

# Historic Preservation Law: A Green Mountain Perspective

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Over the past several decades, historic preservation has become an important component of contemporary land use. There is growing recognition that the retention of historic places can fundamentally define our communities in positive ways. As a result, historic preservation has shaped the appearance of many of our nation's most significant places. Based on the prevalence in the popular imagination of the role of preservation regulations, historic preservation has been largely viewed as an urban phenomenon. Not surprisingly then, most historic preservation tools, such as the local historic district, reflect this urban-centric focus regarding what and how to preserve historic resources. There are, however, unquestionably important nonurban historic resources—ranging from rural village centers to farms—that also merit serious preservation attention. How does historic preservation law influence and interact with historic resources in areas that lack the density to rely so predominantly on collective regulation and design review to accomplish preservation objectives? This article explores how historic preservation law works in a rural state, specifically Vermont—a state recognized in the popular imagination for its historic character and brand.

To explore this issue, we first examine why Vermont is unique as compared to many other states. We then discuss why historic preservation law therefore functions differently and, on the main, successfully here. We next focus on the actual laws and programs that influence the protection of the built environment throughout the state that have had lasting and continuing impact. To conclude, we examine what potential lessons historic preservation advocates can learn from the Vermont experience and, in turn, what this tells us about historic preservation law generally. We contend that scale, localism, and incremental progress fundamentally shape historic preservation in a rural state. This is reflected in the operation of various Vermont-focused historic preservation laws and in the state's general success in preserving its historic character over a sustained period.

## ***Understanding the Vermont Difference***

Although entire books have been written on Vermont's distinctiveness and brand, there are some general themes that shape how historic preservation law functions in the state, specifically: (1) Vermont's rural nature, (2) the degree of interconnectivity, (3) the comparative lack of development

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pressure, (4) applicable Vermont policy and law, and (5) the overlay between preservation and other state land use goals.

Vermont is a predominantly rural state. In fact, by many measures Vermont is nearly the nation's most rural state. With a population of fewer than 650,000 residents, the state is amongst the nation's smallest. This fundamental ruralness shapes the state in countless ways and is fundamental to its identity, character, focus on localism, and sense of place. The state takes pride in its rural symbols and protecting its rural resources and industries such as dairy farming, maple sugaring, and forestry sectors.

Vermont residents are also inherently passionate about their communities. A longtime resident may have driven past or stopped at the local general store 500 times without much thought, but when a national chain retailer shows interest or threatens change, residents will often staunchly defend their community character and their long-held sense of place. The Preservation Trust of Vermont (PTV), a statewide nonprofit preservation organization established in 1980, has played a critically important role as intermediary in these community focused challenges, crafting relationships and paths toward mutually acceptable outcomes.

The late Paul Bruhn, PTV's director, often identified community valued locations using the sociological term "third places," or the places outside home and work that define their community and where residents connect. Be it a theatre, opera house, community hall, or community-supported grocery store or restaurant, Vermonters and preservation advocates will identify inventive solutions that turn a threat into opportunity. Typically, the solution addresses more than one community need in a single project. Vermonters, as much or perhaps even more than residents of other areas, embrace the value of local product and character, seeking to support Vermont businesses and local downtowns. This degree of "localvore" care for the future of these historic communities as authentic and livable places fundamentally shapes how historic preservation operates across the state.

Vermont's small scale allows preservation to work somewhat differently than preservation in larger, more urban states. But equally important is Vermont's strong value on citizen engagement and small "d" democracy. Vermonters have and expect unparalleled access to local and state decision-makers, especially in the state's smaller and tightly knit communities where few decisions are made without robust community involvement and input. This emphasis on public involvement elevates ideas that align with community values and allows projects to gain traction, support, and funding quickly. This often slants the playing field toward projects that promote historic preservation and a sense of place.

Another aspect of being small is that advocacy groups easily

grow and gain influence. One of the primary ways that historic preservation projects work in Vermont is through the network of diverse groups devoted to retaining community character and resources, concomitantly advancing historic preservation. One of the best examples is the PTV, which has been the leader in protecting the built and natural environment in endless ways, ranging from iconic battles over big-box retailers' entry into the state in the 1990s to preserving smaller-scale community resources. PTV's initiatives drew national attention, as in both 1993 and 2004, the National Trust for Historic Preservation named the entire state to its Most Endangered List—recognizing its historic importance and the threat of suburban sprawl and land use changes on the state's iconic landscape. Today, PTV remains active and its summer series of workshops at its Grand Isle Lake House play a clearinghouse role in connecting state officials and local advocates to shape the next cycle of preservation projects across the state.

