

Evaluation of H.P.C.



Montgomery County Government

A DESCRIPTION AND EVALUATION OF THE MONTGOMERY COUNTY HISTORIC PRESERVATION COMMISSION

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EXECUTIVE SUMMARY

This report describes and evaluates the structure, workload, staffing, and overall operations of the County's Historic Preservation Commission (HPC).

Established in 1979, the HPC has nine citizen members, appointed by the Executive and confirmed by the Council. County law assigns the HPC an unusually broad range of adjudicatory, advisory, and administrative responsibilities, to include acting upon Historic Area Work Permits (HAWPs) applications, rendering advice on historic site designations, administering historic preservation grant and loan programs, and public education.

The operation of the HPC has been affected greatly by an increase in the volume and complexity of HAWP applications, and by the large number of Atlas resources not yet evaluated for designation on the Master Plan for Historic Preservation. This study finds that, although County resources dedicated to supporting the HPC have increased, the current staffing structure does not enable the HPC to meet effectively all of its statutory responsibilities. In addition, the report finds that while many citizens regard the HPC as hard-working, dedicated, and knowledgeable, there are others who have concerns about the HAWP process and the manner in which HAWP decisions are made.

This report recommends a package of legislative, administrative, and staffing changes to address problem areas. Major recommendations include:

- Authorize the HPC to establish decision-making panels, to refer cases to the Hearing Examiner, and to delegate certain matters to staff;
- Revise HPC membership requirements to include representation from business-related fields; and compensate HPC members at a level comparable to members of other adjudicatory commissions;
- Establish a sunset date for the Atlas, and adopt a schedule for evaluating the remaining Atlas resources for Master Plan designation;
- Delegate the intake of HAWP applications and the inspection of HAWPs to staff trained in historic preservation; and develop written design standards governing HAWP decision-making;
- Develop materials and programs to better educate the public about historic preservation, and improve the administration of existing preservation programs;
- Establish a separate Historic Preservation Office within the Department of Housing and Community Development, and authorize an additional staff position to manage the office; and
- Provide training to citizens appointed to serve on the County's adjudicatory boards and commissions.

Finally, this report recommends that the Council direct the Office of Legislative Oversight to conduct a follow-up evaluation in FY94. If, at that time, the problems identified in this evaluation have not been addressed, then the Council should consider modifying the basic structure, administrative location, and/or authority of the HPC.

I. AUTHORITY, SCOPE, AND METHODOLOGY

A. Authority. Council Resolution No. 11-1907, CY 90 Work Program of the Office of Legislative Oversight (OLO), adopted March 13, 1990.

B. Scope. This report describes and evaluates the structure, staffing, workload, and overall operations of the Montgomery County Historic Preservation Commission (HPC). The scope of this report did not include evaluating the substance of specific cases decided by the HPC, except insofar as the study design included reviewing the appeal record of HPC's decisions, compiling examples of HPC's decisions, and interviewing applicants that appeared before the HPC.

C. Methodology. This project was conducted during February-June 1990, by Karen Orlansky, OLO Program Evaluator, with assistance initially from Ari J. Sky and later from Kenneth Wilcox, both Public Administration Interns. The research design included document and file reviews, interviews, a phone survey of Historic Area Work Permit applicants, site visits, observations of HPC meetings, and a survey of historic preservation commissions in other jurisdictions. The HPC allocated time for discussion with OLO at seven full Commission meetings and at two special worksessions that were scheduled exclusively for discussion of evaluation issues.

Within the County Government, interviews were conducted with staff from the following departments and offices: the Department of Housing and Community Development, the Department of Environmental Protection, the Office of Planning Policies, the Office of the County Attorney, the Office of the Board of Appeals, the Office of Zoning and Administrative Hearings, the Office of Management and Budget, the Office of Personnel, and the Office of the County Council. In addition, interviews were conducted with the Montgomery County Planning Board Chair, the Chair of the Board of Appeals, and M-NCPPC staff from the Montgomery County Department of Planning, the Montgomery County Department of Parks, and the Prince George's Department of Planning.

