the building served an important function within the surrounding community, which was struggling with an influx of out-patients from nearby psychiatric facilities, high rates of homelessness and drug use. During this time the building had minimal maintenance and no restoration work, while the interior was reconfigured to serve its new use.

Interest in Conveyance and Redevelopment

Owing to its proximity to the downtown core, its unique and historic built form and streetscapes, and a burgeoning artistic community, Parkdale began to experience residential mid-rise development pressure following the turn of the 21st century. The former Queen and Lisgar Branch Library was identified by concerned community members as an under-developed site at-risk of inappropriate development should the building be sold to a private developer. Interest developed within the community, with support from the local City Councilor, to find an appropriate new use for the building that would engage with and reflect the diversity of local inhabitants and organizations through the creation of a cultural space.³

³ J. Stolk, personal interview, February 16, 2015.

The Redevelopment Process and New Use

In addition to fears of residential development and a desire to ebb the ‘gentrification’ of Parkdale, many community members also sought redevelopment as they came to realize that the current use by Toronto Public Health was not taking full advantage of the space as neighborhood demographics changed, and that the city was not properly maintaining the heritage features of the building.⁴ Concurrent with the revitalization of the neighborhood, the independent nonprofit Theatre Centre was looking for a new home within Parkdale, previously located a few blocks down from the former library. The Theatre Centre entered into negotiations with the City of Toronto in 2005, supported by the local community and City Councilor, and was able to persuade the City of Toronto to enter into a lease agreement, with the restoration of the building the responsibility of the organization. The adaptive reuse project took 9 years to complete, partly due to the need to find a new facility for Public Health, but also due to the limited resources available to the Theatre Centre.⁵ In 2005, when negotiations began, the Theatre Centre had annual revenue of \$281,705 and expenses of over \$300,000, with only \$40,000 worth of assets.⁶

The final cost for the adaptive reuse project came to \$6.2 million. The Theatre Centre acquired financing through a long-term fundraising campaign, as well as from 3 public sources: municipal development fees (Section 37 density bonus funds), provincial lobbying, and a variety of grants at the municipal, provincial and federal governments. The Theatre Centre entered into negotiations with the City of Toronto to acquire the building in 2005; a lease was signed in 2010, Toronto Public Health relocated in 2012 and the new Theatre Centre officially opened in 2014, 9 years following the start of the project.

Requirement for an extensive time frame

The successful adaptive reuse of the Queen and Lisgar Branch Library by the Theatre Centre was dependent upon the significant time frame afforded to the third sector organization, largely due to the time required to find a suitable new home for Toronto Public Health, as well as the political negotiating that occurred in order to secure development funds and a lease agreement. In this particular case study the extended time frame greatly benefitted the small organization, providing sufficient time to fundraise, apply for grants, undertake feasibility studies, and rally community and private sector support. In other projects however, such a time frame could prove to be prohibitive to an organization, potentially losing community interest and facing the expiration of time-sensitive grants.

Challenges arising from lack of capacity

Few of the sources of financing used to acquire and adaptively reuse the former Queen and Lisgar Branch Library were taken for granted, and they cannot be seen as providing a financing model for third sector organizations of a similar capacity looking to acquire surplus public heritage buildings. A number of the grants used in the project have been cancelled, and other sources (such as Section 37 development funds) were derived from a negotiation process,

4 J. Stolk, personal interview, February 16, 2015..

5 *ibid.*

6 Canada Revenue Agency, Form T3010, (Ottawa, ON: 2005).

and vary in how much money is provided. Unlike large third sector organizations which can tap into provincial infrastructure loans, grants or subsidies, organizations such as the Theatre Centre require a significant amount of time to build a base of financing from the ground up.⁷ Were it not for the extended timeframe afforded to the Theatre Centre due to external processes, their successful acquisition and adaptive reuse of the former library would be uncertain. Since acquiring the property, the Theatre Centre has experience a significant increase in its financial capacity when compared to 2005. In 2014, the center reported revenue of \$705,570, expenses of \$710,312 and assets worth \$6.284 million.⁸ This new financial leverage, critical to the organizations capacity, will undoubtedly assist the Theatre Centre in its future growth, and provides a solid foundation to support programming and maintenance.

⁷ J. Stolk, personal interview, February 16, 2015.

⁸ Canada Revenue Agency, Form T3010, (Ottawa, ON: 2014).

Downsview Park (Toronto, Canada)

The property

Located in the northwest end of the City of Toronto, the Canadian Forces Base Toronto (Downsview), was a federal government military base operated by the Department of National Defense (DND). The site was closed in 1994, and in 1996 the Federal Government announced that it would be transformed into a national urban park, called “Parc Downsview Park” and maintained by a federal crown corporation of the same name (PDP). DND maintains a limited presence on the site, as does a private company that operates a manufacturing plant and runways. This case study will focus on Plant Complex 1 and Buildings 55 & 58. Plant Complex 1 includes the first industrial building constructed on the site and that was until recently home to the Canadian Air and Space Museum (CASM), a third sector organization. The complex along with buildings 55 & 58 were designated by the Federal Heritage Building Review Office (FHBRO) in 1990, and listed by the City of Toronto in 1998.

Plant Complex 1, composed of 6 buildings, was constructed between 1929 - 1944 to serve as a facility for De Havilland, a Canadian aircraft company. The 1929 building was designed by prominent Toronto architects Mathers and Haldenby of brick, steel and glass, and over the course of the 1930s and 1940s accrued a number of additions as the business expanded in order to serve the war effort. The complex was sold to DND in the post-war period, and was used for manufacturing purposes by the Canadian Armed Forces prior to the closure of CFB Downsview in 1996. The complex was then transferred to Parc Downsview Park, a crown corporation.

Buildings 55 & 58 were constructed in 1943 during the height of World War II as hangars used for war-time aircraft construction. They were identified by FHBRO as being significant due to their unique size that was reflective of their highly specialized use, in addition to their use of brick and steel construction, rare during wartime material rationing. FHBRO also noted the significance of their unique interior lighting system and the high degree of craftsmanship.

Eviction of the museum and redevelopment plans for Plant Complex 1

Following the transfer of Downsview Park to PDP - a federal crown corporation - CASM was granted approval to use a portion of the complex. The museum occupied the site from 1997 until 2011, when tenants of the complex were served with eviction notices . In the 2009 review, the consultants stated that the use of the complex by the museum was compatible due to the “strong historical associations” of the building with the theme of the museum.⁹

In late 2011 it was announced that the listed heritage building would be substantially demolished, the facade left intact and replaced with a recreational facility.¹⁰ Following inquiries as to how a federal agency could substantially demolish designated building, it was revealed that the building had lost its designation following its transfer from DND to a crown corporation. The stated reason for eviction was the museum’s inability to make rent, as well as the need for upwards of \$3.5 million of maintenance.¹¹

⁹ ERA Architects Inc., Downsview Area Secondary Plan- Heritage Building Conservation Study Review, City of Toronto, 2009, 18.

¹⁰ Megan O’Toole, “Canadian Air Space Museum evicted, possibly to be replaced by ice rink,” *The National Post*. September 20, 2011.

¹¹ Alyshah Hasham, “Air and Space Museum heads for demolition amid heritage status confusion,” *The Toronto Star*, October 29, 2011.

The plan to construct a skating facility fell through, however, and the building sat under-utilized. PDP was merged into Canada Lands Company (CLC) in 2012, and in 2014 it was announced that the complex would be repurposed and leased to Centennial College of Applied Arts. The proposed new use would include the restoration of the complex alongside new construction, however CASM has not been offered space within the complex. CASM is in continued negotiations with the Greater Toronto Airport Authority to display its collections at Lester B. Pearson International Airport.

Demolition of buildings 55 & 58

Buildings 55 & 58 were declared surplus by DND in 2007, who announced plans to demolish the buildings and construct a helicopter landing pad alongside a new building, receiving approval to do so from FHBRO and soliciting interest from heritage groups in the buildings' relocation. Following significant community uproar and media attention, a private heritage developer attempted to intervene, proposing the buildings be used to store private aircraft and to house an aviation museum. The developer entered into negotiations with DND and PDP in an attempt to swap land so as to save the buildings while still providing space for DND to construct a landing pad. The negotiations fell through, according to DND, due to the fact that no other land was available at no cost for DND use, and not because of a lack of interest (the developer having stated that outright purchase would be a last resort, if possible).¹² Buildings 55 & 58 were demolished in 2010.

Challenges arising from ownership by a crown corporation (loopholes in Treasury Board policy)

The loss of federal heritage building status for Plant Complex 1 at Downsview Park reflects a significant flaw within the federal designation process. FHBRO reviewed and designated the building, however following its transfer to PDP, a crown corporation, Treasury Board policy no longer applied and the designation was removed. That the complex remained on the official register until 2011¹³ with no indication that it was no longer covered by Treasury Board policy has not been officially addressed, however it could have been a result of the fact that FHBRO is not responsible for monitoring the status of designated buildings; it relies upon departments to provide updates and in this case, it was the responsibility of the Department of National Defense (DND) to report to FHBRO that the building had been transferred to PDP. While Treasury Board policy does not place legislative obligations upon federal departments, it does contain policy obligations, and designation as a federal heritage building provides a degree of security for communities. In the case of Plant Complex 1, any sense of security amongst the community and the third sector tenant that might have been derived from the complex's designation was in error.