The University of Vermont's Historic Preservation graduate program has also had an outsized impact on the preservation field in Vermont. Established in 1975 as one of the first programs to focus on this emerging professional discipline, the program has attracted many students to the state. A surprising number of the program's graduates have stayed. This has provided the state a cadre of trained preservationists and consultants who have facilitated preservation work throughout Vermont as consultants, professional staff to agencies and within state government, and as volunteers in their communities. This infusion of professional preservationists has influenced land use across the state and has helped to ensure that historic preservation has a seat at the table.

Beyond the small population and engaged citizenry, most preservation projects in Vermont are also at a scale that makes success achievable. Size and complexity become manageable to advocates and make it easier for successful preservation outcomes to be achieved. Scale frequently lowers the barrier on the funding needed to achieve these projects.

Vermont's size additionally allows small projects to stand out, providing tangible evidence of the community benefits of such projects. This creates a snowball effect as each success provides inspiration for the next endeavor and influences other communities to undertake similar initiatives. While the economies of achieving preservation goals on a resource-by-resource basis may be challenging, investments by the state and private philanthropy go further here. One prominent example is the ongoing work of the Freeman Foundation contributing more than 11 million dollars over a 20-year period to 469 projects in every county across the state. Their \$20,000 grant toward the rehabilitation of the Vergennes Opera House (with a total project cost of \$390,000) helped reinvigorate a community resource that reopened after a 27-year closure as a celebrated community space featuring active performances, weddings, corporate and public meetings, and Vergennes' own Carnevale.

Though often a challenge, Vermont's lack of population and density has been an asset to the preservation of its built legacy. Except for a few significant exceptions and areas, there simply is not the same degree of development pressure, compared to that experienced by other states in recent years. In many ways, a lack of development pressure provides a more manageable scale to work within and isolates the challenges of adverse impacts to the individual development project being proposed, rather than forcing preservation advocates to wrestle

with widespread and constant threats across various fronts.

Relating to this comparative lack of pressure, through the sustained and parallel efforts of land use planners, there has been a strong and persistent push to locate new development in village centers and downtowns. This has been the focus of state land use laws since the late 1960s, followed by the passage of Vermont's Land Use and Development Act (known as Act 250; see discussion below). The impact of that legislation still resonates today. Although these efforts come from differing disciplines, the desired outcome is the same—an avoidance of urban sprawl and a deliberate attempt to focus new development in its traditional location within the Vermont landscape. This encouragement through land use regulation and incentive programs also helps lessen preservation challenges through Vermont's designated downtown program and numerous other regulatory and incentive-based programming.

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Vermont, however, does face significant challenges, both economically and from a historic preservation perspective, in its small towns and villages. While a generation ago, the challenge was protecting characteristic rural and village development from sprawl, it is now to prevent these resources from being lost by abandonment and neglect. In the coming years, these neglect-related concerns may become a bigger threat than development pressure. The former ally (lack of development pressure) may, in fact, turn into the largest adversary. It threatens to require state and local communities to explore new tools and ways for addressing and securing the preservation of these rural village resources in the face of changing demographics, diminishing interest in farming, and an aging populace.

### ***Understanding the Role of Vermont's Historic Preservation Laws***

As in most states, historic preservationists rely on a suite of tools to encourage preservation activity and investment, to discourage insensitive development and the demolition or unconsidered alteration of historic resources, and to foster a sense of place attachment. The discussion below focuses on the state's principal preservation tools: (1) Act 250 state land use regulation, (2) state and downtown tax credits, (3) state grant programs, and (4) local historic regulation, which are explored in turn.

Unlike many states, Vermont has a statewide land use permitting law known as Act 250. See 10 V.S.A. § 6001 *et seq.* Enacted into law in 1970, Act 250 was “designed to achieve a balance between economic development and the legitimate interests of citizens, municipalities, and state agencies in protecting the environment.” *Id.* at § 6001(3)(A)(i). Under Act 250, before starting “development,” which is defined as “the construction of improvements . . . involving more than 10 acres of land (or 1 acre in municipalities without zoning and subdivision laws), . . . for commercial or industrial purposes” or construction of 10 or more housing units, the landowner will first have to obtain a land use permit. If a land use permit is required, the project will be evaluated using 10 statutory criteria by the applicable district commission, which determines whether or not to permit the project.