Others interviewed included: current members of the Historic Preservation Commission; representatives of the Local Advisory Panels appointed by the HPC; a selection of individuals who had formerly served on the HPC or the Planning Board; and former County staff who had previously been assigned to support the HPC. Information was also obtained from the National Park Service, the National Alliance of Preservation Commissions, and the Maryland Historical Trust.

Additional feedback from the citizens of the County was obtained through interviews with attorneys, architects, planners, and other individual citizens who have appeared before the HPC. The research design included interviews with those who have appeared numerous times before the HPC, as well as with individuals who have appeared once before the HPC during the past three years.

D. Acknowledgements. Throughout this study, OLO received cooperation from all parties. In particular, OLO wants to acknowledge the many hours that Executive branch and Planning Commission staff spent providing information and working with OLO. A special thanks is owed to Jared Cooper, DHCD Historic Preservation Specialist,* Alison Vawter, DHCD Office Services Manager, Edward Lattner, Assistant County Attorney, and Gwen Marcus, M-NCPPC Historic Preservation Planner. The time spent by HPC members, the Director of the Department of Housing and Community Development (DHCD), the Deputy Director of DHCD, the Chief of the Division of Community Planning and Development, and M-NCPPC's Planning Department Director discussing issues and helping to generate constructive recommendations was also greatly appreciated.

II. ORGANIZATION AND TERMINOLOGY OF REPORT

A. Organization of Report

Chapter III, **BACKGROUND**, reviews events leading to the 1979 adoption of the County's Master Plan for Historic Preservation, and the ordinance that created the Historic Preservation Commission; this chapter also explains the application of the County's preservation laws in municipalities, and offers brief descriptions of the Maryland Historical Trust, the Certified Local Government program, and the National Register of Historic Places.

Chapter IV, **EVALUATION**, describes and evaluates the structure of the HPC; staff support for the HPC; and the way in which the major responsibilities assigned by law to the HPC have been and are performed.

Chapter V, **COMPARATIVE INFORMATION**, compares the structure, staffing, and responsibilities of the County's HPC to historic preservation commissions in other jurisdictions.

Chapter VI, summarizes OLO's **CONCLUSIONS**, and Chapter VII, outlines OLO's **RECOMMENDATIONS**, for changes to the laws and regulations governing the HPC, the staff resources supporting the HPC, and other aspects of HPC's operations.

Chapter VIII, **DEPARTMENT/AGENCY/COMMISSION COMMENTS**, contains the written comments received on a draft of this report.

* Mr. Cooper has since resigned from his position with the County Government, effective July 27, 1990.

B. Report Terminology

<u>Atlas</u>	<u>Locational Atlas and Index of Historic Sites in Montgomery County</u>
CLG	Certified Local Government
CPD	Division of Community Planning and Development in the County's Department of Housing and Community Development
DEP	Department of Environmental Protection
DHCD	Department of Housing and Community Development
HAWP	Historic Area Work Permit
HPC	Montgomery County Historic Preservation Commission
HPLF	Historic Preservation Loan Fund
LAP	Local Advisory Panel*
Master Plan	Master Plan for Historic Preservation
MHT	Maryland Historic Trust
M-NCPPC	Maryland-National Capital Park and Planning Commission

● When the County Council is exercising its authority circumscribed by the Regional District Act, it is technically called the District Council. For simplicity, this report consistently uses the term County Council to refer to the elected legislative body of Montgomery County.

● Unless otherwise indicated, all State law citations in this report reference the Annotated Code of Maryland (1989); and all County law citations reference the Montgomery County Code (1984), as amended.

● In accordance with the definitions outlined in County Code Chapter 24A, Historic Resources Preservation, a property listed on the Atlas is referred to as an historic resource; and a property designated on the Master Plan for Historic Preservation is referred to as an historic site.

* Pre-1989, the LAPs were called "Local Advisory Committees" or LACs.

