

A Quarterly Journal of
the National Alliance of
Preservation Commissions
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Alliance the review

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COVER IMAGE

The Capitol District Zoning Commission works to preserve the area around the Arkansas State Capitol.
Credit: Robin Zeigler



A quarterly journal with news, technical assistance, and case studies relevant to local historic preservation commissions and their staff.

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All current NAPC members who serve as staff to preservation commissions are encouraged to distribute articles in *The Alliance Review* to commission members and other staff and elected officials within your member organization.

NAPC can provide additional digital copies of *The Alliance Review* to members of your commission. Simply email us at director@napcommissions.org with your commission member's name and email address.

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In this Issue

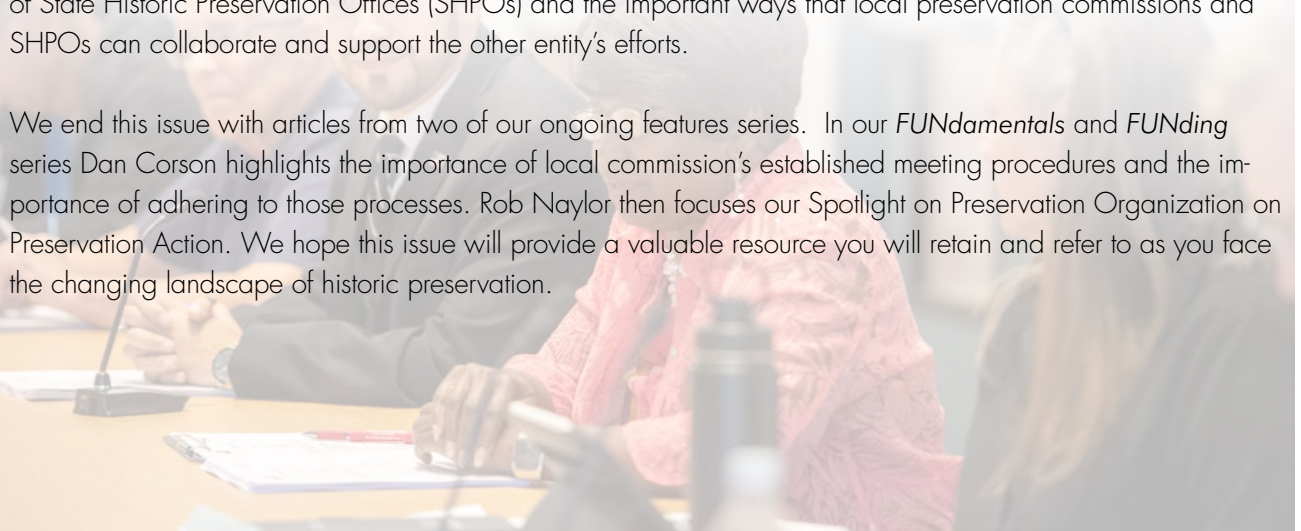
BY REBECCA GOODWIN, THE ALLIANCE REVIEW EDITORIAL COMMITTEE

The theme of our second issue of *The Alliance Review* of 2025 is different than most we have produced. Many in the historic preservation community have noticed the changing tides affecting our efforts, from legislative actions to legal challenges, our world is becoming more challenging. These challenges make it imperative that we be aware of the laws that affect what we do, and that local preservation commissioners and staff follow established policies and procedures. While “dry” subjects, understanding these legal concepts and commission basics will help you achieve your goals and minimize the risk of legal challenges.

This packed issue leads off with Catharine Gilliam Burns outlining the system of federal, state and local laws that enable historic preservation commissions to regulate and protect historic resources. Catharine leads us through the enabling legislation each state passes that authorizes local preservation commissions to legally operate and defines what you can and cannot do. Bill Schmickle, PhD, provides insight into the importance of public trust to the success, or failure, of historic preservation efforts. Several of NAPC’s Commission Assistance and Mentoring Program (CAMP) legal trainers explain why an understanding of the basics of commission authority, due process, property rights and other legal issues is imperative to increase community confidence in your efforts, ensure fairness and minimize the possibility of litigation.

Scott Slagor and Amy Krull explore balancing transparency related to cultural resources and the legal requirements of protecting archaeological resources and documentation. Inspired by CAMP Trainer, Dan Becker, we follow with a one-pager showing the interconnected preservation framework that flows from the federal government through the National Park Service to state and local entities. And Stephanie Paul, NAPC Executive Director, provides an update on the sweeping changes that historic preservation is currently facing. The changes could limit local community input on federal undertakings, decrease federal and SHPO support, and cut or eliminate the financial incentives that flow to local historic preservation commissions. Betsy Bradley explains the concepts of state preemption and the impact of state legislative efforts to supersede local decision-making related to land-use and planning to achieve state-determined priorities and outcomes. Kelly Little and Justin Kockritz explain the role of State Historic Preservation Offices (SHPOs) and the important ways that local preservation commissions and SHPOs can collaborate and support the other entity’s efforts.

