

A Preservation Primer

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This chapter presents an overview of some of the major players and elements in the preservation community: the National Historic Preservation Act of 1966, the National Register of Historic Places, National Historic Landmarks, local preservation ordinances and tax incentives for preservation.

THE NATIONAL HISTORIC PRESERVATION ACT OF 1966

By the mid-1960s, there was growing concern about the rate at which America's heritage was disappearing. That period marked the heyday of several federal programs that did enormous amounts of damage to America's historic resources.

One of these was a program called Urban Renewal. The main idea behind Urban Renewal was that the best way to revitalize America's inner cities was to demolish blighted neighborhoods ("blighted" being the federal government's favorite word to describe a neighborhood that needed a new coat of paint) so that vacant land then could be offered to developers who would build shiny new office towers, hotels, and housing in the inner cities. The first part of the program worked: The demolition was a complete success. The second part didn't work so well: The rebuilding didn't always occur either at the speed or with the quality that had been intended. The result is that, even now, the scars of Urban Renewal are all too visible in many communities.

At the same time, construction of the interstate highway system was in full swing. In passing through big cities and small towns alike, these highways naturally took the route of least resistance—namely, through the middle of older neighborhoods where land values were depressed. For a while in the 1960s, it seemed likely that any historic building or neighborhood that wasn't demolished in the name of Urban Renewal stood a very good chance of being demolished in the name of interstate highway construction.

Alarmed by the devastation caused by these and other programs, the U.S. Conference of Mayors in 1965 appointed a special committee to find a way to strengthen the federal government's commitment to and involvement in historic preservation. The committee promptly traveled to Europe, believing that the European experience in preservation must have some lessons for the United States. After a couple of months traveling around Europe, talking to public- and private-sector leaders in preservation, committee members came back to this country and issued their report. If any one document can legitimately be called the "Bible" of the modern preservation movement, it is this report, which is entitled *With Heritage So Rich*.

There are two aspects of that report that are particularly impressive. First, it is beautifully and thoughtfully written -- not the sort of thing you might expect from a committee report. It presents a candid overview of the state of preservation at that time, as well as an eloquent and compelling statement of why preservation is important. The second impressive thing about the report is that it accomplished just what its authors hoped it would: Within a few years, every one of the major recommendations included in *With Heritage So Rich* was enacted into law.

In 1966, acting partly in response to *With Heritage So Rich*, Congress passed the National Historic Preservation Act (NHPA). While it has been amended a few times, this is the federal preservation law under which we still operate today. NHPA accomplished four things of enormous

First, it created the **National Register of Historic Places**, the federal government's official list of properties worthy of preservation.

Second, it led to the appointment, in every state and territory, of a **State Historic Preservation Officer (SHPO)** with responsibility for encouraging and assisting preservation efforts at the state level. **A major part** of each SHPO's responsibility is to see that significant properties in his or her state are nominated to the National Register.

Third, the legislation established a program of **grants in aid of preservation** whereby the federal government provides funds to help the states carry out the preservation responsibilities mandated to them by NHPA. Today, the work of the SHPOs is still supported in part by a federal appropriation from the Department of the Interior.

Fourth, NHPA created an independent federal agency called the **President's Advisory Council on Historic Preservation**. The role of the Advisory Council is spelled out in Section 106 of the Act. Section 106 says that

whenever a federal agency (or any other agency using federal funds or acting under a federal license) is going to do something that will impact a property listed in the National Register of Historic Places, it must give the Advisory Council the opportunity to review and comment on the proposed undertaking. It is important to note that Section 106 gives the Advisory Council the power to "review and comment" only; the Council does not have the power to refuse permission for a proposed project. Note also that the protection provided by Section 106 is invoked only when the historic resources affected are listed in the National Register and when the proposed project is being undertaken by a federal agency or involves the use of federal funds.

Here's an illustration of how Section 106 works: if a state highway department, using federal highway funds, is planning to widen a highway that runs through a historic district that is listed on the National Register, the highway department may not carry out the project until it gives the Advisory Council the opportunity to review and issue comments on it. If the Advisory Council's review indicates that the road-widening project will have an adverse impact on the historic district, the Council will work with the highway department and other interested parties (such as the SHPO and local preservationists, for instance) to work out some form of mitigation.

One major recommendation of *With Heritage So Rich* was not included in the 1966 legislation-but it was enacted into law ten years later. In 1976 Congress passed the Tax Reform Act, which provided tax incentives for the rehabilitation of historic buildings. While the 1976 legislation itself was relatively ineffectual, it eventually led to the adoption of tax-incentive laws (most notably the Economic Recovery Tax Act of 1982) that had a major impact on historic preservation.