III. BACKGROUND

A. Legislative History

1. The County's Authority to Adopt Local Laws Concerning Historic Preservation. The County's authority to adopt local laws and regulations concerning the preservation of historic resources derives from the State's delegation of land use power to the County in the Regional District Act. There is also mention of historic preservation in the Express Powers Act, the State's general delegation of powers to all charter counties in Maryland.

Montgomery County's planning and zoning powers are circumscribed by the Regional District Act, Article 28 of the Annotated Code of Maryland. The Regional District Act grants certain local planning and zoning authority to the County Councils of Montgomery and Prince George's Counties; the County Executives of Montgomery and Prince George's Counties; and the Maryland-National Capital Park and Planning Commission (M-NCPPC), a ten-member commission composed of the five members of the Montgomery County Planning Board and the five members of the Prince George's County Planning Board.

On May 24, 1973, the Regional District Act was amended to authorize the M-NCPPC to make and adopt and, from time to time, amend a Master Plan for Historic Preservation to:

. . . identify and designate sites, structures with their appurtenances and environmental settings, or districts having historical, archaeological, architectural, or cultural value. (1973 Maryland Laws, Chapter 848)

This plan designating historic sites is considered a "functional master plan" that amends the General Plan for the Maryland-Washington Regional District.* As a functional master plan, the Master Plan for Historic Preservation must be prepared and adopted in accordance with procedures outlined in State and County law; these procedures are described in more detail later in this report.

In addition to authorizing the adoption of a Master Plan for Historic Preservation, the Regional District Act authorizes the County Councils of Montgomery and Prince George's counties to provide by ordinance:

* First adopted in 1964, the General Plan is a comprehensive plan required by State law for the physical development of Montgomery County. In broad terms, the General Plan establishes policy guidelines for land use, transportation, conservation, open space, sewer and water systems, employment, and housing; and indicates areas suitable for residential purposes, business or industry, agriculture, open space, recreation, and community facilities.

. . . regulations for the protection, preservation, and enhancement of sites, structures with their appurtenances and environmental settings, or districts of historical, archaeological, architectural, or cultural values designated on the adopted and approved General Plan. (1973 Maryland Laws, Chapter 848)

The Regional District Act provides that the Master Plan for Historic Preservation may include sites, structures with their appurtenances and environmental settings located in municipalities not subject to the jurisdiction of M-NCPPC, with the consent of the governing body of that municipality. In Montgomery County, this language pertains to municipal corporations that, under State law, have zoning authority and authority to establish their own Historic District Commissions.*

Two years after explicit authority related to historic preservation was added to the Regional District Act, the General Assembly amended the Express Powers Act to add Section 5(BB), titled "Historic and Landmark Zoning and Preservation". This section, enacted during the 1975 session of the General Assembly, specifies that, in addition to any existing charter provision or local law providing for planning and zoning, all charter counties in Maryland are authorized to: "enact laws generally for historic and landmark zoning and preservation," and to "enact such laws to be administered generally by an Historic District Commission, and to provide for appeals."

2. Events Leading to the Adoption of the Master Plan for Historic Preservation and Historic Preservation Ordinance. This section summarizes the major events during the 1970's that preceded the adoption of the County's Master Plan for Historic Preservation and historic preservation ordinance in July 1979.

• The Council appointed the Montgomery County Historical Review Committee. In June 1973, the County Council adopted Resolution 7-1259 to establish the County Historical Review Committee, composed of five members: the Director of the County's Department of Libraries, a representative of the Montgomery County Historical Society, and three non-governmental members with expertise in historical research. This Committee was directed to oversee the development of a written history of the County, to determine the number of historical resources in the County, and to study approaches for preserving them. The Historical Review Committee's end product was a book, A Grateful Remembrance, the Story of Montgomery County, Maryland, published jointly in 1976 by the County Government and the Montgomery County Historical Society.

* See Section F of this chapter (page 11) for further information about the application of historic preservation laws in municipalities.