¹² Lisa Queen, "Historic Downsview hangars demolished," North York Mirror, March 10, 2010.

¹³ Alyshah Hasham, "Air and Space Museum heads for demolition amid heritage status confusion," *The Toronto Star*, October 29, 2011.

Challenges arising from conflicts in Treasury Board policy

Treasury Board policy supported the market valuation of Buildings 55 & 58 without obligating DND to prioritize finding appropriate alternative uses first. DND did agree to preserve the buildings through the transfer of ownership to a private developer for private and third sector use, however it was upon the condition that the department receive other land for development at no cost. A subsequent 'compromise' - that a third sector organization acquire and relocate the massive hangars to another site - was impractical, and should not be construed as best efforts as it would demand significant capacity on the part of the third sector. Following Treasury Board policy directives on how to determine highest and best value, DND valued the property over the significance of the heritage buildings, and was supported by unclear policy that obligates the pursuit of market value for surplus federal heritage buildings.

Niagara Military Museum (Niagara Falls, Canada)

The case study of the Niagara Military Museum illustrates the acquisition of a surplus heritage military building by a municipality on behalf of a third sector organization. This case study evidences the potential that exists for the misuse of public sector acquisition for third sector use, and the risks that might be incurred arising from a lack of third sector capacity to operate and maintain the building.

The building

The Niagara Falls Armoury was constructed between 1910-1912 by the Federal Department of Public Works to designs by architect T.W. Fuller in the Gothic Revival style. The building served as the regional center for recruitment during World War I, and was subsequently used as a training and recruitment facility by DND for a number of regiments. The armoury was designated as Recognized by FHBRO in 1990.

The disposal process and new use

The City of Niagara Falls became aware of the building being declared of as surplus through newspaper articles in 1998¹⁴. Subsequent community interest in the building prompted a series of discussion between DND and the City of Niagara Falls, with the DND agreeing to sell the building for \$2 to the city.¹⁵ Throughout the process a number of different interest groups proposed alternative uses, including an art gallery, the Niagara Military Museum, Project Share (a local food bank), a homeless shelter, or the subdivision of the lot to develop single family homes.

Niagara Falls City Council was divided on whether to acquire the building for fear of assuming unknown and potentially significant maintenance costs, pitting community interests against the city budget. By late 2004, following a renege on their decision to acquire it, City Council agreed to purchase the building, with one Alderman stating that “The community wants this saved. It almost doesn’t matter the cost.”¹⁶

The Niagara Military Museum was founded in 1999 as a private nonprofit organization with a focus on the collection and display of artifacts relating to the military heritage of the region. It is entirely volunteer-run, and is primarily funded through private donations.

Prior to purchase, consultants hired by the city budgeted \$57,000 in required work; representatives from the Niagara Military Museum estimated the number was closer to \$5,000. City Staff recommended refusal to purchase due to financial concerns, however City Council agreed to assume ownership of the building in late 2004. A lease comprising three rooms within the building to the Niagara Falls Military Museum was agreed upon in 2009, with the intent of the museum becoming financially independent by 2014 and their assumption of financial responsibility for the building and its maintenance.¹⁷

¹⁴ P. Boyle, personal correspondence, January 28, 2015.

¹⁵ ibid

¹⁶ Corey Larocque, “Meeting of the Minds’ to Decide Fate of Armoury,” *Niagara Falls Review*, June 1, 2004.

¹⁷ Corey Larocque, “Niagara Military Museum Finds Home at Falls’ Armoury,” *Niagara Falls Review*, December 28, 2009.

Following a brief co-occupancy of the former armoury with the Niagara Falls History Museum, the Niagara Falls Military Museum became the sole tenant of the armoury, and continues to occupy a limited amount of space within the building. While City Council stated they had no intention of assuming financial responsibility for the museum or the armoury when the lease was signed, the city continues to pay approximately \$13,500 in annual maintenance costs.¹⁸ The museum primarily raises funds through the sale of donated items, private donations, and grants, operating with limited opening hours and relying on volunteers.

Challenges arising from a reliance on public ownership

The City of Niagara Falls acquired the surplus Niagara Falls Armoury from DND in 2004, 6 years after it was declared surplus and following extensive community outcry to have the building saved through municipal ownership. In spite of Niagara City Council's stated intention in 2009 that it would not assume financial responsibility for the armoury, 6 years later the City of Niagara Falls remains responsible for operations and maintenance costs, paying approximately \$13,500 annually. The Niagara Military Museum is the sole occupant of the building, and has thus far been unable to accrue the financing necessary to assume financial responsibility for the building, nor to expand their footprint within the space. As a result, a significant amount of the space within the building is underutilized and the structure has yet to be restored. A desire from the community and the third sector organization to be the sole occupant of the building and have autonomy in decisions relating to their use of the space is significantly hampered by the municipality's ownership of the building.

Challenges arising from a lack of third sector capacity

The Niagara Military Museum has been unable to acquire the finances required to maintain the old Niagara Falls Armoury, let alone undertake a restoration project or deliver public programming. The museum is volunteer-driven and donations-based; it did not receive registered charitable status (which would allow it to issue tax receipts) until 2014. Its assets are primarily donated objects and memorabilia; it has not assumed ownership of the armoury building. Without registered charity status, a substantial donor base, or significant assets, the museum lacked the capacity required to assume the ownership and maintenance costs of a surplus federal heritage building, and has required the public sector to do so. A formal agreement between the public and third sector partners, as well as the participation of a private sector partner, might have provided an opportunity to outline long-term goals and develop a thorough business plan, however due to intense community pressure and a lack of policy requiring long-term plans be presented prior to the conveyance, the building is underutilized and the city will remain responsible for the building's operations and maintenance costs for the foreseeable future. The museum lacked the capacity to acquire the surplus federal heritage building, and in spite of its best intentions, has yet to find viable tools that would enable it to achieve the capacity to do so.

¹⁸ P. Boyle, personal correspondence, January 28, 2015.

Canada Malting Company Silos (Toronto, Canada)

The Canada Malting Company Silos illustrate the challenges that might arise through the acquisition of a surplus heritage industrial building by a municipality with no partnership agreement with a third sector partner. It also evidences the subsequent challenges faced by multiple third sector organizations to propose a financially and politically viable adaptive reuse of the building. This case study illustrates the challenges faced by the third sector in formulating viable plans due to political changes and a lack of available financing, and the risks that are incurred by the public sector in acquiring surplus heritage buildings without adequate plans in place.

The building

The Canada Malting Company Silos are located on Toronto's downtown waterfront, on reclaimed land directly adjacent to the Toronto Island Airport. The two grain elevators were constructed in 1929 and 1944. Additional structures on the site include the headhouses and marine leg. The complex played a significant role in the development of Toronto's waterfront industry, the revival of the grain trade in the city, and the city's increasing prominence through the middle of the 20th century as a part of the Great Lakes trade route. The complex was included on the City of Toronto's inaugural Inventory of Heritage Properties in 1973.

The silos are located on valuable real estate within the heart of the City of Toronto; no longer an industrial district, the area is defined by mixed-use residential and commercial buildings, with extensive public space. Billy Bishop Airport, Toronto's downtown island airport, is directly across a narrow strait from the silos.

Declaration of surplus

The complex was expropriated by the federal government in 1973, and leased back to the Canada Malting Company who maintained operations on the site until 1987 at which time it became vacant. By this time the silos were under the jurisdiction of the Harbourfront Corporation, a federal crown corporation with a mandate to develop a mixed-use urban waterfront in Toronto. Following public outcry over the aggressive high-rise redevelopment occurring along the waterfront that was spurred by the Harbourfront Corporation, it was dissolved in 1990.¹⁹

The disposal process and new use

The complex was transferred to the City of Toronto in 1993 with the intention that they would be used for public purposes, but with no public purpose having yet been identified and no third or private sector partner engaged. The City solicited a request for expressions of interest in 1993, entered into discussions with a third sector organization, and in 1999 granted the organization a ninety-nine year lease on the silos to adaptively reuse the complex as a music museum and music-themed hotel. A new building, containing a theatre and education centre, would be constructed as well. Financial challenges in raising the \$70 million needed halted the project in 2002.

¹⁹ Greg Spafford and David Gordon, *CEDRO: ACUPP Toronto Harbourfront Case Study*, University of Calgary, 2001. Web. Accessed March 5, 2015.

In 2005 the city approved the use of the site for ‘Humanitas’, a museum for the City of Toronto; in 2008 the plan was formalized with the establishment of the nonprofit “Toronto Museum Project”. The Toronto Museum Project proposed to restore the silos through engaging in a partnership with a private sector partner, however no partner responded to the RFP. Upon further feasibility investigations, it was revealed that a restrictive covenant placed by the federal government upon the site following its transfer to the city in 1992 preventing any non-public use of the site. Another covenant restricts sponsorship opportunities, so as to not conflict with harbourfront activities. The plan for the Toronto Museum Project’s redevelopment of the silos was subsequently cancelled.