## Federal and state downtown tax credits have fundamentally shaped the appearance of downtown and village centers across the state and have spurred economic development in these vitally important areas.

For historic preservation advocates, Criterion 8, prohibiting undue adverse effects on aesthetics, historic sites, and on rare and irreplaceable natural areas, is the primary hook for challenging a project involving a historic site. See Act 250 District Commission Training Manual, Criterion 8: Historic Sites (Criterion 8), <https://nrb.vermont.gov/sites/nrb/files/documents/8historicsitesfinal.pdf>. To determine compliance with this criterion, the district commission is required to evaluate whether: (1) the project site or development is or contains a historic site, (2) whether the project will have an adverse effect on the historic site, and (3) whether this adverse effect will be undue. Criterion 8 also provides for challenges to projects with aesthetic impacts—so even projects not directly involving a historic property or site can rely on this factor to intervene or engage with a proposed project.

Criterion 8 has repeatedly demonstrated its ability to shape (or deter) development within the state. It has given preservation advocates a tool for challenging larger scale projects that impact historic sites. It has also been instrumental in ensuring that historic preservation concerns are addressed in project design as well as through the conditions imposed on the project applicant through the permitting process.

As a direct historic preservation tool, however, Act 250’s impact is somewhat limited in that the project has to qualify as “development” before it is triggered. This means that if a project is below a certain threshold or size (e.g., the demolition of

a single historic resource on a small lot), it will likely be outside of the Act’s jurisdiction.

Several other Act 250 criteria can advance preservation objectives for larger-scale development proposals. Added in 2014 and revised again in 2016, Criterion 9(L) relates to settlement patterns, specifically intended to promote protection of Vermont’s traditional landscape. See Act 250 District Commission Training Manual, Criterion 9(L): Settlement Patterns (Criterion 9(L)), <https://nrb.vermont.gov/documents/manual/criterion9l>. (last visited Nov. 15, 2019). This criterion is focused on protecting Vermont’s historic settlement pattern of compact village or urban centers separated by rural countryside. It can play a role in tailoring projects that have sprawl impacts or are not designed to conform with these traditional land use patterns. Coupled with definitions for what an “existing settlement” is, Vermont’s state land use law helps defend the big-picture preservation of existing villages and downtowns and supplements the more specific review afforded under Criterion 8 for defined historic resources.

Although some perceive Act 250 as a substantial barrier to projects, it does not necessarily have to be so. For example, the Walmart located in downtown Rutland moved through the entire permitting process (Act 250, state, and local permitting) to open its store within an eight- to nine-month period with community support because the developers made a concerted effort to fit the project into an appropriate local context and scale. This example shows that it is possible, if a project is sensitively designed to be compatible with local character, to meet a collective goal for commercial development within a desired land use context and gain community support for an expedited approval.

Tax credits also play an important role across Vermont. From 2014 through 2018, the Federal Rehabilitation Investment tax credit funded 66 projects in 29 communities—resulting in \$71 million in tax credits awarded—fostering a total investment of \$358 million in private investment. Since 2012, exercise of the rehabilitation tax credit has contributed more than \$28 million specifically to housing, for total project investment of more than \$153 million for housing projects across the state. This federal funding, in a small state with corresponding limited resources, has massive impact.

In addition to the federal tax credits, Vermont has a substantial state tax credit program focused on its downtowns. See 32 V.S.A. § 151. Created in 1983, the downtown and village tax credits are available for commercial buildings in designated downtowns and village centers. In 2019, \$2.6 million in state income tax credits were made available to projects that enhance the historic character and improve building safety of older and historic commercial and community buildings in designated village centers and downtowns. Intending to target those community spaces in Vermont’s historic village centers, these tax credits support general rehabilitation work, code compliance work, and façade improvements. For example, in the 2019 funding round, a downtown tax credit of \$19,850 was awarded to the new owners of Hancock, Vermont’s general store, which helped revitalize and upgrade this critical community resource (out of a total project budget of \$145,000). Coupled with funding from federal programs, this seed money can go a long way in a small Vermont community such as Hancock. All told, federal and state downtown tax credits have fundamentally shaped the appearance of downtown and village centers across the state and have spurred economic development in these vitally important areas.