● The Planning Board directed staff to prepare an inventory of historic resources. In September 1973, the Montgomery County Planning Board directed M-NCPPC staff to prepare an inventory of all historic resources in the County. The Montgomery County Parks Department staff assembled this index between 1973 and 1976. The end product, titled The Locational Atlas and Index of Historic Sites in Montgomery County, published in October 1976, listed approximately 1000 historic resources and districts located throughout the County.

● The Planning Board appointed the Montgomery County Advisory Committee on Historic Sites. In September 1977, the Planning Board publicly expressed its concern about "the rapid loss of historic resources through development", and the lack of a method in the County for incorporating the protection of historic resources into the planning process. To address these concerns, the Planning Board appointed an Advisory Committee on Historic Sites, composed of 14 citizens and one Planning Board member, who served in an ex-officio capacity. This Advisory Committee was charged with the tasks of: developing a Master Plan of Historic Sites and Districts for the County; and drafting an ordinance for the regulation and preservation of historic sites placed on the Master Plan.

M-NCPPC provided staff support for the Advisory Committee, with additional professional assistance provided by Sugarloaf Regional Trails, Inc. The Committee's work was financed in part by federal grants made available through the Maryland Historical Trust for survey and planning activities, under the provisions of the National Historic Preservation Act of 1966.

● The Council placed a moratorium on the demolition or substantial alteration of Atlas resources. In January 1978, the County Council adopted Bill 41-77, Preservation of Historic Sites, to place a moratorium on the demolition or substantial exterior alteration of all resources identified on the Atlas. The intent of the moratorium was to safeguard the County's identified historic resources until the Advisory Committee on Historic Sites completed its work, and a comprehensive approach to historic preservation in the County was in place. Bill 41-77 was enacted with a sunset date of July 1, 1980.

● The Advisory Committee on Historic Sites completed its work. The result of the Advisory Committee's work was a draft of the County's Master Plan for Historic Preservation and a draft historic preservation ordinance. On April 11, 1979, the Planning Board transmitted to the Council and County Executive a formal Preliminary Draft of the Master Plan; and on April 17, 1979, the Council approved introduction of Ordinance 9-4, which proposed to create County Code Chapter 24A, Historic Resources Preservation.

The Planning Board and Council conducted a joint public hearing on May 21, 1979, and joint worksessions on June 1 and June 29, 1979. Based upon the public hearing and worksessions, a number of revisions were made to both the proposed ordinance and the Preliminary Draft; and on July 16, 1979, the Planning Board transmitted to the Council and the County Executive the Final Draft Master Plan for Historic Preservation.

● The Council takes final action. On July 24, 1979, the Council enacted Ordinance 9-4 to create County Code Chapter 24A, Historic Resources Preservation, and adopted the County's first Master Plan for Historic Preservation. On September 12, 1979, the Master Plan was formally adopted by the M-NCPPC as an amendment to the General Plan.

B. Summary of the Master Plan for Historic Preservation and Historic Preservation Ordinance Adopted in July 1979

1. The Stated Purpose. The Master Plan for Historic Preservation and Chapter 24A, Historic Resources Preservation, were adopted in July 1979 as complementary measures; together, they constituted a comprehensive approach to preserving County sites identified as having historical, archaeological, architectural, and/or cultural value. Chapter 24A requires the preparation and adoption of a Master Plan for Historic Preservation, and the Master Plan in turn calls for the enactment of a County preservation ordinance.

The purpose of the Master Plan, as stated in its introduction, is to:

. . . provide a rational system for evaluating, protecting, and enhancing Montgomery County's heritage for the benefit of present and future County residents. By integrating the protection of important historic resources into the planning process, and by developing a range of incentives and educational programs, the Plan provides a means to augment the County's attractiveness as a place to live and work, and as a place with a visible heritage.