Soon after the failure of the Toronto Museum Project, Facilities and Real Estate, a city agency, proposed the complete demolition of the Canada Malting Co. complex, prompting Heritage Preservation Services to issue an intention to designate the buildings under the Ontario Heritage Act. In addition to the evaluation of the site for provincial designation, the HPS report included four alternatives for the site and their financial implications:

- Complete preservation, stabilization and mothballing. \$20,600,000
- Remediation of silos and selective demolition of subsidiary buildings. \$17,700,000
- Preservation of symbolic representation of silos, demolition of subsidiary buildings. \$15,300,000
- Demolition of all structures, preservation of silo foundation ruins. \$8,412,250

In 2010 the silos were designated under the Ontario Heritage Act, Also in 2010 the City of Toronto undertook the demolition of a number of buildings on the site, with a stated intention of selling portions of the site to private developers in order to restore the silos. A master plan was expected to be issued by the city in 2011, including an RFP for private sector participation, however this relied upon continued support and interest in the site from the newly-elected City Council, and a master plan was never presented.²⁰ In spite of the lack of political will, planning studies have consistently identified the important of the silos to the surrounding community,²¹ and a desire to have them better integrated and used for public benefit.

Challenges arising from public sector ownership

The Canada Malting Co. Silos, a former industrial building that was expropriated by the federal government, was transferred to the City of Toronto in 1993. The city intended that the silos would be used for public purposes, however at the time of acquisition no public purpose had yet been agreed upon. A request for expressions of interest was issued in 1993, which led to the leasing of the property to a third sector organization in 1999. Subsequent plans to develop a museum faced similar challenges, as did plans to engage a private sector partner to facilitate its development. The building has been vacant for 28 years, with no future use planed and significant deterioration occurring. Dependence upon public sector ownership, and a lack of policy obligations that public entities must have plans prior to the acquisition of surplus federal heritage buildings, has resulted in the slow decay of a designated building.

20 Carys Mills, “City looks to develop former Canada Malting site” *The Globe and Mail*. September 15, 2010.

21 Canada Malting Silos Visioning (2009-2011), Eireann Quay and BBTC Strategic Transportation Study (2012), and Bathurst Quay Neighbourhood Study (2014).

Postal Station ‘K’ (Toronto, Canada)

The Postal Station ‘K’ case study illustrates the challenges that arise from exclusion of a surplus historic postal station from federal policy, and the subsequent sale for maximum profit without community consultation and without third sector participation. This case study shows how loopholes in Treasury Board policy can exclude historic properties from federal heritage building designation and policy obligations. In this case study, a federal crown corporation sought to realize full market value in the face of community and political opposition, as well as third sector interest in the partial use of the building.

The building

Postal Station ‘K’ was constructed in 1936 as a federal post office. The Modern Classical building was designed by architect Murray Brown on the site of the former Montgomery’s Tavern, a hotel and tavern that played a significant role in the Rebellion of Upper Canada (1837). The postal station derives its significance from its being a federally-funded public works project during the Great Depression that served as a source of employment for the local community. It is also a significant and rare example of the use of the Modern Classical style, and is a celebrated work of Murray Brown’s. The building has also received attention as it retains the royal cypher of King Edward VIII, who was King for less than a year, making the cypher a rare and unique relic of his short reign.

With a significant setback from the street, the property has become an important public space for the surrounding community. Additional public benefit was derived from the private museum located in the basement of the building that celebrated the history of the site and building.

The site was listed as a National Historic Landmark in 1925, was included on the City of Toronto’s inaugural Inventory of Heritage Properties in 1974. As the building was owned by Canada Post, a crown corporation, Postal Station ‘K’ was never eligible for consideration as a federal heritage building.

Declaration of surplus

In 2012 it became known to the local community and politicians that Canada Post, a crown corporation, was intending to dispose of the property along with a number of excess post offices. Located just north of a major intersection and within close proximity to significant residential developments of 30-storey plus towers, it was clear that the site would be appealing to private developers looking to purchase lots on Yonge Street.

The disposal process and new use

In late 2012 it was announced that Canada Post had sold the building to a private development company who had plans to redevelop the site as a purpose-built residential rental tower. Significant community outcry bolstered by protests and petitions rallied city and provincial politicians to speak out against the redevelopment. Prior to the dec-

laration of the building as surplus, the museum that occupied the basement of the building had expressed interest in expanding, occupying a portion of the front of the building and constructing a café.²²

In 2013, the City of Toronto designated Postal Station 'K' under the Ontario Heritage Act, concurrent with their approval of the development plan for the site. The plan is to construct a 27-storey tower, retaining the 2-storey facade of Postal Station 'K'. The heritage component of the building will not be publicly accessible or be used for community purposes; the developer has agreed to preserve public right-of-way in front the building for use as a civic square.

Challenges arising from ownership by a crown corporation (loopholes in Treasury Board policy)

Postal Station 'K' illustrates the risks that might be incurred due to the lack of heritage policy obligations applied to federally-owned heritage buildings within the custody of crown corporations. As Canada Post has no obligations to abide by Treasury Board policy, the disposal process for Postal Station K (a National Historic Site) did not obligate consultation with FHBRO or a heritage professional. It fell to the City of Toronto to negotiate with the purchaser (a developer) to have the building preserved in some form; designation occurred concurrent with negotiations for site variances, providing the private developer with leverage in the negotiation process. Due to the amount of time required to research and propose provincial designation - and the lack of any holding period applied to buildings under review - the developer's support for designation was essential. Should the developer not have been in support of designation, they would have had the opportunity to lawfully demolish the building prior to it being provincially designated.

²² Town of York Historical Society, "Museum celebrates unique history of Postal Station K," Newsletter, September 2009. Accessed February 27, 2015. <http://www.townofyork.com/pdfs/september2009-town-of-york.pdf>

The Grove Arcade (Asheville, NC, United States)

The building

Located in Asheville, North Carolina, the Grove Arcade opened in 1929, and was designed by architect Charles N. Parker. The building was envisioned as a mixed-use public market, and when complete offered over 250,000 square feet for retail and commercial uses spread across 3 floors with a 2-storey rooftop tower. During World War II the building was appropriated by the Federal Government to serve the war effort; it remained within federal ownership serving as administrative space until the 1980s.

Declaration of surplus

Beginning in the early 1980s the surrounding community of Asheville began to demand the return of the Grove Arcade building to its original use as a public market, and the relocation of the federal government to a new facility. During this time the building was successfully listed on the National Register of Historic Places, and a special Mayor's Task Force was established in order to gauge private sector interest and other opportunities for the redevelopment project. Concurrently, concerned citizens formed the Grove Arcade Public Market Foundation - a registered charity - in order to advocate for the building's return to public use.

The Redevelopment process and new use

In 1997 following the construction of a new federal facility, the Grove Arcade was transferred as a 'Historic Monument' public benefit conveyance to the City of Asheville for \$1. The same year the city signed a long-term lease with the Grove Arcade Public Market Foundation, and a subsequent lease with a private sector partner.

The Grove Arcade re-opened as a public market with commercial and residential units in 2002 following a \$20 million dollar restoration. Operating under a master lease held by the Foundation, the building as of 2014 was 100% occupied, with a waiting list for residential units.²³ In addition to the retail and commercial spaces available, the Foundation offers community meeting space, discounted for registered nonprofits.

Benefits derived from use of the public benefit conveyance program

The Grove Arcade entered the PBC program through proactive campaigning on the part of the community and local politicians as opposed to internal federal identification of the property as surplus. The building was conveyed as a historic monument to the city of Asheville for \$1, and included a number of restrictive covenants in order to ensure its long-term preservation. The city of Asheville is not permitted to sell the title or transfer ownership except to a local authority, and only following NPS approval. In addition to requiring NPS approval, the conveyance also requires the North Carolina SHPO and the Asheville City Council approve any work done to the exterior of the

²³ John Boyle, "Duke Energy mulling Grove Arcade lease rights sale," *Citizen-Times*, December 15, 2014.

building. As the owner of the building, the city must approve of the sale of lease rights by the non-profit and private sector partners; should lease rights be sold or transferred, they may only go to a registered non-profit. The final protective measure applied through the PBC process was the conveyance of facade easements and the air rights of the property to North Carolina Preservation, effectively removing future development pressure from the property and decreasing its valuation based upon 'highest and best use'.

Benefits from the use of a third sector heritage P3

Following conveyance of the Grove Arcade to the City of Asheville, the city entered into a P3 to undertake the large-scale restoration project. The city retained ownership and provided city-issued bonds, an attractive means of raising capital usually reserved for municipal capital projects and which are free of income tax on interest received. They also provided support to the private and third sector partners through the permitting process.

The Grove Arcade Public Market Foundation, a third sector organization involved in the early advocacy work associated with the building, was brought on as the third sector partner and head lessee; they managed the restoration project and the leasing of the ground floor of the building (retail). They were also responsible for securing project financing, and have retained management of the retail component of the building post-completion.

Duke Energy was the private sector partner, and holds the lease for the commercial and residential units. Aside from providing substantial upfront project financing, Duke Energy purchased the state and federal historic tax credits from the Grove Arcade Public Market Foundation, which as a non-profit had no tax to claim against. Through the sale of tax credits ('syndication' to a project investor), the foundation was able to turn the credits into cash, which could then be used to fund future restoration work.