We end this issue with articles from two of our ongoing features series. In our *FUNDamentals* and *FUNDing* series Dan Corson highlights the importance of local commission’s established meeting procedures and the importance of adhering to those processes. Rob Naylor then focuses our Spotlight on Preservation Organization on Preservation Action. We hope this issue will provide a valuable resource you will retain and refer to as you face the changing landscape of historic preservation.



Credit: Historic Preservation Board of Miami-Dade County, Florida

Meeting of the Historic Preservation Board of Miami-Dade County, Florida

Amy Krull currently serves as Federal Projects Archaeologist with the Michigan State Historic Preservation Office (SHPO). Her time is primarily spent reviewing projects in the state that require archaeological consultation. Scott Slagor is the Cultural Resource Protection Manager for the State Historic Preservation Office. He has served in this role two years, overseeing the Environmental Review program, which includes federal agency consultation under Section 106 of the National Historic Preservation Act.

Cultural Resources and Confidentiality

By Amy Krull and Scott Slagor

Cultural Heritage

The past belongs to everyone, and we are all responsible for its stewardship. Cultural heritage provides us continuity with the past, both through the tangible (artifacts, cemeteries, buildings, etc.) and the intangible (knowledge, language, traditions, etc.). Cultural resources are critical to community identity and can be used as tools for placemaking and positive quality-of-life improvements. Certain cultural resources require special protections, particularly archaeological sites. Local governments, such as municipalities and counties, who retain archaeological information, must ensure that site data is not readily available to the public.

Archaeological sites are nonrenewable resources, providing irreplaceable information about the past, and in some instances serve as places of reverence and reflection for contemporary communities. The United States has a rich and diverse archaeological history, dating from 50 years to several thousands of years ago, prior to the arrival of European explorers. Archaeological sites can be found everywhere, in urban settings, rural areas, and underwater. Many sites are imperiled by the effects of climate change and development. Yet, the most immediate threats are looting and vandalism. Throughout the country, archaeological sites have been damaged or destroyed by both nefarious activities and by curiosity seekers, whose actions have unintended consequences to these special cultural resources. One example of the latter comes from the Great Lakes, wherein shipwrecks and other submerged cultural resources have been irreparably damaged by ruptures caused

by the anchors of modern boats whose passengers are trying to get a closer look.

Cultural Resources and the Law

Section 106 of the National Historic Preservation Act (NHPA) is a common place that local governments intersect with cultural resource data. Section 106 requires federal agencies to consider the effects of their undertakings on historic properties prior to authorizing proposed projects. Historic properties are cultural resources eligible for listing in the National Register of Historic Places, including archaeological sites, historic structures, shipwrecks, and Traditional Cultural Places.



Credit: Sara Ayers-Rigsby

Overview of shell mound and pioneer house at Dubois Park, in Palm Beach County, Florida.



Credit: Florida Public Archaeology Network (FPAN)

Through Heritage Monitoring Scouts (HMS) Florida, volunteers work to assess and track impacts to sites including shoreline erosion, storm events, visitor traffic, and more.

Compliance with Section 106 involves the identification of cultural resources around project areas. Federal agencies or their delegated authorities (sometimes municipalities) are required to consult with the State Historic Preservation Officer (SHPO), Tribal Historic Preservation Officers (THPO), and other consulting parties when projects are either federally funded (grant, loan, direct monies), or require a federal permit/license, or are on federal land. Common funding sources for municipal projects include Community Block Development Grants from the Department of Housing and Urban Development, and road improvement money from the Federal Highway Administration.

During the Section 106 process, records are created documenting agencies' compliance with the law. Typically, these records include Cultural Resources reports, which provide details about archaeological and architectural resources. Many local governments include documentation related to Section 106 as part of the public record. Although municipalities and counties provide this information as a matter of transparency, many are unknowingly violating the protections clauses of the NHPA and state policies, as archaeological site locations and other sensitive information is considered privileged. The Archeological Resources Protection Act and the National Environmental Policy Act also contain provisions to protect site data. Similarly, states have distinct policies that address how to appropriately share archaeological information. In Michigan, for example, the SHPO is

the keeper of the State Archaeological Site File and only shares this information with federally qualified archaeologists, THPOs, and tribal cultural specialists.

Section 106, Archaeology, and Local Commissions

Local governments and their various historical commissions intersect with sensitive archaeological data both through their own permitting processes and through federal undertakings. On the local side, many commissions are well versed in considering impacts to buildings, structures, and objects; sometimes called "above-ground resources." However, archaeological resources are largely below ground and can sometimes fall prey to an "out of sight, out of mind" mentality. It is important to recognize that any property could be archaeologically sensitive; and most historic buildings and structures will have an archaeological component.

