



Trends in Local Historic Preservation Law

International Municipal Lawyers' Association Webinar
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@USACHP

Speakers



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Topics

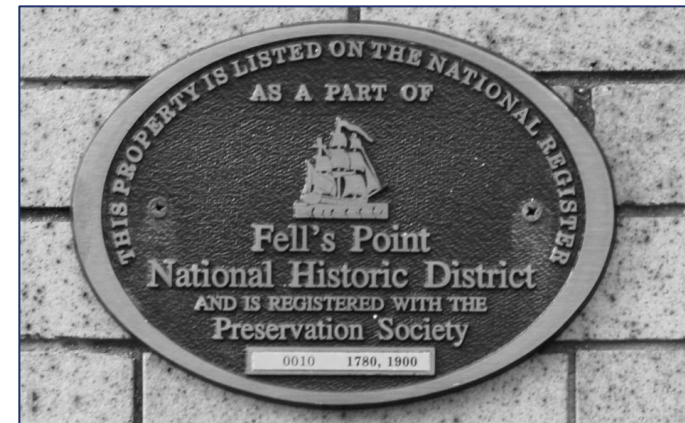
- Local Designation of Historic Properties
- Local Regulation of Historic Properties
- Localities' Role in the Federal Framework
 - Certified Local Government Status
 - National Register Nominations
 - Section 106 Process
 - Policy Adoption



Local Designation of Historic Properties

Designation

- Historic preservation law applies to sites designated historic due to:
 - **Age** (e.g., 30 years in NYC)
 - **Significance** (people, events, architectural style, informational)
 - **Integrity** (the ability of a resource to communicate its significance)



Local Designation

Local governments can develop their own criteria for local registers of historic places in all 50 states.



Hot Topics!

- Designation of sites associated with people underrepresented in historic places
- “Integrity” standards



Local Regulation of Historic Properties

Do You Have Historic Regulation?

- About 3,500 local governments do!
- Local ordinances usually govern:
 - External features of private property
 - Demolition, alteration, and new construction (90-95%)
 - Economic hardship (56%)



REGULATING HISTORY

Sara C. Bronin & Leslie R. Irwin

ABSTRACT

America's local historic commissions collectively wield tremendous influence over millions of privately-owned parcels of land. By reviewing rehab proposals, blocking demolitions, and mandating property maintenance, these commissions have helped to protect many of America's most beloved neighborhoods. They fill a vacuum left by federal and state governments, which have declined to offer robust legal protections to private historic sites.

Litigation challenging local historic decisions and press vilifying commissions for their alleged elitism, anti-environmental decisions, and general obstruction of progress have put preservation in the contemporary crosshairs. While we align with those who believe that clear-thinking commissions can successfully mediate between the past and the present, for the sake of the future, we decline to wade deeply into these debates. Instead, we expose an uncomfortable truth: neither opponents nor supporters have a full grasp of historic preservation law.

Hot Topics!

- Localities addressing climate change in their regulations
- In our survey of 314 localities:
 - 1 addresses climate change (Cooperstown)
 - A handful mention “renewable energy”





ACHP CLIMATE CHANGE AND HISTORIC PRESERVATION POLICY STATEMENT

America's historic properties—important places that help to define and connect people to their communities—are experiencing escalating climate impacts that are increasingly leading to their damage and destruction. The Advisory Council on Historic Preservation (ACHP) has developed this policy statement to define more clearly connections between climate change and historic properties, to articulate policy principles the ACHP will integrate into the Section 106 process, and to guide public-serving institutions on how they may acknowledge, plan for, mitigate, and adapt to climate change impacts on historic properties.

SCOPE OF THE ISSUE

In 2014, the Union of Concerned Scientists released an important report, *National Landmarks at Risk: How Rising Seas, Floods, and Wildfires Are Threatening the United States' Most Cherished Historic Sites*. Through a series of case studies illustrating climate change impacts to well-known historic places (many of them federally owned and managed), the report concluded that:

Localities' Role in the Federal Framework

Subtopics

- Certified Local Government Status
- National Register Nominations
- Section 106 Process



Nat'l Historic Pres. Act Allows Localities to:

- Become certified as a “CLG” by establishing preservation programs 54 U.S.C. ch. 3025
- Participate in National Register nominations 54 U.S.C. ch. 3021,
36 C.F.R. Part 60
- Act as a consulting party in Section 106 review 54 U.S.C. § 306108





Certified Local Governments

- Have designation & regulation programs
- Survey & inventory historic places
- Provide for public participation
- Are certified by the National Park Service

Benefits of CLG Status

- Eligibility to apply for funding (Historic Preservation Fund funding)
- Direct access to State Historic Preservation Office staff for assistance with commissions, building assessments, surveys, and nominations
- Can carry out certain federal/state historic preservation responsibilities
- Ability to engage in the Section 106 process