The Old U.S. Mint (New Orleans, LA, United States)

The Building

The Old U.S. Mint was constructed in 1835 to designs by the prominent American architect William Strickland in the Greek Revival style. Located on the edge of the city's historic French Quarter, the building produced coinage from 1835 until 1911, when the mint was decommissioned. During this period it accrued significance as not only a federal mint but as the quarter for Confederate troops during the Civil War prior to the capture of New Orleans in 1862. Following the end of production in 1911, the Old U.S. Mint served other federal uses, including as an assay office, a federal prison, a storage facility and fallout shelter, with periods of abandonment and decay.

Benefits derived from the use of a public benefit conveyance

The Old U.S. Mint in New Orleans was conveyed to the state of Louisiana as an historic monument public benefit conveyance in 1965, with the State obligated to renovate and convert the building to a new use within 15 years. In 1981, the Mint was converted into a museum celebrating the building's history as a federal mint.

The Old U.S. Mint is now part of the Louisiana State Museum. The mint is owned by the state, however programming and projects are supported by an independent non-profit, The Louisiana Museum Foundation (LMF). LMF was established shortly after the mint was converted into a museum, and is a third sector partner whose mission is to fundraise, administer contributions, and acquire grants to support the programming of the museum. Through this partnership, LMF is responsible for providing financial support for all public programming, while the state responsible for salaries and maintenance. LMF also provides critical support for the New Orleans Mint Performing Arts Center, located within the Old U.S. Mint, a multi-purpose facility that hosts performance art and media programs. As a private non-profit organization, it can access certain public grant money that might not be available to the state; it also benefits from being able to more readily solicit private donations. LMF holds annual fundraising events, undertakes appeals for special projects, and assists the State Museum with project coordination in support of their various facilities, including the Old U.S. Mint.

LMF provides critical support for the New Orleans Mint Performing Arts Center, located within the Old U.S. Mint, a multi-purpose facility that hosts performance art and media programs. The Mint also contains the Louisiana Historical Center. The partnership between the Museum and the Foundation has encouraged the development of an engaged community that provides financial support for the ongoing use of the historic building and its continued public benefit.

Federal Archive Building (New York, NY, United States)

The building

The Federal Archive Building is located in Manhattan, New York, in the Greenwich Village neighborhood abutting the Hudson River. Constructed between 1892-1899 to designs by architect W.J. Edbrooke, the 10-storey, 400,000 square foot facility was intended to serve the nearby Hudson River docks, occupying a full city block. Due to its massive volume the building soon came to be a repository for a variety of Federal government documents, serving as the central storage facility until the latter half of the 20th century. In spite of its federal ownership and the jurisdictional issues that might ensue, the newly-formed Landmarks Preservation Commission designated the building in 1966, and it was subsequently listed on the National Register in 1974.

Declaration of surplus

In the mid-1970s, the General Services Administration (GSA) determined that the building was in excess of federal government needs, and initiated a disposal process. Early on in the process the GSA entered into discussions with the recently formed New York Landmarks Conservancy, a nonprofit organization within New York City that focuses on the preservation and redevelopment of historic properties. The Conservancy engaged with Columbia University's Center for Advanced Research in Urban & Environmental Affairs in 1975 to undertake a feasibility study, the results of which recommended the redevelopment of the building as a mixed-use residential, commercial and community facility.

The report recommended the federal government initiate a public benefit conveyance under the recently-passed legislation permitting the transfer of 'historic monuments'. As a PBC, the net revenues from the property received by the public entity would have to be reinvested in historic preservation purposes, and so it was recommended that they be provided to the Landmarks Conservancy in order to establish the Historic Properties Fund - a revolving loan fund.

Following approval of the feasibility study, the Landmarks Conservancy issued an RFP for a private development partner, and the property was successfully transferred to the New York State Urban Development Corporation, who subsequently initiated a public private partnership.

The redevelopment process and new use

The redevelopment process was significantly delayed due to challenges to the process, largely arising from community disagreement with the proposal. The local community board disagreed with the redevelopment into market-rate rental apartments, proposing that they instead be affordable housing, and that greater public input be facilitated in the decision making process²⁴. The delays resulted in the backing-out of the first private sector partner, replaced by Rockrose Development Corporation, and the reorganization of the transaction by the state government so as

²⁴ Sharon Zukin, *Loft Living: Culture and Capital in Urban Change*, (New Brunswick, NJ: Rutgers University Press, 1991), 167.

to garner greater political support for the project and counter community resistance. In the end, the project was converted into rental apartments, with ground floor commercial space and below-market community space in the lower levels.

Benefits derived from the use of a third sector heritage P3

A P3 with a third sector partner was an innovative tool used in the redevelopment of the Federal Archive Building to satisfy the requirements of the PBC that was used for this building. In this particular heritage P3, the state corporation retained ownership, the Landmarks Conservancy managed the issuance of the RFP and the preconstruction process, and the private developer leased the building, channeling an agreed upon percentage of net proceeds to the Landmarks Conservancy to finance their new revolving fund.

A significant challenge faced in the redevelopment was community discontent with the redevelopment, upset with the lack of affordable housing and casting the process as the privatization of a federal building for the benefit of a private sector developer. The state's response - to reorganize the disposal so as to avoid further community disruption - did not help reduce those fears, however it should be noted that community space was and continues to be provided within the building at below-market rent.

Structure of the revolving fund

In 1982, the Landmarks Conservancy set-up their Historic Properties Fund, initiated by the reinvestment of net proceeds from the redevelopment of the Federal Archive Building. The Fund is capitalized based on a unique deal, wherein the developer paid \$10,000/unit over 15 years at 11% interest; 8% of gross commercial rent (32,000+ square feet at market rate) for 75 years; and 8% of any net proceeds from refinancing or co-op conversion over a certain amount. By 1999, the Fund had remitted \$7 million; the payment received in 2014 from their portion of the gross rent alone was over \$190,000.

In order to satisfy the requirements of the PBC, the Fund provides below-market rate loans and project management services to lower and moderate-income individuals and nonprofits with historic properties. Since 1982, it has closed over \$25 million in loans, provided \$423,000 in grants and assisted over 240 properties. The Fund has in excess of \$8 million in assets, with a cumulative default rate of close to zero.

Preservation North Carolina (Various, NC, United States)

The organization

Preservation North Carolina began in 1939 as the North Carolina Society for the Preservation of Antiquities, and has since been formally established as a private nonprofit organization dedicated to protecting buildings, landscapes and historic sites within the state of North Carolina. Alongside its revolving fund program, Preservation NC operates a house museum, runs workshops, issues publications, pursues legislative advocacy, and issues awards.

The organization receives its funding from over 4,000 members and other private sources. In 2012, Preservation NC received over \$600,000 in contributions and grants, earned over \$1.2 million from its programs and had close to \$11 million in assets. Of the \$600,000 in contributions, less than a tenth of the financing came from government grants.

The revolving fund program

Preservation NC runs a successfully revolving fund program, referred to as the Endangered Properties Program. The program, based off of earlier successes in Savannah, Pittsburgh and Charleston, was the first state-wide revolving fund established, set-up in response to rampant post-war demolition. In the quarter-century following the establishment of the fund, upwards of 450 properties had been protected through conservation easements or protective covenants. Relying significantly on private financing, the fund has greatly benefitted from the donation of real estate, an attractive option for property owners looking to guarantee the preservation of their buildings, avoid capital gains tax on appreciated value, receive tax deductions or remove property value from estate tax.²⁵ By 2014, the fund had been used to protect more than 725 properties, finding suitable new uses for historic buildings and ensuring their long-term preservation by attaching protective covenants to the property.

The fund has benefitted from choosing to take options out on properties, allowing the organization to market the property to potential buyers prior to incurring significant financial costs²⁶. The use of options is advantageous when a fund has a network of individuals or companies interested in historic properties, or when it is unable to hold the property for the extended period of time that might be required to find an appropriate purchaser, undertake a restoration and take out an easement.

Use of surplus federal heritage buildings

Preservation North Carolina has participated in the restoration of a number of surplus public heritage buildings, including schools, hospitals, industrial and civic structures. Benefitting from both the PBC program and a state program of a similar structure, Preservation NC had purchased and resold approximately 30 surplus public properties,

²⁵ J. Myrick Howard, *Gifts of Real Estate for Preservation North Carolina: Building North Carolina's Future by Saving its Past*.

²⁶ Olivia Mitchell, "An Evaluation of Historic Preservation Revolving Loan Funds, and Recommendations for the Establishment of Future Programs" (Msc thesis, University of Pennsylvania, 2011), 19.

spurring over \$50 million in private investment²⁷. A significant number of these properties have been adaptively reused as community centers, museums, affordable housing and space for community organizations.

Following restoration, Preservation NC can sell the property at market value so long as a covenant is attached. For larger surplus public heritage buildings, such as schools and hospitals, Preservation NC has engaged in P3s with private developers and local governments, realizing the benefits that can arise from combining their experience with heritage redevelopment with the financial strength of private developers and the attractive incentives offered by the public sector.

Benefits derived from the use of a revolving fund

Preservation NC runs the successful Endangered Properties Program revolving fund. Relying on private financing, the fund has greatly benefitted from the donation of real estate, an attractive option for property owners looking to guarantee the preservation of their buildings, avoid capital gains tax on appreciated value, receive tax deductions and remove property value from estate tax.²⁸ The fund has benefitted from choosing to take options out on properties, allowing the organization to market the property to potential buyers prior to incurring significant financial costs.²⁹ The use of options is advantageous when a fund has a network of individuals or companies interested in historic properties, or when it is unable to hold the property for the extended period of time that might be required to find an appropriate purchaser, undertake a restoration and take out an easement.