Although less substantial in terms of dollars allocated, state grant programs play an important role in facilitating preservation work across the state. Vermont offers two small grant programs. Historic preservation grants are offered to towns and nonprofits to support rehabilitation of historic public buildings, and barn preservation grants are available to owners of historic agricultural buildings. Many of these programs have been in place for decades, which has allowed these programs to have incremental impacts. The historic preservation grants program has been in place since 1986 and has provided nearly \$5 million for the preservation of over 550 historic community buildings. Historic Preservation Grant Program 201, Vermont Division of Historic Preservation, [https://accd.vermont.gov/sites/accdnew/files/documents/HP/HP-Grants-Summaries\\_FY2018.pdf](https://accd.vermont.gov/sites/accdnew/files/documents/HP/HP-Grants-Summaries_FY2018.pdf) (last visited Nov. 15, 2019).

The historic barn grant program, first funded in 1992, has allocated over \$3 million for small barn projects to restore these iconic features of the Vermont landscape. While the individual grants are relatively small (up to \$15,000 and requiring 50/50 match from the landowner), over 360 historic barns and outbuildings have been the beneficiaries of the program. Vermont Agency of Commerce and Community Development, Historic Preservation Barn Grants, <https://accd.vermont.gov/historic-preservation/funding/barn-grants> (last visited Nov. 15, 2019). While Vermont has its fair share of barns, the state's landscape has benefitted from the barns that have been brought back to life with this infusion of state resources.

Local preservation regulations are intentionally discussed last in this hierarchy. In Vermont, local regulations vary widely among municipalities, and preservation regulations play a different role or at least have a different impact in Vermont than in many other states.

Some cities and towns in Vermont have adopted design review and local regulations, and where these have been enacted, the regulations are helpful in shaping and protecting historic resources. For example, since 1973, the city of Burlington has included within its zoning ordinance design review or regulation for the treatment of historic buildings and sites, defined as properties listed or eligible for listing on the State or National Register of Historic Places. The city's Historic Preservation Review Commission retains oversight of alterations to designated historic structures and sites, providing education and guidance to property owners as part of their review. The attentive examination of alternatives can thoughtfully and carefully manage alterations to historic structures without a blanket prohibition to new work and new uses for these properties. The process here, however, is substantially less onerous than that of other urban communities, like the town of Brookline, in Massachusetts, where review of alterations to a listed historic property may require review by several jurisdictionally separate boards and up to four separate local permits. In that community, even a partial demolition may require up to a two-year demolition delay.

Although Burlington is not alone, regulations like these are not widespread. Some communities provide guidance or recommendations to historic property owners or allow a review board to provide guidance to the Development Review Board (the body responsible for addressing zoning determinations in most Vermont communities). However, many more communities have decided not to rely on local historic district regulations. It can be difficult for neighbors in small

communities to regulate one another and to pass judgment on a proposed project or proposed repairs or alterations. The density of historic resources that merit a strong historic district ordinance with a historic review board often is lacking. When there is only one project carried out in a village center every other year, it is hard for a regulatory tool or body to function this sporadically in any meaningful fashion. While regulation exists in Vermont at the local level, it is generally not the primary path to accomplishing historic preservation objectives, particularly outside principal "urban" areas such as Burlington, Montpelier, and Bennington.

Most importantly, historic preservation often is just one component in a larger project where the outcomes accomplish many general community objectives. Many projects that historic preservationists point to as success stories are not preservation projects per se, but are projects advanced by other advocates for other reasons—and they achieve a much-desired community use or function, such as providing a general store, performing arts center, or other community need. The fact that a historic building is involved is a function of a desire to repurpose old buildings that have served a community well and can continue to do so. While the typical Vermonter may appreciate the frugality and utility in repurposing a Grange Hall for a community daycare, they may not necessarily attribute the effort to historic preservation, but to common-sense concern for the environment, thrift, need, and a desire to retain activity and services in traditional downtowns and village centers. Contrary to the occasional multimillion-dollar tax credit project, small community initiatives of this size and scale are prototypical for Vermont and are the hallmarks of the state's strong historic preservation movement.

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Historic preservationists in Vermont have been successful in connecting preservation to other social outcomes, including encouraging the reuse of historic resources in meeting the state's affordable housing goals through the Vermont Housing & Conservation Board, and working on land conservation projects with the Vermont Land Trust or Vermont Natural Resources Council. Over the past seven years, 613 housing units have benefited from the Rehabilitation Investment tax credits in the state of Vermont; 517 of those units identified as affordable. The creation of these newly renovated housing units has been possible through the directed efforts of housing

advocacy groups like Champlain Housing Trust and Housing Vermont, showcasing the powerful impact of integrating related and aligned policy objectives and programming.