National Register of Historic Places

- Is kept by the Department of the Interior
- Requires SHPOs & federal agencies to notify local govts of nominations
- Triggers Section 106

Steve Martin CC:
Ybor City Historic District National Historic Landmark, Tampa Florida



Local Involvement in National Register

- A State Historic Preservation Office must notify the chief elected official before it nominates a property located within a CLG (54 U.S.C. § 302504)
 - Local commission can prepare a report (with public input) about eligibility criteria
 - If local commission & CLG recommend a property not be nominated, SHPO stops
- A federal agency must notify the chief elected official of a proposed nomination & give 45 days to comment (54 U.S.C. § 302104)
- A locality can appeal to the Secretary of the Interior any nomination or failure to nominate



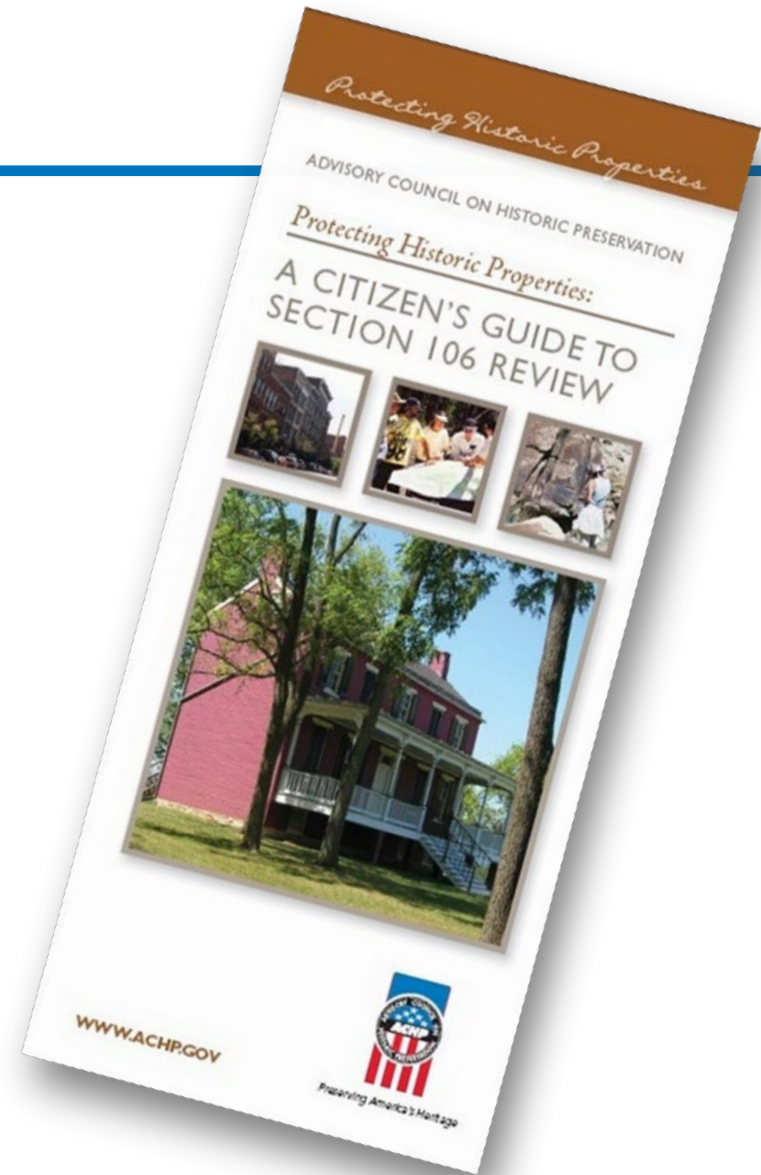
Section 106 Reviews

- Require federal agencies to take into account the effects of their “undertakings” on properties on or eligible for the National Register of Historic Places



Stop, Look, & Listen...

“The head of any federal agency shall, prior to the approval of an undertaking, take into account the effect of the undertaking on any historic property and afford the ACHP a reasonable opportunity to comment with regard to the undertaking.”



What is an Undertaking?

A project, activity, or program with federal:

- Funding (all or part)
- Permit, license, or other approval



The Section 106 Review Process

36 CFR §§ 800.3-7

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INITIATE the process

Undertaking with the potential to affect historic properties?

YES



IDENTIFY historic properties

Historic properties present or affected?



ASSESS adverse effects

Historic properties adversely affected?