²⁷ Preservation North Carolina, "Recycling Surplus Public Property in NC" (website, April 14, 2010).

²⁸ Howard, *Gifts of Real Estate for Preservation North Carolina: Building North Carolina's Future by Saving its Past*.

²⁹ Mitchell, "An Evaluation of Historic Preservation Revolving Loan Funds," 19.

Battersea Arts Centre (Wandsworth, London, England)

The building

the former Battersea Town Hall was constructed in 1893 by British architect Edward W. Mountford. Located on what were formerly the outskirts of the city of London, the town hall occupies a full block, containing over 70 rooms arising from a number of additions over the course of its use as a civic building. In addition to its substantial physical presence, the town hall is significant for its role as the staging ground for radical politics through the early 20th century; women's suffrage, as well as the trade union and labor movements, all took root within the expansive building.

The disposal

Postwar urban expansion and the centralization of local governments saw the amalgamation of Battersea with the neighboring borough of Wandsworth, and the relocation of the local authority to the Wandsworth Town Hall in 1965. Battersea Town Hall was officially declared surplus, and the new local authority determined to demolish the building and replace it with a library and recreational facility.

The surrounding community of Battersea organized and campaigned against the demolition of the building, partnering with Victorian Societies to advocating for the preservation of the structure. The community successfully had Battersea Town Hall designated a Listed building, preventing its demolition.

The local authority subsequently operated the building as an arts and theatre center, however in 1979 the building was once again threatened following public expense cuts. Another round of community organizing and campaigning convinced the local authority to provide the building to the Battersea Arts Centre Charity on a short-term lease in order to continue operating the theatre arts center.

Use of the community asset transfer program

A former town hall, the Battersea Arts Centre has been in use by a third sector organization since 1980, structured upon a series of short-term leases. The transfer of the building to the Battersea Arts Centre as a community asset in 2008 was facilitated through a 120 year long-term lease and 20 rent-free years, a transfer that enabled the organization to embark on an ambitious £13.3 million (\$26.3 million USD) capital project. The project included the restoration of major public spaces, the construction of apartments for resident artists, infrastructure modernization and general refurbishment of the 120 year old building. The project was substantially financed by the public sector; less than half a million pounds were raised from the private sector. Additional work continues to be undertaken in phases as financing is acquired and the needs of the center evolve and expand.

The Landmark Trust (Various, United Kingdom)

The Organization

The Landmark Trust is a building preservation trust that works to preserve at-risk historic buildings in Britain. Established in 1965 by private philanthropists, the trust set out to preserve and reuse buildings that were going unnoticed by the National Trust, whose work primarily focused on large-scale at-risk heritage buildings. Over the course of the past 50 years, the trust has been set-up as a private nonprofit charity, and has reused over 200 heritage buildings within Britain. The majority of buildings saved from demolition or inappropriate use by the Trust have been repurposed as vacation properties, with the trust retaining ownership, while a limited number have been set aside for long-term leases.

Program Structure

Early restoration and reuse projects by the Landmark Trust were directly funded by the founder of the trust, John Smith, through the use of a private trust fund. As public funds became more readily available, the Landmark Trust has come to acquire financing from public bodies set-up for the purpose (Heritage Lottery Fund, e.g.), in addition to private donations and profits from their holiday rentals.³⁰ The Trust adds around three to four properties to its portfolio each year. Similar to the revolving funds in the United States, the Landmark Trust focuses on properties that have been passed over by private interests. By repurposing the buildings as holiday properties and retaining ownership, the Trust can guarantee their long-term maintenance, as the pressures exerted on a residential property (additions, modernizations, etc.) are not as significant on holiday properties. The “novelty” of staying in a historic building that might require guests to “trundle their luggage across a field in a wheelbarrow” can help preserve character defining features where residential use might not otherwise.³¹

Benefits derived from the use of a building preservation trust

The Landmark Trust was established to preserve small to medium sized buildings that were not of interest to the larger National Trust, however it has since come to acquire and reuse a variety of building types, from workers cottages, to castles, to mid-century apartments. The Appleton Water Tower in Norfolk is one of their more eclectic properties, and a former public heritage building. Constructed in 1877 to serve as a repository of safe drinking water for the royal estate of Sandringham, the ornate Byzantine-styled tower also included rooms for the royal family and their guests. It later came into the ownership of the Local Authority, and was declared surplus in 1973. The tower sat vacant and was at threat of demolition until its acquisition by the Landmark Trust, who restored it in 1977 as a vacation rental property. Benefitting from a steady and predictable stream of revenue, the tower has undergone multiple self-financed restoration projects. The predictable revenue stream from the letting of the property for vacation rentals has been a successful model replicated at dozens of Landmark Trust properties. The Appleton Water

30 Caroline Stanford, “‘A Fresh Window on Life’: Adaptive Re-Use and the Landmark Trust,” *Journal of Architectural Conservation* 9, no. 3, (2003): 22.

31 Ibid., 23.

Tower illustrates the long-term financial benefits that can be accrued from surplus heritage buildings that are restored and operated by building preservation trusts, benefits that might not have been realized should the property have been sold to a private owner following its restoration.

B: Policy Review

Canadian Policy Review

Reviewed Policy

Treasury Board of Canada. Policy on Management of Real Property. November, 2006.

Treasury Board of Canada. Guide to the Management of Real Property.

Treasury Board of Canada. Directive on the Sale or Transfer of Surplus Real Property.

Financial Administration Act. Minister of Justice: R.S.C., 1985, c. F-11.

Treasury Board of Canada. Policy on Management of Real Property. November, 2006.

This policy outlines the responsibilities of deputy heads in the management of federal real property. The policy, issued in 2006 by the Treasury Board, consolidated previous policy, including policy that specifically addressed the management of heritage buildings and the disposal process. The replaced heritage policies were:

- Treasury Board Heritage Buildings Policy
- Treasury Board Policy on the Disposal of Surplus Real Property

The new policy outlines the requirements of department deputy heads, accountable to their respective ministers. The policy applies to all departments listed in Section 2 of the *Financial Administration Act*.

Crown Corporations are exempt from Treasury Board policy on federal real property management, except in regards to section 6.1.15 (concerning the Federal Contaminated Sites Inventory). The Treasury Board is accountable to both Cabinet and the Prime Minister for the policies it issues³².

Section 6.1.9 addresses the responsibilities of deputy heads in regards to the management of heritage buildings and submitting buildings to Parks Canada for review. The section states:

“The heritage character of federal buildings is respected and conserved throughout their life cycle. Buildings that are 40 years of age or older, whether crown-owned buildings under the administration of their minister or buildings they are planning to purchase, must be evaluated by Parks Canada for their heritage character.”

This section indicates that all buildings owned by the government or intended for purchase that are 40 years or older *must* be evaluated by Parks Canada for their heritage character.

³² Treasury Board of Canada. Foundation Framework for Treasury Board Policies.

Section 6.1.10 addresses changes to recognized and classified heritage buildings. The section states:

“Where their minister has administration of heritage buildings: conservation advice is sought for recognized heritage buildings; consultations with Parks Canada are undertaken before demolishing, dismantling or selling a recognized heritage building and before taking any action that could affect the heritage character of a classified building; and best efforts are made to arrange for appropriate alternative uses of under-utilized or excess classified and recognized heritage buildings, first within the federal government and then outside the federal government.”

This section states that in the case of changes to *recognized* buildings, conservation advice must be sought from a conservation specialist or Parks Canada. In regards to changes to *classified* buildings, Parks Canada must be consulted. When demolition, dismantling or disposal for either *recognized* or *classified* buildings is being considered, Parks Canada must be consulted. When a building is identified as surplus, *best efforts* must be made to arrange for appropriate alternative uses, first within the federal government and then elsewhere.

“Acquisition, operation, maintenance and disposal strategies are developed based on the findings of the performance assessment and on an economic and program analysis that considers the full life-cycle costs and benefits of the real property options to meeting ongoing program requirements. To ensure the effective consideration of all suitable options, including a public-private partnership (P3), all infrastructure investments creating an asset with a lifespan of at least 20 years, and having capital costs of \$100 million or more, will be subjected to a P3 screen, in consultation with PPP Canada. Should the assessment conclude that there is P3 potential, departments will be required to develop a P3 option among possible options. These strategies must inform the development of the departmental investment plan.”

This section indicates that all buildings should receive a performance assessment, including an economic and program analysis. IN regards to infrastructure with a lifespan of over 20 years and with a capital cost of at least 100 million, PPP Canada must be consulted to determine potential for a P3. Section 6.1.14 addresses the disposal of real property. The section states:

“Real property surplus to program requirements is not retained. The type of right or interest in the property will dictate the most appropriate means of cessation of occupancy or disposal. A disposal by sale or transfer must be completed in conformance with the Treasury Board Directive on the Sale or Transfer of Surplus Real Property.”

This section indicates that departments must dispose of property that has been determined to be surplus to program needs. It refers deputy heads to consult the Directive on the Sale or Transfer of Surplus Real Property for conformance standards.