Similarly, the intent of Chapter 24A, Historic Resources Preservation, as stated in the opening section of the ordinance is to:

. . . provide for the identification, designation, and regulation, for purposes of protection, preservation and continued use and enhancement, of those sites, structures with their appurtenances and environmental settings, and districts of historical, archaeological, architectural, or cultural value. . . (and) to preserve and enhance the quality of life in the County, safeguard the historical and cultural value of the County, strengthen the local economy, stabilize and improve property values in and around such historic areas, foster civic beauty, and to preserve such sites, structures, and districts for the education, welfare, and continued utilization and pleasure of the citizens of the County, the State of Maryland, and the United States of America. (Section 24A-1. Purpose)

2. Summary of the Master Plan. The Master Plan for Historic Preservation, as adopted by the Council in July 1979, consisted of five chapters plus appendices.

The Master Plan summarized the County's history of development and architecture, reviewed the status of the County's historic resources, and identified how current (i.e., 1979) plans and policies at the County and municipal levels affected historic resources. The Master Plan proposed that the County implement a "system to protect and enhance the County's heritage", to include:

- Creating an Historic Preservation Commission charged with the responsibility to see that, "the historic resources in the County are evaluated and means for safeguarding them are undertaken;"
- Using existing and proposed government planning, regulatory, and administrative devices to promote historic preservation; and
- Developing a broad public education program.

In addition the Master Plan listed historic sites in the County to be designated for protection by the County's preservation ordinance; and contained a proposed Design Guidelines Handbook, intended for use as a guide for new design, preservation, and restoration of historic sites in the County.

3. Summary of Ordinance 9-4. Chapter 24A, Historic Resources Preservation, as enacted by Ordinance 9-4:

- Directed that a Master Plan for Historic Preservation be prepared, and outlined criteria to be used in considering historic resources for designation on the Master Plan;
- Established an Historic Preservation Commission (HPC), assigned the HPC specific powers and duties, and outlined the standards and procedures for the issuance of Historic Area Work Permits;
- Established a process for handling cases of demolition by neglect, defined as historic sites or resources that are deteriorating due to the failure of the owner to provide necessary maintenance;
- Established a process for handling applications to demolish or substantially alter historic resources identified on the Atlas, but not yet evaluated to determine whether they should be placed on the Master Plan; and
- Established penalties for violations of Chapter 24A.

The structure and responsibilities of the HPC, and details of Chapter 24A are discussed more fully in Chapter IV of this report.

D. Relevant Amendments to County Law Since 1979

Amendments to the County Code enacted since 1979 that affect the work of the Historic Preservation Commission and the provisions of Chapter 24A, Historic Resources Preservation, are summarized below in chronological order.

● October 1982: Bill 42-82 establishes a uniform system of fines, procedures for enforcement, and civil penalties for violations of the County Code. As part of this omnibus bill, violations of Chapter 24A are classified as "Class A" violations, resulting in a civil penalty of \$250 per day for initial offenses, and \$500 per day for repeat offenses.

● June 1984: Bill 1-84 adds a new article, "Tax Credit for Historic Preservation," to Chapter 52, Taxation. This law establishes a tax credit for work performed with an Historic Area Work Permit approved by the HPC, or for ordinary maintenance on historic sites that costs more than \$1,000 and is determined by the HPC to have, "historic, architectural, or cultural value." The tax credit is equal to ten percent of the amount expended on restoration and/or preservation of the historic property, and is credited towards the taxpayer's real property tax bill.*

● June 1984: Bill 68-83 amends Chapter 56, Section 1, "Rehabilitation Loan Fund", to make owners of historic structures or properties eligible for loans from the Rehabilitation Loan Fund to rehabilitate their property. The law provides that such loans must be approved by the HPC.**

● July 1988: Bill 15-88 amends Chapter 24A, to establish an historic preservation easement program. Under this program, the owner of an historic site may offer the County a preservation easement, subject to HPC's recommendation and the County Executive's approval. In addition, Bill 15-88 authorizes the County to share preservation easements with the Maryland Historical Trust.***

* Executive Regulation 122-85, "Administrative Guidelines for Real Property Historic Preservation Tax Credit," went into effect with Council approval on December 17, 1985; this regulation was reviewed and re-issued as Executive Regulation 35-86, effective June 1, 1987. See page 42 for more about use of the tax credit.