Commissions with design-review authorities, who are also Certified Local Governments, must follow the Secretary of the Interior Standards for Rehabilitation in their decision-making. As, *Standard Number 8* specifically requires that "Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken." Any project that includes ground



Credit: Amy Krull

Archaeological excavation in Ingham County, Michigan conducted by USDA, Natural Resources Conservation Service.

disturbance has the potential to affect archaeological resources. Projects ranging in scale from new construction to new or updated fencing, lighting, landscaping, and the installation/removal of concrete and asphalt have the potential to disturb archaeological resources. Depending on local requirements, and the level of due diligence a permit applicant has performed, sensitive archaeological information may be provided in Commission review packets without consideration of the inherent risks of providing archaeological site information to the public.

Additionally, the work of local governments and historical commissions often converges with federal undertakings. Section 106 of the NHPA requires the federal agency to identify appropriate consulting parties (e.g., local historical commissions) and to engage the public. The local governments that are within an undertaking's Area of Potential Effects (APE) are automatically a consulting party in this process, should they choose to participate. The Section 106 consultation process is designed for federal agencies to make well-informed decisions, which should rely on information from SHPOs, THPOs, and local governments, as these are the groups who best know their resources. The perspective of a local commission is invaluable for such things as identifying historic properties within the APE and negotiating mitigation efforts when faced with adverse effects that could result from an undertaking.

Local participation in the federal process for a proposed undertaking can often produce reward-



Preparation for archaeological excavation related to a highway expansion project in Raleigh, North Carolina.

Credit: Amy Krull



Credit: Amy Krull

Archaeological survey of Roosevelt Park during the Michigan Central Station renovation, City of Detroit.

ing results for a community. For example, during the Section 106 process for recent undertakings related to new housing in the City of Detroit, a number of archaeological districts were identified. The city, as a consulting party under Section 106, was able to signal the importance of these archaeological districts to the federal agency and adverse effects to these special resources were mitigated. During the consultation process, the city was able to request that archaeologists with expertise specific to Detroit would be part of site mitigations. Through consultation with the federal agency and SHPO, the city was also able to engage a state university in the curation of artifacts recovered during mitigation of the sites that comprise the newly identified archaeological districts. For one of the archaeological districts, the city, SHPO, and the archaeologists worked together to produce posters and other interpretive material to help educate the public about the communities who lived in the neighborhood which the district represents during the mid- to late-19th century and early- to mid-20th century.

Local Government Responsibilities to Protect Archaeological Sites

Local governments can take simple steps to protect sensitive data by restricting the dissemination of privileged information about archaeological sites, including location, character, and ownership. Geospatial data, such as Geographic Information Systems (GIS),



Credit: Amy Krull

Cultural Resources consultants excavating an archaeological site prior to the construction of a new housing development in the City of Detroit.

Global Position Systems (GPS), and other mapping that shows archaeological sites should not be publicly accessible. For Freedom of Information Act (FOIA) requests, local governments must observe state and federal regulations. For instance, the Michigan Freedom of Information Act explicitly exempts the dissemination of archaeological site locations.

Archaeological reports, mapping, and other documents containing sensitive information should be filed with a cover sheet indicating that the document is "CONFIDENTIAL" or "RESTRICTED". Subsequent report pages should be watermarked or stamped to reflect their confidential nature. These documents should not be included in publicly distributed information, project bids, or in electronic retrieval systems without restricting access to specific users.

Additional proactive steps that local governments can take to balance community transparency and risk include initiating consultation with the SHPO and THPOs. Consult with the SHPO to develop an Unanticipated Discoveries Plan (UDP) to ensure preparedness if archaeological sites are accidentally encountered. Each state has a SHPO, and this office should have a template or example of an UDP to make the creation of one an easy process. Communities can also consult with the SHPO on internal measures to flag sensitive areas without exposing sensitive data. Additionally, forming a relationship with the THPO whose ancestral lands are in your community is an invaluable connection. To identify the appropriate THPOs to contact, your SHPO may be able to direct you to regional tribal networks. For instance, in Michigan, the Michigan Anishinabek Cultural Preservation and Repatriation Alliance (MACPRA) is the go-to organization for establishing a dialog with appropriate tribal partners.

The responsibility to protect archaeological sites should not be solely left to law enforcement, private property owners, archaeologists, and Tribes. It is imperative that local governments act as the first line of defense by ensuring that archaeological site locations and other pertinent information is kept confidential and not disseminated to the public. With the steps discussed above, the archaeological resources of a community can endure for future generations. For additional questions about cultural resources and archaeology, please contact the SHPO and visit <https://www.mipace.org/historic-preservation/>. ■

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