

A Layperson's Guide to Historic Preservation Laws
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There is a clear need to understand what properties are subject to preservation protection and what laws and regulations apply to the protection of said properties as well as the various and overlapping jurisdictions that legislate and regulate such behavior.

The rationale and legitimization for Historic Preservation in the United States resides with three basic classifications which include the following: National Register of Historic Places; State Register of Historic Places; and Local Listing of Historic Landmarks and Districts. These classifications have been created as a result of enabling Federal legislation referred to as the Historic Sites Act of 1935, amended in 1966 as the National Historic Preservation Act.

This legislation created the national criteria for Historic designations, The National Register of Historic Places and the authority for its implementation under the auspices of the Department of the Interior National Park Service.

The registry includes districts, sites, buildings, structures, and other objects that are significant in American history, architecture, archeology, engineering and culture.

Criteria for establishment of protection under this enabling legislation and accompanying regulation require that an event has made a significant contribution to the broad patterns of history or that are associated with the lives of persons significant in our past or that employ the distinctive characteristics of a type, period, or method of construction or that represents the work of a master, or possesses high artistic value, or represents a significant and distinguishable entity whose components may lack individual distinction or that have yielded, or may likely yield information in prehistory or history.

In order to be listed properties must meet certain statutory requirements based on historical, architectural, archeological, or cultural significance.

Many States also have created registers that must comply with the requirements specified in the Federal enabling legislation and subsequent regulation. These State historic registers **maybe more or less inclusive** than the National Registry. This is often an honorific designation without regulatory protection.

State preservation laws are typically enacted to reflect the goals of the national policy to protect significant resources. State Historic Preservation Commissions are typically created to enforce those state statutes where applicable.

Locally designated landmarks and historic districts are also represented as properties that potentially may be included for protection under local historic preservation ordinances and zoning ordinances. A model local historic preservation ordinance guideline is as follows:

- Statement of purpose
- Definitions
- Establishment of authority of the Commission

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- Criteria for designation of historic status
- Statement of actions reviewable by Commission and the legal effect of such review.
- Standards and procedures for the review of “economic hardship claims”
- “Affirmative maintenance” requirements and procedures governing situations of “demolition by neglect”.
- Procedures for appeal from final preservation commission decision.
- Fines and penalties for violation of ordinance provisions.

Historic preservation ordinances generally empower preservation commissions to review and enact upon applications for certificate of appropriateness. Most often, owners of property subject to a preservation ordinance must submit an application to the preservation commission in order to obtain permission to alter, move, demolish, construct additions and new buildings. Requests are evaluated at a public hearing based on standards for review set forth in the local ordinance.

Some communities restrict demolition of historic or significant properties entirely except in cases of economic hardship or public safety, health or fire hazards.

Many communities have enacted demolition delay ordinances which allow commissions, property owners and other interested parties the opportunity to explore alternatives to demolition.

Some communities have also established informal processes to encourage property owners to consult with commission staff and members before embarking on a major project in order to assure compliance with historic preservation criteria.

Many communities have designated historic districts, zones in which only certain changes maybe made which do not alter the significance, historic value, cultural or architectural integrity of any structure or site within the district. Additionally, some communities have integrated comprehensive or master planning processes that address rational development strategies which balance historical significance with reasonable economic development opportunities. A few communities have even experimented with collaborative structures creating greater interaction and communication between Planning Boards, Zoning Boards, Preservation Commissions and other local stakeholders resulting in rational community development and planning.

The Guide further illustrates and elaborates on the primary laws that govern archeological resources including the following Acts:

- Archeological Resources Protection Act which protects certain artifacts on Federal and Indian Lands.
- Archeological and Historic Preservation Act- Protects certain antiquities from being disturbed by development or other means.
- Historic Sites Act - Protects a variety of historic sites deemed of significance by the Secretary of the Interior.
- Antiquities Act- Protects artifacts on Federal property.

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- National Historic Preservation Act- Protects sites that have been designated on the National Register.
- National Environmental Policy Act-Requires an environmental impact statement for all federal projects that might affect the natural environment and or historical or archeological sites.
- Abandoned Shipwreck Act- Protects abandoned shipwrecks in U.S. territorial waters and assigns ownership to State entities in which State the shipwreck is located.
- Native American Graves Protection and Repatriation Act- Provides for the protection of Native American Gravesites and skeletal remains.
- State archeological Protection Laws- Protects archeological sites on State and private lands.
- State Preservation and Environmental Laws- Protects archeological sites within State jurisdictions.

Judicial Review Processes:

Historic Preservation Laws whether enacted by Federal, State, or Local legislation are subject to review by courts generally referred to as judicial review. The decisions resulting from this review become law until vacated or reversed by a higher court. Historic preservation litigation generally involves both statutory and constitutional claims. Statutory claims may address issues such as whether a local preservation commission exceeded its authority under a preservation law or whether “substantial evidence” or a “rational basis” exists to support the Commissions decision. Commission decisions are typically reviewed under standards set forth in *state administrative procedure acts*.

In reviewing preservation laws, it is important to recognize that generally federal, state, and local laws are interpreted through implementing regulations and guidelines. Guidelines are typically advisory in form and are generally used to illustrate what kinds of activities may or may not be permissible under a preservation ordinance. **Design criteria**, for example, are often adopted in the form of guidelines.

Constitutional Restrictions also must be considered when enacting historic preservation law. Historic Preservation laws must operate within the confines State and Federal constitutional protections that preserve the rights of individuals and organizations. Constitutional challenges to historic preservation laws may arise under the Takings, The Due Process and the Equal Protection Clauses of the Fifth and Fourteenth Amendments, or the Free Exercise and Free Speech Clauses of the First Amendment of the U. S. Constitution.

Voluntary Approaches to Historic Resource Protection

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There are a number of different voluntary approaches that are available for organizations or individuals to utilize as alternatives to regulatory solutions. Following are some of the possible avenues available to preservation groups.

- Direct Acquisition
- House Museums
- Revolving Funds and Land Trusts
- Easement Programs
- Tax Incentives
- Federal Tax incentives
- The New Markets tax credit
- Charitable giving rules
- State and local tax incentives
- Non profit foundations

Other considerations that need to be addressed include environmental hazard laws, building code requirements, transportation funding and road design standards. Environmental hazards such as lead paint and toxic waste sites must be considered whenever addressing historic preservation sites.

Building code requirements are to be considered as well particular attention should be given to having a basic understanding of the BOCA code generally referred to as the National Building Code when considering any changes to existing historic structures.

Federal Transportation funds since 1991 have set aside a specific amount for transportation enhancement funding which includes funds for historic preservation.

Road design standards also have created interesting challenges for historic preservation which sometimes work at cross purposes to the goals of preservationist interests.

Finally, the Guidelines offer a rich collection of resources both primary and secondary to assist preservation professionals and laypersons in endeavoring to better understand the complexity of legislative, regulatory and other considerations necessary to navigate the universe of historic preservation.