On the land conservation side, an example of a significant recent partnership involved PTV, the Vermont Land Trust, and others to acquire, from a potential developer, a highly visible undeveloped site at exit 4 near Randolph, Vermont, to prevent a proposed hotel and mixed-use commercial development out of scale with the surrounding countryside. Leveraging preservation and land conservation funding is often a powerful combination in accomplishing related objectives that would otherwise be difficult for a single discipline or advocate to achieve alone.

Vermont's rural identity also impacts how preservation works. Specifically, this rural character means that commonly used regulatory tools often do not work as well as in urban settings because (1) a substantial percentage of Vermont municipalities do not have any zoning regulations, let alone standards for the treatment of historic resources (limiting the opportunity for regulatory or even overlay district regulation); (2) neighbors do not necessarily want to regulate their neighbors and there is a desire to avoid conflict and intrusiveness (and beyond this reticence, individual property rights are highly prized); and (3) in a rural setting, there is less incentive to create complicated historic districts or overlay districts as fewer resources are covered within a single cohesive district or proposed district. What works in a rural state like Vermont is fundamentally shaped by the resources involved and the communities in which they are located.

To summarize, while these factors clearly interrelate, Vermont's connectivity, small population, lack of development pressure, engaged citizenry, and the interspersed nature of historic preservation within other land use priorities tell the Vermont story. They help explain why this state has long held such a strong attachment to place and has been able to maintain its authenticity in the face of substantial land use and cultural changes over the past several decades. Vermont's distinctiveness, in turn, feeds into how preservation laws operate in the state.

### **Three Lessons from the Vermont Experience**

Historic preservation may operate differently in Vermont than in many other places. However, the state's experience offers three important lessons into how advocates can have success in advocating for the protection of historic iconic resources. In reflecting on this, the primary takeaways are as follows.

1. **Scale matters.** Preservation, at its most powerful, is locally driven and led. Defining preservation at a more local scale makes sense as people generally know each other, can work together, and see the tangible returns on their public investments across the state. A drive across Vermont will very clearly show the results of the state's collective investments in downtowns and village centers and across the rural landscape. Each success has important ripple impacts in sustaining the sense of community and encouraging communal ventures. In other states, determining how to best leverage scale and how to target

efforts and laws in such a way to accommodate local goals and objectives may be an important lesson the Vermont experience can offer.

2. **Slow and steady wins the race.** Vermont demonstrates that small, incremental investment pays off in a predictable and tangible fashion over the long run. Small, steady, and reliable investment over time pays dividends, multiplying and compounding the impact of earlier efforts. The importance of this patience also can be seen in the cumulative improvements and success evident in Vermont's downtowns, village centers, and landscape. The whole of the impacts of sustained investment is hard to quantify, but consistent and long-running focus on these projects from a funding perspective has unquestionably helped preserve the state's historic character. Vermont's continued focus on the overall objective of creating meaningful and desirable places to live through sustained funding for preservation initiatives demonstrates the benefit of sticking with what works and leveraging the value of time to accomplish larger goals over a longer horizon.
3. **Partnership matters.** Collaborating with diverse coalitions of individuals and organizations will achieve multiple and compatible integrated objectives. It also cultivates multiple avenues for advocacy and funding from across the spectrum. As noted throughout this article, many of Vermont's best preservation success stories are not driven initially by preservationists, but by an alliance of interests of which preservation is only one component toward a shared and strongly desired local objective. There can be two—or more—birds killed with any given project stone. Historic preservation is likely only a part of the total sum of the collective achievement. At the end of the day, protecting historic buildings takes consistent care and attention, and each generation must make the decision anew to continue using and preserving its historic resources (whether individually or collectively). For preservationists in other areas seeking to expand their impacts, looking at how to best combine their efforts with the goals of other compatible and aligned disciplines is an important takeaway from how preservation works here in Vermont.

In the end, Vermont, as a very rural state with unquestionable historic significance, demonstrates the inherent localness of preservation efforts and the influence of community-focused programming and partnerships to achieve the state's long-term planning and preservation goals. Within the hierarchy of relatively robust preservation laws, preservation regulations are situationally important, but they must be combined with other community efforts and values to achieve their aims, particularly in rural areas that might not be inclined to self-regulate. What Vermont offers is an example of the benefits of working at a livable and understandable scale, finding common ground, and leveraging shared priorities that are reflected in preservation laws and policies. This can help achieve the result of allowing a community to maintain its much-valued historic resources and authentic sense of place. 