Treasury Board of Canada. Guide to the Management of Real Property.

The guide lays forth operational guidelines for federal real property management, informed by federal legislation, Treasury Board policies, directives and standards. The guide provides guidance and interpretation of policies and acts; it does not replace them. In addition to reflecting policy standards, it also reflects best practices that go above and beyond what is required in relevant policy.

Section 3.3.5 of the guide addresses heritage buildings. This section states that the Minister of the Environment is responsible for approving the designation of buildings as recognized or classified, and that deputy heads are responsible for respecting and conserving heritage character.

The section indicates that the Federal Heritage Buildings Committee, located within FHBRO, must evaluate buildings for recommendation for designation based upon historical associations, architecture and environment.

Section 6.6.5 addresses the use and occupancy of heritage buildings. This section states that custodial departments should have a plan in place to have all federal real property that is 40 years or older within their jurisdiction reviewed by FHBRO. In the case where changes of use or other interventions are proposed for designated buildings:

- Classified: guidance must be sought from FHBRO.
- Recognized: conservation advice must be sought from FHBRO or the private sector.

Section 7 addresses the disposal of federal real property through sale or transfer (not leases, easements or demolitions). Section 7.2.3 addresses the disposal of heritage buildings. This section states that departments should consult with FHBRO early on in the process. Best efforts should be made when arranging for alternative uses. The scope of ‘best efforts’ depends on the building’s designation:

- Classified building: protecting the building’s heritage character and specifying the nature/level of protection in any sale agreement (through an easement, heritage covenant, or servitude specifying conservation requirements); or
- Recognized building: deciding whether to continue to protect its heritage character, and specify the nature/level of protection in the sale agreement.

The section states that when the sale/transfer is extending outside the federal government, departments should look to provincial and municipal governments, and to heritage groups. Following disposal, departments should notify FHBRO in order to update the database.

Treasury Board of Canada. Directive on the Sale or Transfer of Surplus Real Property.

This directive addresses the requirements of custodial departments to dispose of surplus real property by sale or transfer; it does not refer to disposal through easements, leases, licenses and demolitions (refer to Guide to the Management of Real Property).

The directive identifies two processes for disposal: routine and strategic. Routine disposal refers to properties or portfolios with lesser value that can be easily sold without prior investment. These properties are disposed of by the custodial department with the advice of PWGSC or a private sector firm.

Section 6.2 identifies when properties should be considered for strategic disposal. This section states:

“Custodians shall categorize surplus properties as either routine or strategic. All surplus properties are considered routine unless they meet at least one of the following criteria, which qualifies them as strategic:

- a. the size or value of the property, or of a portfolio of properties, is significant enough to affect local markets negatively if its integration into the market is not managed;
- b. the value of the property, or properties within a portfolio, can be increased significantly (e.g., through subdivision, rezoning, investment or pre-sale development);
- c. a partnership with another level of government, the private sector or other party may offer the best mechanism to realize either the inherent value of a particular property or portfolio of properties or the greatest benefits to the government beyond the financial return; or
- d. sensitive policy issues exist, including the potential for a substantial gain by a party other than the federal government.”

This section indicates that departments should consider strategic disposal for a number of reasons, including (c), which recognizes that the private sector or other party could help to realize either the inherent value of a property or the greatest benefits to the government *beyond financial return*.

Strategic disposal is facilitated through transfer of the subject property to CLC; CLC is exempt from the Treasury Board’s Policy on the Management of Federal Real Property.

Section 6.5 refers to the transfer of surplus properties to other levels of government. This section states:

“Custodians shall formally determine the degree of interest in surplus properties in Canada by simultaneously providing federal departments, agent Crown corporations, provincial and municipal governments an opportunity to:

- a. acquire surplus routine properties for a public purpose, in the priority order noted above, before the property is offered for sale on the open market; or
- b. identify their public purpose interest in surplus strategic properties for equal consideration by the custodian during the development of the disposal strategy.”

This section indicates that custodial departments must provide levels of government an opportunity to express interest prior to open market sale if they can serve a public purpose.

Section 6.7 of the Treasury Board directive addresses the sale or transfer of a building for public purposes, stating:

“In the case of a sale or transfer for public purpose:

- a. Custodians shall ensure their deputy head is satisfied that the acquiring party has demonstrated that the surplus property is required for public purpose consistent with its long-term plans and that the sale or transfer is the best real property decision from a whole-of-government perspective, taking into account the market value of the surplus property based on highest and best use.
- b. Consideration received for property shall be based on market value for continued public purpose use, in accordance with the Treasury Board Appraisal and Estimates Standard for Real Property. The variance between the values should inform the conditions of sale, when appropriate.
- c. If surplus property sold or transferred for public purpose can or could potentially be rezoned and resold for profit, custodians shall include appropriate covenants in the conveyance documents to ensure that the original intent of the sale or transfer is respected.”

This section indicates that covenants (easements) must be included in the sale if the potential for rezoning or resale exists, in order to ensure the original intent of the sale or transfer is respected. It states that the market value should be used to inform the conditions of sale, *when appropriate*, which is not substantiated.

Financial Administration Act. Minister of Justice: R.S.C., 1985, c. F-11.

Section 99 of the FAA addresses the disposal of federal property owned by crown corporations (agent corporation).

99(2) states:

“Subject to this section and sections 90, 91, and 130, an agent corporation may sell or otherwise dispose of or lease any property held by the corporation and may retain and use the proceeds of the disposal or lease, but only

- (a) in accordance with the regulations; or
- (b) on the authorization of the Governor in Council.”

Section 99(3) states:

“subsection (2) does not apply in respect of any sale or other disposal or lease of property by an agent corporation established by an Act of Parliament, if the corporation is specifically empowered by that Act or any other Act of Parliament ... (a) to sell or otherwise dispose of or lease property...”

These sections indicate that Parliament can enable crown corporations to dispose of property without authorization or in accordance with regulations. They also state that disposing departments can retain the proceeds of the sale of the building.

American Policy Review

Review Policy and Guidelines

40 U.S. Code § 550. Disposal of real property for certain purposes.

Executive Order 11593. Protection and enhancement of the cultural environment. 1971.

Executive Order 13287. Preserve America. 2003.

National Historic Preservation Act. 1966.

General Services Administration. Administrative Code 1020.21. Procedures for Historic Properties. 2003.

General Services Administration. Federal Management Regulation. Subchapter C – Real Property. 2014.

Part 102-75: Real Property Disposal

Part 102-78: Historic Preservation

General Services Administration. Legacy Vision Policy. 2014.

40 U.S. Code § 550. Disposal of real property for certain purposes.

This policy refers to the disposal of federal property for specific purposes, including for use as a historic monument (subsection h). The decision is subject to disapproval by the Administrator of General Services.

In regards to disposal of a property as a historic monument, the policy states:

“(1) Conveyance.—

(a) In general.— Without monetary consideration to the Government, the Administrator may convey to a State, a political subdivision or instrumentality of a State, or a municipality, the right, title, and interest of the Government in and to any surplus real and related personal property that the Secretary of the Interior determines is suitable and desirable for use as a historic monument for the benefit of the public.”

This policy states that the Secretary of the Interior determines when a federal property can be transferred to a public body for use as a historic monument. This includes for-profit use, so long as income is used for historic preservation, park or recreation purposes. The transfer is to be done without consideration of monetary value.

Executive Order 11593—Protection and enhancement of the cultural environment. 1971.

This Executive Order (EO) addresses the responsibilities of the federal government in regards to historic preservation, in particular in regards to policy and management of historic buildings.

Section 2, addressing the responsibilities of Federal agencies, states:

“Where... the Federal agency head proposes to transfer, sell, demolish or substantially later the property he shall not act with respect to the property until the Advisory Council on Historic Preservation shall have been provided an opportunity to comment on the proposal.”

Section 3, addressing the responsibilities of the Secretary of the Interior, states that the Secretary must “review and evaluate the plans of transferees of surplus Federal properties transferred for historic monument purposes to assure that the historic character of such properties is preserved...”.

This policy affirms the role of the Secretary of the Interior in carrying out its responsibilities noted in 40 U.S. Code Section 550 in approving properties for transfer as historic monuments for public benefit. It also states that federal agencies will not dispose or alter of a property prior to review and comment by the Advisory Council on Historic Preservation (ACHP).

Executive Order 13287—Preserve America. 2003.

This EO addresses the responsibilities of the Federal Government in protecting, enhancing and using historic properties within Federal ownership, and in promoting intergovernmental partnerships and cooperation in their preservation and use.

Section 2, addressing Building Preservation Partnerships, states:

“When carrying out its mission activities, each agency, where consistent with its mission and governing authorities, and where appropriate, shall seek partnerships with State and local governments, Indian tribes, and the private sector to promote local economic development and vitality through the use of historic properties in a manner that contributes to the long-term preservation and productive use of those properties. Each agency shall examine its policies, procedures, and capabilities to ensure that its actions encourage, support and foster public-private initiatives and investment in the use, reuse, and rehabilitation of historic properties, to the extent such support is not inconsistent with other provisions of law, the Secretary of the Interior’s Standards for Archeology and Historic Preservation, and essential national department and agency mission requirements.”