THE NATIONAL REGISTER OF HISTORIC PLACES

The National Register of Historic Places is the foundation upon which our preservation activities are based. The National Register is the federal government's official list of properties worthy of historic preservation. When the federal government puts a property on the National Register, it is saying, in effect, "This property is important enough to be preserved." It does not say, "This property *must* be preserved" or, "This property will be preserved" or, "We are prepared to offer financial help to ensure that it will be preserved." It says only that the property is of sufficient importance to us as Americans that it *should* be preserved.

We tend to think of the National Register as a list of buildings, but in fact it includes ships, grain elevators, engineering structures of all kinds, dams, bridges, locomotives, mine headframes in Butte, Montana, and the cable car system in San Francisco. The Register is far more than just buildings.

As a major part of his or her responsibility, the SHPO in each state is responsible for seeing that all of the state's significant properties are nominated to the National Register. Obviously, that's an enormous job, a job that will never be fully completed -- particularly if properties have to be nominated one by one. Fortunately, it is possible to streamline the nomination process so that groups of properties can be added to the Register all at once.

The most common form of multiple-property nomination is the **historic district**. A historic district nomination draws a boundary around a portion of a community or a group of buildings and nominates everything within that boundary to the National Register, all at once. The historic district recognizes the fact that a group of buildings may have a significance greater than the significance of any single building in the group. The historic district of Charleston, to cite an example, extends over several square blocks. Some of the buildings in the district are very impressive landmarks, while others are not so impressive. But what makes the place really significant is that it presents a context that makes the individual buildings less important than the whole collection.

The second form of multiple-property nomination, called a **multiple resource nomination**, simply provides a way of adding all of a community's historic resources to the National Register at once. A multiple resource nomination may include some historic districts as well as individual historic buildings.

The third form of multiple listing, a thematic group nomination, provides a means of adding to the Register several properties that share some feature or quality in common. Perhaps they were all designed by the same architect, for instance, or they are all made of the same material, or they were all built at roughly the same time. Whatever the quality or feature, it provides a link among individual properties -- and this link makes it possible to add them all to the National Register in a single nomination.

How does the nomination process work? Since this is a federal government program, the first step in nominating a property to the National Register of Historic Places is filling out an official form. The nomination process is fully democratic: Anybody can nominate anything to the National Register, assuming that he or she is willing to fill out the

form and do the research or knows the history that is required to justify the property's eligibility for the Register. The completed forms are reviewed by the SHPO in the state where the property is located.

The SHPO also notifies the owner of the property—who might not have been involved in the process up to this point—that the nomination is being reviewed. The owner, if he or she does not want the property listed in the Register, can object to the nomination. If the owner does object, the property will not be listed in the Register. If the owner does not object, he or she is presumed to have concurred, and the nomination will proceed. In the case of a historic district, or any of the multiple listings, every property owner concerned must be notified. In the case of a historic district, they all must be given the opportunity to object; if a simple majority of them object, the nomination will not go forward.

There is a process by which, even if an owner refuses to allow a property to be put on the National Register, the property may still be declared eligible for the Register if it meets the criteria. This declaration of eligibility is important because, generally speaking, the benefits of National Register listing are also extended to properties that have been declared *eligible* for the Register.

Next, the nomination goes before a state review board. These review boards go by various names—the National Register Review Board, the State Architecture Review Board, and the like. Typically, members of the board are appointed by the governor; the actual makeup of the board—at least one architect, at least one historian, and so on—may be specified by state statute. The board meets at intervals -- every month in a few states, quarterly in others -- to review National Register nominations against the evaluation criteria.

If the review board feels that the property meets the criteria, the nomination form goes to the SHPO for signature. Then the form is forwarded to the National Register staff in Washington, where it is reviewed once more. If the nomination is found to be in order, it is signed by the keeper of the National Register, and the owner receives a formal letter of notification.

Once a property is listed, it generally cannot be removed from the Register unless something happens—a catastrophic fire, for instance, or an ill-considered and extensive 'remodeling' -- to destroy or compromise the significance that made it eligible for listing in the first place. If a building is listed in the Register because of its outstanding design features and an owner eliminates or changes those features, is there a penalty? No. But if the alteration is severe enough that it destroys the property's significance, the property may be removed from the Register (or "de-listed"). But since there are no 'National Register police' to wander the country and keep an eye on these properties, de-listing generally occurs only when someone takes the time to notify the SHPO or the National Register that a property's status should be reviewed. Simple change in ownership does not affect a property's National Register status, even if a new owner objects to the listing.

The federal government does not provide an official marker for properties listed in the Register. A number of private firms do manufacture plaques that identify National Register properties, and owners are free to purchase them and attach them to their properties if they wish.