RESOLVE adverse effects

Section 106 agreement or Council comments

PROCEED

NO



Section 106 Consulting Parties

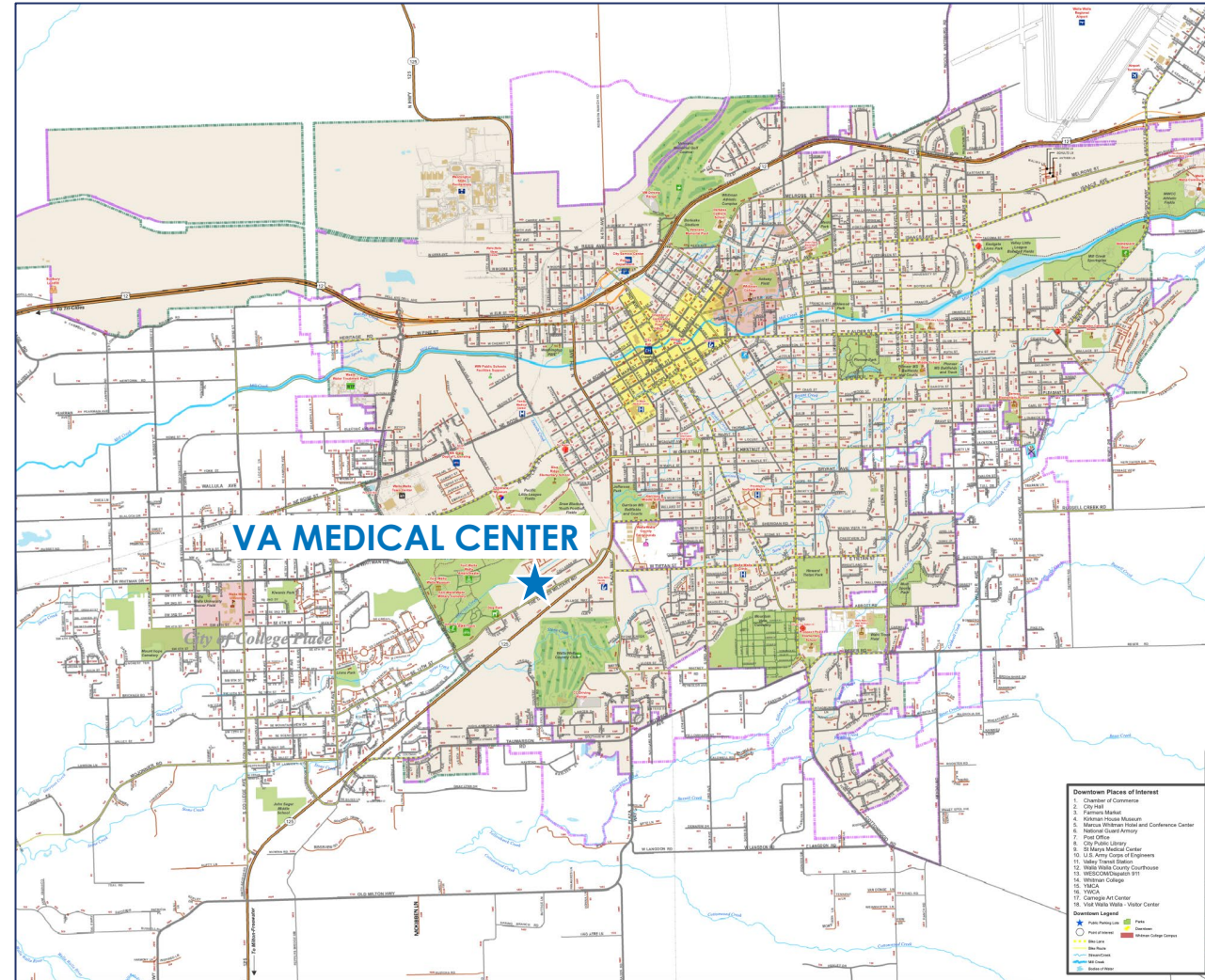
36 CFR § 800.2

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Local Governments May Participate

Representatives of a local government with jurisdiction over the area in which the effects of an undertaking may occur are entitled to participate



If You Disagree...

With a federal agency's finding of no historic properties affected by an undertaking:

Coordinate with SHPO

Agency may request formal determination of eligibility from the Keeper of the NRHP

If agency doesn't resolve, contact ACHP

If You Disagree...

With a federal agency's finding of no adverse effect:

Coordinate with SHPO

Send a written objection to federal agency during 30-day review period

Agency must consult to resolve the objection or request the ACHP review its finding

Coordinating Local & Federal Reviews

- Avoids duplication of effort
- Ensures that properties of significance to the community are identified
- Is an opportunity to identify mitigation measures that are meaningful to the community
- Facilitates better communication



Policy Adoption: Climate Change

- 15 principles
- Local governments can:
 - Identify vulnerable historic sites & populations
 - Develop planning & mitigation strategies
 - Update regulations

www.achp.gov/initiatives/sustainability-climate-resilience



The Black Fire at Gila National Forest, New Mexico, 2022.
Credit: National Wildfire Coordinating Group

Policy Adoption: Burial Sites

- 13 principles
- Local governments can:
 - **Prioritize - & invest in - dignity & respect**
 - **“Stop look and listen” before proceeding with projects**
 - **Consult with descendant communities**





Thank You

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