** Executive Regulation 115-85, "Administrative Guidelines for the Historic Preservation Loan Fund", were approved by the Council on March 19, 1985. See page 43 for more about the use of this fund.

*** See page 43 for more about the easement program.

● September 1989: Ordinance 11-59 amends Chapter 24A to: change the appeals body for HPC decisions on Historic Area Work Permits from the Circuit Court to the County Board of Appeals; require the HPC to adopt method (2) executive regulations, for administration of its responsibilities; and modify certain hearing requirements and deadlines for handling applications to demolish or substantially alter resources listed on the Atlas.

October 1989: Bill 13-89 extends the availability of the County's historic preservation tax credit (see description of Bill 1-84, enacted in June 1984) to property owners in municipalities that have the authority to establish their own Historic District Commissions, pursuant to authority granted in State law.

E. Provisions in the County's Zoning Ordinance

In addition to the sections of County law summarized above, Chapter 59, Zoning, contains the following provisions regarding the preservation of historic sites:

● Section 59-A-6.2. Historic Site Preservation, establishes a procedure whereby developers who desire to preserve an historic site may apply to the Planning Board for a density transfer from that site to an adjoining property, provided that the transfer is from a tract of lower density to a tract of higher density, subject to certain conditions. This law further permits the Planning Board to enter into a contract with a developer requesting such a density transfer that specifies the future uses that would be permitted for the specific site.*

● Section 59-D-2. Project Plan for Optional Method of Development. CBD Zones. Section 59, establishes a procedure whereby the existing 20 percent public use space requirement for an Optional Method Project may be transferred to include more than one lot, provided that the project will, "preserve an historic site, building, structure, or area". This ordinance was enacted to provide a method for large retail or residential projects to preserve historic sites as a way to meet public use space requirements.**

* This provision was enacted by ZTA F-807 in August 1972, and amended by ZTA 75020 in February 1976; according to M-NCPPC staff, it was used one time soon after its original passage.

** This provision was enacted by ZTA 87028 on March 15, 1988, and according to M-NCPPC staff, has not been used to date.

F. The Application of County Preservation Laws in Municipalities

While the authority granted to the County under the Regional District Act applies to much of the County, the following seven municipalities have their own zoning authority: Barnesville, Brookeville, Gaithersburg, Laytonsville, Poolesville, Rockville, and Washington Grove. State law, (Article 66B), empowers these municipal corporations to establish their own Historic District Commissions, and to pass local laws to protect historic resources within their jurisdiction.

Table 1 (page 11a) shows which of the seven municipal corporations not covered by the Regional District Act have opted to be covered by the County's preservation law, and which have established their own Historic District Commissions. The record indicates that only Brookeville has opted to be covered by Chapter 24A; and only Gaithersburg and Rockville have established their own Historic District Commissions.

Chapter 24A applies to the remaining portion of the County covered by the Regional District Act; this includes the jurisdictions of Chevy Chase Village, Chevy Chase Section 3, Chevy Chase Section 5, the Town of Chevy Chase, Garrett Park, Glen Echo, Kensington, Martin's Addition, Somerset, and Takoma Park. These municipalities, which are under the Regional District Act, can control certain aspects of historic preservation through their housing and building codes. In addition, these municipalities have the authority to review and comment on nominations of historic resources to the County's Master Plan for Historic Preservation as well as to the National Register of Historic Places.

G. The Maryland Historical Trust, the Certified Local Government Program and the National Register of Historic Places

1. The Maryland Historical Trust (MHT). The MHT is an agency established by State law charged with conducting the State's historic preservation activities, including those assigned to the State by federal law. The Director of MHT is appointed by the Governor as the State's Historic Preservation Officer. MHT is administratively located within the Maryland Department of Housing and Community Development.