There are three primary criteria that determine a property's eligibility for the National Register for Historic Places. The first of these is **significance**. The nomination form must demonstrate that this property is sufficiently significant in some way to justify being placed on the National Register. This means, generally speaking, that the property is associated with a person or event of significance in history; or that it exhibits distinctive characteristics or high artistic values, or is the work of a master; or that it is likely to be of help in the discovery of important information at some time in the future.

It is important to note that the property only has to satisfy one of these criteria for significance. It may, for instance, be a great piece of architecture in which nothing historically significant ever happened. It is also important to note that the National Register is intended to include properties of *local* as well as *national* significance. This means that association with a person or event of local significance may be sufficient to justify a property's listing in the National Register.

The second major criterion is **integrity**. Think of it this way: Whatever it is that makes a property significant, is there still enough of it present—in terms of location, design, materials, and so on -- to justify its being listed in the National Register? The issue of integrity may arise in the case of a property that has been moved from its original location, to cite a single example. If the property's significance is primarily architectural, its integrity may not have been destroyed by the relocation; however, if the property's significance is primarily historical (if, for instance, it is the house where an important event took place), its relocation may be thought to have destroyed its integrity and rendered it ineligible for the Register insofar as that criterion is concerned.

The third criterion is **age** of the property. Generally speaking, properties are not eligible for the National Register if they have achieved significance within the past fifty years. There are exceptions, of course, and there are a number of properties in the National Register that are not yet fifty years old. For instance, Washington's Dulles Airport, which is

much less than fifty years old, is listed in the National Register because it is the work of a master architect and demonstrates an innovative approach to the challenge of getting people off the ground and into the air.

What are the benefits that accrue to the owner once a property is added to the National Register of Historic Places? The first benefit is extremely important yet frequently overlooked. Listing in the National Register is an honorific designation. Property owners should take justifiable pride in the fact that the federal government has acknowledged the significance of their property by listing it in the Register. Second, listing in the National Register is the basic criterion of eligibility for whatever preservation funds may be available. Granted, there aren't many funds currently available; money for preservation is difficult to come by these days. But every source of preservation funding that *is* available requires that the property be listed in the National Register. Third, tax incentives for the preservation or rehabilitation of historic buildings are restricted to properties listed in the National Register. And finally, as mentioned earlier, properties listed in the National Register enjoy a measure of protection through Section 106 of the National Historic Preservation Act.

Many people believe that there are severe restrictions associated with being listed in the Register. They're wrong. Listing imposes no restrictions on private property rights. That simple fact is so important -- and so frequently misunderstood -- that it's worth repeating: Listing in the National Register imposes no restrictions on an owner's right to do anything to his or her property that local law allows. When people object to having their properties listed in the Register, it is almost always because they don't understand this fact. Any restriction that is imposed on an owner's private property rights is the result of local law, not the provisions of the National Register.

NATIONAL HISTORIC LANDMARKS

Some historic properties -- a relatively small number -- are designated National Historic Landmarks. These are properties of exceptional significance; think of them as the cream of the crop of America's historic and cultural resources. National Historic Landmark (NHL) designation, unlike National Register nomination, is a process in which the general public plays no direct part; it is essentially an in-house function of the Department of the Interior.

NHLs enjoy somewhat greater measure of protection than other properties listed in the National Register of Historic Places. Every year the National Park Service issues a list of threatened and endangered NHLs (called the Section 8 Report) in order to call attention to these landmarks in jeopardy and spur local efforts to ensure their preservation. The major difference between NHLs and other National Register properties is their level of significance, which the National Park Service commemorates with a plaque that identifies a given property as a National Historic Landmark.

LOCAL ORDINANCES

The first local preservation ordinance was enacted in Charleston, South Carolina, in 1931. For the first time, the Charleston ordinance designated a portion of the city as a historic district and imposed restrictions on what owners could do to their properties in that district. Charleston's example has been widely emulated: Today there are approximately 2,000 communities across the country that employ preservation ordinances of one kind or another.

It is important to note that in most cases there is no correlation between being listed in the National Register of Historic Places and being protected by a local preservation ordinance. In Charleston, for example, there is a historic district that is listed in the Register. There is also a historic district that was created by the local preservation ordinance. While these districts occupy the same general area, their boundaries are not identical, which means that a particular house may be in the National Register but not protected by the local ordinance, or vice versa, or it may be covered by both.

Generally, these ordinances create a review board of local residents that has the power to approve or disapprove an owner's application to do certain things to his or her property. In short, the ordinance simply imposes an additional level of regulation with which a property owner must deal before carrying out certain kinds of work. In most cases, the ordinance says that any work that requires a building permit must be approved by the review board before the building permit can be issued; this means, obviously, that work not requiring a building permit (routine maintenance, for example) can be done without the review board's approval. Beyond this generalization, the specific provisions of local ordinances vary enormously from community to community. Typically, ordinances say that: (1) if the owner of a protected building wants to tear the building down, the review board's approval must be obtained before a demolition permit can be granted; (2) if the owner wants to make certain alterations to a protected building, the review board must approve before the work is undertaken; and (3) if a property owner wants to put up a new building in a protected historic district, the review board must approve the plans before the new building can be constructed.