This section requires Federal agencies to enter into partnerships with other levels of government, Indian tribes and the private sector in the management and use of historic properties. It identifies public-private initiatives as desirable agreements that should inform agency policies and procedures.

Section 3, Improving Federal Agency Planning and Accountability, states:

“(a) Accurate information on the state of Federally owned historic properties is essential to achieving the goals of this order and to promoting community economic development through local partnerships. Each agency with real property management responsibilities shall prepare an assessment of the current status of its inventory of historic properties required by section 110(a)(2) of the NHPA (16 U.S.C. 470h-2(a)(2)), the general condition and management needs of such properties, and the steps underway or planned to meet those management needs. The assessment shall also include an evaluation of the suitability of the agency’s types of historic properties to contribute to community economic development initiatives, including heritage tourism, taking into account agency mission needs, public access considerations, and the long-term preservation of the historic properties. No later than September 30, 2004, each covered agency shall complete a report of the assessment and make it available to the Chairman of the ACHP and the Secretary of the Interior.”

Part (a) states that federal agencies must assess the condition and management needs of their inventories of historic properties. This must include an evaluation of the properties’ ability to contribute to community economic development initiatives.

“(c) Each agency with real property management responsibilities shall, by September 30, 2005, and every third year thereafter, prepare a report on its progress in identifying, protecting, and using historic properties in its ownership and make the report available to the Advisory Council on Historic Preservation and the Secretary of the Interior. The Advisory Council on Historic Preservation shall incorporate this data into a report on the state of Federal Government’s historic properties and their contribution to local economic development and submit this report to the President by February 15, 2006, and every third year thereafter.”

Part (c) states that Federal agencies must prepare regular reports on the state of their inventories of historic properties and on their contributions to local economic development. These reports are to be provided to the ACHP and the Secretary of the Interior.

ADM 1020.21. Procedures for Historic Properties. 2003.

This order establishes GSA procedures for complying with Federal regulations for the use, protection and enhancement of historic and cultural properties. The order applies to all GSA programs, activities and actions that could affect historic and cultural properties. The policy applies to all National Register and National Register eligible properties.

Chapter 4 – Regulatory Compliance Procedures describes the regulatory framework that guides GSA activities and programs.

Part 5 (a) - Promoting the use of Federal historic properties - recognizes that EO 13287 mandates the GSA to “...work with State and local governments and the private sector to promote economic development and heritage tourism through the use and interpretation of GSA historic buildings.” It recognizes that this policy applies to buildings that have been identified as surplus for disposal.

Part 5 (b) - Leasing of Federal historic property for non-Federal use (outleasing) - recognizes that Section 111 of the NHPA mandates the GSA to seek appropriate new uses for historic buildings. Potential leases must be able to demonstrate that they can meet Federal preservation goals, and who can ensure public access to architecturally significant spaces originally intended for such use. Any lease must be reviewed by the Regional Historic Preservation Office (RHPO) for approval.

Part 5 (e) - Declarations of excess - states that the RHPO must be notified as early as possible that the GSA is initiating disposal procedures. Disposal proposals must be reviewed by the RHPO in the case of disposal, adaptive use, public-private partnership, or other studies/actions that could lead to transfer or sale. The RHPO will advise of any compliance conflicts or community interests, and will notify the State Historic Preservation Office (SHPO) and the ACHP prior to any action being taken.

Part 9 (h) - Excess Property - recognizes that Federal agencies must meet historic property compliance responsibilities before a property is transferred or sold by the GSA. The policy states:

“GSA shall explore appropriate financial remedies such as return on investment pricing, marketing of cant space to other Federal agencies and supplementing a predominantly Federal use with leasing to non-Federal tenants. Disposal staff shall coordinate with the RHPO to integrate provisions for the protection of historic property into the transfer or sale procedures and documents... Transfer provisions shall also address the process for determining use...with priority given to uses that minimize loss of historic features...”

This section indicates that the GSA must first explore viable alternatives, including lease to non-Federal tenants, prior to disposal. It must also coordinate with the RHPO to ensure the property remains protected after it leaves the Federal inventory. It also states that the GSA can control future use of the building to ensure its continued preservation.

GSA. Legacy Vision Policy.

GSA's Legacy Vision Policy addresses the GSAs preservation and fiduciary responsibilities. The policy indicates the financial constraints of the GSA, and their inability to maintain their existing inventory. The Policy references The Portfolio Strategy for Restructuring and Reinvesting in the Owned Inventory initiative, which seeks to reduce the GSAs inventory to income-producing properties that are self-sufficient.

The policy states that “Both GSAs portfolio restructuring initiative and its stewardship responsibilities must be performed in an integrated fashion.” The policy calls for the review based on quantitative qualities of all GSA property, with non- and under-performing buildings placed on a watchlist. Watchlist review will account for intangible values, such as stewardship.

The policy highlights the need for strategies that will ensure historic buildings are positioned to be strong financial performers within the portfolio. This can be done through partnering with Historic Preservation Offices.

During review the GSA and HPO should consider asset-specific strategies to ensure the preservation of historic buildings, including:

“Conveyance to Financially Positioned Stewards:

While the goal is to restructure the owned-portfolio to consist primarily of strong income-producing properties, GSA acknowledges that it will inevitably need to retain a limited number of buildings at the financial fringe. It is envisioned that this limited number will consist primarily of legacy properties. That said, GSA’s financial constraints need not impair its stewardship responsibilities. Donation or conveyance to a responsible steward who is better positioned than GSA to devote additional resources to preserve the building can be sought.”

This policy respects stewardship responsibilities, and recognizes that other organizations have the potential to better ensure the long-term preservation of historic buildings. The GSA can meet both stewardship and fiduciary responsibilities through conveyances.

National Historic Preservation Act. 1966.

Section 110 of the NHPA establishes Federal agency responsibilities for preserving historic properties within their authority. The policy states that Federal agencies must use historic properties first (E.O. 13006). In regards to the transfer of surplus Federal historic properties, the policy states:

“(e) The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural or culturally significant values will be preserved or enhanced.”

This section states that the Secretary of the Interior must review and approve of any plans to transfer Federal historic properties.

Section 111 of the NHPA addresses the responsibilities of Federal agencies as they relate to the lease or exchange of Federal historic properties that have been identified as surplus. The policy states that:

“...any Federal agency...may lease an historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately insure the preservation of the historic property.”

This section states that Federal agencies are allowed to lease or exchange Federal historic properties so long as the action will insure the property’s preservation.

Standard 7 of the NHPA states “An agency gives priority to the use of historic properties in carrying out agency missions.” Three guidelines address the disposal process.

“Guideline (e): As provided for in Section 111 of the Act, the agency should consider leases, exchanges, and management agreements with other parties as means of providing for the continuing or adaptive use of historic properties.”

“Guideline (f): Surplus properties that are listed in or have been formally determined eligible for the national Register can be transferred to State, tribal, and local governments for historic preservation purposes through the Historic Surplus Property Program.”

“Guideline (g): The use of historic properties is not mandated where it can be demonstrated to be economically infeasible, or where historic properties will not serve the agency’s requirements. The agency’s responsibility is to balance the needs of the agency mission, the public interest in protecting historic properties, the cost of preservation, and other relevant public interest factors in making such decisions.”

These guidelines indicate that Federal agencies can take advantage of the Historic Surplus Property Program in order to dispose of listed or eligible National Register properties. It also states that Federal agencies do not have to use historic properties when it is economically infeasible or when they do not serve agency purposes. It does, however, iterate that all Federal agencies have a responsibility to balance their mission, public interest in preservation (and its associated costs) and other relevant factors in the decision making process.

GSA. Federal Management Regulation.

The GSA’s Federal Management Regulation contains regulatory policies that relate to property management and associated administrative activities within the Federal government. The FMR works within the framework of statutes, EOs, Presidential memoranda, Circulars and bulletins, as well as relevant policy directives. It applies to Federal agencies, except for establishments within the legislative or judicial branch of the Government.

Subchapter C – Real Property

Part 102-75: Real Property Disposal

This section of the FMR applies to agencies with the authority to dispose of Federal property (“disposal agencies”), most commonly the GSA, unless authority has been granted to other Federal agencies.

The following sections address means of determining the most appropriate method of disposal:

Section 102-75.255

“The disposal agency must determine that there is no further Federal need or requirement for the excess real property and the property is surplus to the needs of the Federal government. After reaching this determination, the disposal agency must expeditiously make the surplus property available for acquisition by State and local governmental units and non-profit institutions or for sale by public advertising, negotiation, or other disposal action. The disposal agency must consider the availability of real property for public purposes on a case-by-case basis, based on highest and best use and estimated fair market value.”

This section stipulates that Federal agencies can transfer properties to other levels of government or nonprofit institutions, list the properties for public sale, and enter negotiations or other forms of disposal. Public benefit conveyances are to be identified on a case-by-case basis.

The following sections specifically address public benefit conveyances:

Section 102-75.350:

“Based on a highest and best use analysis, disposal agencies may make surplus real property available to State and local governments and certain non-profit institutions or organizations at up to 100 percent public benefit discount for public benefit purposes. Some examples of such purposes are education, health, park and recreation, the homeless, historic monuments, public airports, highways, correctional facilities, ports, and wildlife conservation. The implementing regulations for these conveyances are found in this subpart.”