The MHT is responsible for surveying historic resources and districts for listing on the National Register of Historic Places and the Maryland Inventory of Historic Sites.* MHT can acquire and hold real property and easements for preservation purposes. MHT also distributes federal and state funds made available for preservation projects.

* Resources listed on the County's Atlas are included on the Maryland Inventory of Historic Sites.

Table 1

Applicability of Chapter 24A in Municipalities
Not Covered by the Regional District Act

<u>Municipality</u>	<u>Municipality Has Opted to be Covered by Chapter 24A, Historic Resource Preservation</u>	<u>Municipality Has Own Historic District Commission</u>
Barnesville	No	No
Brookeville	Yes	No
Gaithersburg	No	Yes
Laytonsville	No	No
Poolesville	No	No
Rockville	No	Yes
Washington Grove	No	No

Source: Montgomery County Municipal League chart indicating application of County laws in municipalities, November 1989.

2. The Certified Local Government Program. Local governments that meet federal standards established by the Department of Interior, as well as standards established by the MHT, are eligible to receive matching funds for preservation activities through the "Certified Local Government (CLG)" program. In 1985, Montgomery County became the first jurisdiction in Maryland eligible for CLG funding.

Under standards established by the Department of Interior in 1984, to receive CLG funds, a local government must:

- Enforce state or local legislation for the designation and protection of historic resources;
- Have a qualified historic preservation review commission established by state or local legislation;
- Maintain a system for the survey and inventory of historic properties; and
- Provide for adequate public participation in local historic preservation programs, including the process of recommending properties for nomination to the National Register.

To become a CLG in Maryland, local governments must also meet additional standards established by MHT. State CLG standards include a number of requirements related to the structure and responsibilities of the local historic preservation commission. Specifically:

- The local historic preservation commission must have at least five members, of which a minimum of two must be qualified (according to State criteria) in architecture, history, architectural history, or archaeology;
- Each member of the local historic preservation commission must attend at least one MHT-approved informational or educational meeting annually;
- The local historic preservation commission must review and render decisions upon any proposed alterations, relocations, proposed demolitions, or new construction on historic sites designated for protection under local law; and
- The decisions by the local historic preservation commission on alterations to historic sites must be binding upon applicants, although the local statute must also provide for an appeal of the Commission's decision.

As a local government that meets CLG standards, the County is eligible to apply for "pass through" federal funds allocated to CLGs in Maryland by MHT. The MHT awards matching grants to CLG applicants on a competitive basis.*

3. The National Register of Historic Places. The National Register of Historic Places, established in 1966, is a list of public and private historic resources of federal, state, and/or local significance. Properties may be nominated to the National Register by the HPC, the County Government, or individual citizens. In Maryland, the process of designating properties on the National Register is managed by the Maryland Historical Trust; and concurrence of the National Park Service and the U.S. Department of Transportation is required.

Listing on the National Register does not regulate the use of property or otherwise prevent demolition or alteration. However, when a property listed on, or eligible for inclusion in, the National Register might be destroyed or damaged by an undertaking involving federal funds, licensing, or federal approval, the project must be reviewed by the MHT and the federal Advisory Council on Historic Preservation. The comments of these bodies are not binding on the federal agency or the applicant for federal assistance.

Sites listed on the National Register, similar to sites designated on the County's Master Plan, are eligible to apply for financial assistance from a number of sources to include: matching grants from the MHT; federal income tax credit for the certified rehabilitation of income-producing buildings; and State income tax deductions for the cost of restoration or rehabilitation.

IV. EVALUATION

This chapter is organized as follows:

Section A, Overview of Statutory Responsibilities, outlines the range of regulatory, advisory, and administrative duties assigned by law to the HPC.

Section B, Commission Structure, examines the composition of the HPC, the record of HPC appointments, HPC's use of committees, compensation of HPC members, and the Local Advisory Panels.

Section C, Procedures and Recordkeeping, reviews HPC's efforts to develop written procedures and guidelines, and assesses the maintenance of HPC's records.