Relatively few ordinances give the review board the power to prohibit demolition outright. More commonly, the ordinance empowers the review board to impose a delay on the issuance of the demolition permit. Ideally, local

preservationists will utilize the delay period to find a way to save the building from demolition-but if no such solution has been devised by the end of the delay period, the owner may proceed with demolition. In dealing with proposed alterations to protected buildings, review boards generally have control over exterior alterations, although a few ordinances do impose design-review controls over significant interiors as well. In a further limitation of their powers, many review boards have jurisdiction only over exterior alterations that will be visible from the public right-of-way. In dealing with the proposed construction of a new building in a protected historic district, review boards generally seek to ensure that the new building will be

compatible with the historic architecture that characterizes the rest of the district. This is a thorny issue, since it is perilously easy to allow matters of personal taste to become mixed up in the definition of "compatible" design, so most well-drafted ordinances establish clear and specific criteria by which new designs will be evaluated.

There is no way to generalize further about what local ordinances say. Some ordinances regulate paint color; some do not. Others regulate such features as architectural styles, signage, landscaping, and the placement of satellite dishes. Obviously, the only way to know what a particular local ordinance specifies is to obtain a copy and read it.

In many respects, the benefits of local ordinance protection are the same as those of listing in the National Register of Historic Places. For many homeowners, living in a locally designated historic district is a distinct honor and privilege. Moreover, in some states, owners of properties located in historic districts that are protected by a local ordinance are eligible for certain tax benefits (to find out whether such benefits are available in a particular state, contact the SHPO). Over the years, a significant body of evidence has demonstrated conclusively that the imposition of controls in a historic district does not lower property values, as some alarmists have claimed, but in fact has the opposite effect. In any number of communities where these studies have been carried out, property values in districts protected by local ordinances have at the very least remained stable and, much more commonly, have risen at a higher rate than property values outside the historic district.

The legality of local preservation ordinances has been upheld consistently by courts all the way up to and including the United States Supreme Court. Perhaps the most important landmark preservation case involved New York's Grand Central Station: A developer who wanted to build a skyscraper above the station was refused permission to do so by the city's Landmarks Preservation Commission. The ensuing lawsuit went all the way to the Supreme Court, which ruled in 1978 that New York's ordinance was constitutional and went on to affirm a community's right "to enhance the quality of life by preserving the character and desirable aesthetic feature of a city."

TAX INCENTIVES FOR PRESERVATION

In 1976, the federal government first put in place a system of tax incentives for the rehabilitation of historic buildings. After subsequent changes to these incentives in the 1980s, the Historic Rehabilitation Tax Credit fueled the biggest boom ever in preservation, encouraging and facilitating the rehabilitation of some of the most important historic buildings in dozens of communities across the country. Union Station in Washington, D.C., was rehabilitated under the provisions of this credit, as was the Willard Hotel on Pennsylvania Avenue, which had been closed for a decade. Hundreds of smaller, "mom-and-pop" projects were also carried out because of this credit.

Unfortunately, the law has been changed so that the tax credit is no longer as attractive as it once was, but it is still on the books. In summary, the law says that the owner of a certified historic building (which, in this case, means a building that is listed in the National Register or located in a locally designated historic district that meets National Register criteria) who rehabilitates it according to the Secretary of the interior's Standards for Rehabilitation is entitled to a tax credit-not a deduction, a credit--equal to 20 percent of the rehabilitation expenditures. In order to qualify, the property must be depreciable, income-producing property; owner-occupied residences do not qualify. Also, the rehabilitation must be 'substantial,' which means that rehab expenditures must total either \$5,000 or the basis in the building, whichever is greater. The "basis in the building" is an amount reached by adding to the purchase price of the building the value of any improvements made and then subtracting the cost of the land on which the building stands and any depreciation already taken.

Changes to the law in the 1980s limit its applicability. Individuals with an adjusted gross income greater than \$250,000 generally cannot use the credit, and in most cases, individuals with an adjusted gross income below \$200,000 can utilize no more than \$8,000 to \$9,000 of the credit per year. This means, of course, that the credit is no longer so attractive as a tax shelter as it once was---but for small to medium-size projects such as the rehabilitation of a modest Main Street commercial building, the availability of a tax credit of this amount may still provide an attractive incentive to the property owner.

That, in a nutshell, is preservation, at least procedurally. The remainder of this book explains the organizations and processes in greater detail, and highlights the contacts -- the people -- and resources available to you to make preservation happen.