

Public Archeology and Local Land Use Law

This issue of *CRM* presents 10 papers that were originally prepared for a session entitled “Public Archeology and the Power of Local Preservation Law” that I organized for the 63rd meeting of the Society for American Archaeology held in Seattle, Washington, in March 1998. The session participants, all archeologists by training, were invited to speak about their experiences working with local governments (counties and municipalities) that are using their legal authority to regulate land use and development to protect archeological sites.

Protecting the archeological record has always been a land use and planning problem. Federal laws such as the National Historic Preservation Act, and similar state laws, specifically require consideration of cultural resources during the planning and design phases of government undertakings. Most development in this country, however, is private, and not subject to state or federal preservation requirements because no public lands or financing are involved, and no permits or other authorizations are required—except for those issued by local governments.

The explosive growth of sprawl occurring throughout the country is a direct threat to the archeological record. Last year alone there were over a million new housing starts involving disturbance to thousands of acres of land and the cultural resources they contain. Sadly, because most local governments have no requirements to consider archeological sites in planning for either public works projects or private development, much of the record of the past is in danger of being lost without our even knowing what we are losing in the process. Ironically, many communities do have some form of preservation advisory board or commission, but protecting archeological sites is not a part of their mandates. A recent survey of 2,000 local historic preservation commissions in the country conducted by the National Alliance of Preservation Commissions found that 91% of the respondents do not in any way consider the effects of development on archeological sites.¹

The purpose of this issue of *CRM* is to highlight this growing preservation problem and to present examples of some of the few local governments that are doing something about it. In each case, preservation is achieved by means of local laws controlling land use and development. The legal basis

for these laws derives from the powers given the states under the U.S. Constitution to regulate the activities of private individuals for the purpose of protecting the public health, safety, and welfare.² This authority may be conveyed to local governments through enabling state legislation that establishes the requirements for planning, zoning, and other land use controls. Thus, the local governments that have met these requirements and have chosen to protect archeological sites have accepted the argument that it is in the public interest to do so.

The threat to the archeological record is real, the problems are identifiable, and solutions do exist, as demonstrated by the papers in this issue. The papers are organized roughly by region and illustrate a wide range of approaches to archeological site preservation on the local level. The emphasis is on the practical and information is presented to demonstrate what works, and in some cases, what doesn't. Many of the authors are state agency employees who work every day with local governments (Simon, Bellantoni, McGrath, Cushman, O'Shea). Others are local government planners or program staff who have to make preservation work for their communities (Mayro, Mouriquand, Carr). One author is a member of a local preservation commission that just recently succeeded in establishing protection for a large archeological district (Wheaton). And another is a professional planner with a background in archeology who provides valuable insights on where site protection can be inserted in the planning and development review process (Lawrence). Each author emphasizes something different about their experiences; however, the message that we want to convey to you is the same—local land use law can be a powerful tool for protecting archeological sites. Use it.

Notes

- ¹ Pratt Cassity, personal communication with author.
- ² Susan L. Henry. *Protecting Archeological Sites on Private Lands*. U.S. Department of the Interior, National Park Service. Preservation Planning Branch, Interagency Resources Division, 1993.

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