Section 102-75.351:

“All properties, consistent with the highest and best use analysis, will normally be screened for public benefit conveyance. However, the disposal agency may waive public benefit screening, with the exception of the mandatory McKinney-Vento homeless screening, for specific property disposal considerations, e.g., when a property has been reported excess for exchange purposes.”

These sections indicate that Federal disposal agencies can transfer properties as public benefit conveyances based upon highest and best use, including for the purposes of historic monuments.

The following sections specifically address Property for Use as Historic Monuments:

Section 102-75.445

“A disposal agency may convey surplus real and related personal property for use as a historic monument, without monetary consideration, to any State, political subdivision, instrumentality thereof, or municipality, for the benefit of the public, provided the Secretary of the Interior has determined that the property is suitable and desirable for such use.”

Section 102-75.450

“Only property conforming with the recommendation of the Advisory Board on National Parks, Historic Sites, Buildings and Monuments shall be determined to be suitable or desirable for use as a historic monument.”

These sections state to which governmental organizations historic monuments might be transferred to. It states that only those buildings conforming to the Advisory Board on National Parks, Historic Sites, Buildings and Monuments are eligible for this type of public benefit conveyance.

Private and not-for-profit organizations are not eligible, however they are allowed to enter into long-term lease agreements with receiving agencies following approval from the National Park Service.

Part 102-78: Historic Preservation

This part of the FMR addresses Federal agencies responsibilities as they relate to the management of historic properties. The following sections relate to agency responsibilities in the management of the disposal process of historic properties.

Section 102-78.35

“Federal agencies must solicit information from consulting parties to carry out their responsibilities under historic and cultural preservation laws and regulations. Federal agencies must invite the participation of consulting parties through their normal public notification processes.”

Section 102-78.65

“Federal agencies must-

To the extent practicable, establish and implement alternatives for historic properties, including adaptive use, that are not needed for current or projected agency purposes. Agencies are required to get the Secretary of the Interior’s approval of the plans of transferees of surplus Federally-owned historic properties; and

Review all proposed excess actions to identify any properties listed in or eligible for listing in the National Register. Federal agencies must not perform disposal actions that could result in the alteration, destruction, or modification of an historic or cultural property until Federal agencies have consulted with the SHPO and the Advisory Council.”

Section 102-78.70

“Federal agencies must not accept property declared excess by another Federal agency nor act as an agent for transfer or sale of such properties until the holding agency provides evidence that the Federal agency has met its National Historic Preservation Act responsibilities.”

These sections state that Federal agencies must consult relevant parties prior to undertaking any action including disposal of a Federal historic property, and that approval must be received in order to carry forth plans. Section 102-78.70 applies to situations such as the GSA, stipulating that they cannot dispose of any property without first ensuring the holding agency is in compliance with the NHPA.

England Policy Review

Relevant Policy and Guidelines

Office of Government Commerce. Guide for the Disposal of Surplus Property. 2005.

Government Historic Estate Unit. Protocol for the Care of the Government Historic Estate. 2009.

Government Historic Estate Unit. *The Disposal of Heritage Assets: Guidance note for government departments and non-de-*

Government Historic Estate Unit. Protocol for the Care of the Government Historic Estate 2009.

This policy is established by the Government Historic Estate Unit (GHEU) within English Heritage. It applies to government departments, executive agencies and non-departmental public bodies that are responsible for heritage assets. It also applies to contractors or private-sector partners so long as the asset is occupied by a central government body.

The Protocol, issued by the Department for Culture, Media and Sport (DCMS) explains how government departments should implement the central government's heritage commitments in practice.

The following points in the Protocol apply to the disposal of historic assets.

“3. Ensure that the significance of any heritage asset is taken into account when planning change.

Understanding the heritage asset and its significance enables sound judgment on repairs, alterations, management, re-use or disposal... This will help reconcile conservation and other objectives such as operational requirements, estate rationalization, compliance with building regulations, reducing energy use or improving security in public buildings.”

“7. Safeguard heritage assets that are unused or in course of disposal

Unused assets, such as vacant buildings, should be regularly inspected and maintained in a secure, safe and stable condition pending re-use or disposal. Departments should observe the guidance on the disposal of heritage assets issued by DCMS and endorsed by HM Treasury. This guidance states that maximization of receipts should not be the overriding aim in the disposal of heritage assets; the aim should rather be to obtain best value for the taxpayer.”

These Protocols indicate that those responsible for managing Federal historic assets must have a clear understanding of the asset's significance prior to undertaking any action on the property. They must also ensure properties that are vacant or awaiting disposal are well maintained, and that any disposal action should place value for the taxpayer above profit.

Government Historic Estate Unit. The Disposal of Heritage Assets: Guidance note for government departments and non-departmental public bodies.

This policy is established by GHEU. It applies to government departments, executive agencies and non-departmental public bodies that are responsible for heritage assets. It also applies to contractors or private-sector partners so long as the asset is occupied by a central government body. While not mandatory, it is recommended guidance for local authorities, health trusts, public corporations and the police.

Chapter 3 – Alternatives to be Considered Prior to Disposal – recommends public bodies explore all viable alternatives prior to initiating disposal of heritage assets.

Section 3.1 addresses the appraisal of heritage assets, stating “An appraisal should consider wider property requirements and not simply the price that might be realized...” This section indicates that departments should consider wider property requirements, such as the level of protection placed upon the asset.

Section 3.2 states “If an asset is surplus to requirements in its present use, departments may need to consider whether they can make cost-effective alternative use of it.” This section indicates that departments must explore alternative viable uses for the asset during the assessment of the feasibility of adapting the asset for new uses.

In regards to the assessment, section 3.3 states that “It should not be assumed that historic buildings are more expensive to run than modern buildings.” It also states that departments should consider the potential depreciation of value of the asset due to use restrictions, and repair/maintenance requirements.

Section 3.4 states “Where a public body no longer has a use for an asset, it should consider how to dispose of it in a way that gives best available overall value for money.” This section refers the reader to section 8 in order to identify the most appropriate method of disposal.

Chapter 4 – Partnerships with the Private Sector – addresses the opportunities available when public bodies enter into Public Private Partnerships (PPP) and Private Finance Initiatives (PFI) in the management of heritage assets.

Section 4.2 states that clear information on the heritage asset or assets being transferred must be provided to the private sector partner, in order to ensure they have information on the significance of the asset, and any constraints and opportunities it may present.

Section 4.4 states that bidders must “...demonstrate how best use can be made of any heritage assets in both heritage and service terms,” and that contracts should clearly state maintenance standards to ensure buildings do not fall into disrepair or are inappropriately utilized.

Chapter 6 – The Planning Policy Framework – provides information on those planning policies which direct the disposal of federal historic assets.

Section 6.4 addresses the former immunity of Crown bodies from planning acts. It states that Crown immunity has not, however, been removed from scheduled monument consent. As such, GHEU has issued a guidance note for Crown bodies on procedures for listed building consent and scheduled monument clearance.

Section 6.7 addresses how planning consent can often increase the value of a site with the potential for development. It notes, however, that “...planning authorities normally require planning applications affecting listed buildings to be supported by concurrent applications for listed building consent”, indicating that government bodies must consider that the buildings will be listed should they apply for planning consent.

Chapter 8 – Methods of Disposal – lists the ways in which departments can dispose of historic assets. The appropriate method depends on if the historic asset is economically viable and if it has been kept in good repair.

Section 8.2 notes that “Competitive tender is generally to be preferred to sale by auction...”, as a competitive tender provides the government department opportunity to gain further information on future plans and price, as well as room for negotiations.

Section 8.4 addresses sales subject to ‘overage’ or ‘clawback’. These sales are appropriate when the government wishes to receive profits derived following the granting of planning permission or subsequent increase in market value. These sales can be beneficial when a private partner is responsible for ongoing maintenance.

Section 8.7 addresses sites with no economic use or negative value, due to use restrictions or maintenance/repair requirements. The section states that government departments should “...put the asset into a reasonable state of structural repair...”, which can remove the requirement of a covenant requiring post-purchase repair. The section also states that, when disposing to a building preservation trust, it can be more appropriate to leave the building in a state of disrepair, or to lease the asset until the necessary repairs have been made.

Section 8.8 addresses the disposal of Federal historic assets to charitable trusts. The section states

“A trust may offer a solution where no one else is prepared to invest due to a negative value, or where the special character of the asset is not compatible with a commercial use, or where there is a compelling case for the asset to be used for the benefit of the wider community.”

This section indicates that disposal to a charitable trust can be appropriate when the market value of the asset is negative, commercial use has been determined to be unacceptable, or when the asset is or could be a public benefit.

Chapter 9 – Price – specifies the various methods that should be used when determining an appropriate price for historic assets. It reiterates that maximization of receipts should not be the priority, and that the factors discussed previously (planning and conservation framework, methods of disposal, degree of protection) should all be explored prior to establishing a price.

Section 9.3 states that potential purchasers of historic assets must be determined to be financially sound, in order to ensure the long-term maintenance of the asset.

Section 9.4 addresses the determination of price when transferring a historic asset to a charitable trust. If a building has a negative value, departments can transfer it along with a dowry, to cover necessary maintenance work. It also states that in general gift procedure applies, in which case Parliament should be notified through the Minute procedure.

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