Section D, Workload, provides an overview of HPC's workload since 1980.

* See page 49 for more about CLG funds received by the County.

Sections E through J describe and evaluate how the major statutory functions of the HPC have been performed during the past ten years:

- Evaluating historic resources for Master Plan designation (Section E);
- Acting upon applications for Historic Area Work Permits (Section F);
- Reviewing building permit applications for work on Atlas resources (Section G);
- Investigating and enforcing demolition by neglect cases (Section H);
- Providing information and public education materials on historic preservation (Section I); and
- Administering historic preservation tax credit, grant, easement, and loan programs (Section J).

Section K, Staff Support, reviews the history and current levels of staff support provided to the HPC and related historic preservation activities, and analyzes a number of staffing issues.

A. Overview of Statutory Responsibilities

By law, the responsibilities of the HPC are the same today as they were when the HPC was established in 1979. County law (Section 24A-5) assigns the HPC a broad range of powers and duties, which encompass specific adjudicatory, advisory, and administrative responsibilities.

HPC's adjudicatory responsibilities are:

- To act upon applications for Historic Area Work Permits; and
- To serve as the appellate body for citations issued by the County under the demolition by neglect provisions of Chapter 24A.

HPC's advisory responsibilities are to recommend to the Planning Board, County Executive and/or County Council concerning:

- The designation of historic sites on the Master Plan for Historic Preservation;
- Subdivision proposals that affect an historic site or resource;

- Programs and legislation concerning historic preservation; and
- Updates to the Locational Atlas and Index of Historic Sites.*

HPC's administrative responsibilities extend to both program administration and internal Commission business. In the program administration area, the HPC responsibilities are:

- To administer the historic preservation easement program and any revolving funds or grant programs to assist in historic preservation; and
- To serve as a clearinghouse for information on historic preservation, specifically to provide information and educational materials to the public and to undertake activities to advance the goals of preservation in the County.

In terms of internal administration, the HPC's responsibilities are:

- To appoint members to Local Advisory Panels to assist and advise the Commission on the performance of its functions;
- To employ consultants or other temporary personnel as needed; and
- To promulgate method (2) executive regulations for the proper transaction of its business.

A recurrent question posed by many of those interviewed during the course of this evaluation was whether it is unique to find an adjudicatory board also assigned other types of duties. A comparison of HPC to other adjudicatory boards and commissions in the County indicates that a number of others are assigned, similar to HPC, both adjudicatory and advisory responsibilities, e.g., Animal Matters Hearing Board, Landlord-Tenant Commission, Sign Review Board.

It is more unusual for an adjudicatory board to also be assigned, by law, a significant program administration and public education responsibility. Similar assignments are, however, found with the Ethics Commission, which in addition to performing a quasi-judicial role is also responsible for educating the public and providing information about the County's ethics laws; and with the Planning Board, which in addition to performing advisory and regulating functions, also administers programs and devotes resources to public education activities.

* Section 24A-5(k) also authorizes the HPC to: "Delineate the extent of appurtenances and environmental setting associated with an historic site or resource." Although the law does not specify what decision process this power pertains to, in recent years, this authority has been interpreted to be part of HPC's advisory role with respect to designating properties on the Master Plan and approving subdivision applications that affect an historic site or resource.

B. Commission Structure

1. General Description. The basic structure of the Historic Preservation Commission has not been changed since the original ordinance to establish the HPC was enacted in 1979:

- **Membership:** The HPC has nine members, appointed by the County Executive and confirmed by the Council.
- **Qualifications:** Each member must be a County resident. The four fields of history, architecture, preservation, and urban design must be represented "by a minimum of one member qualified by special interest, knowledge, or training." The remaining members shall, "to the extent possible, be selected to represent the geographical, social, economic, and cultural concerns of the residents of the County."
- **Officers:** The Chair and Vice-Chair of the HPC are appointed by the County Executive, with consideration given to the recommendation of the Commission.
- **Terms:** Commissioners serve three-year staggered terms, and members continue to serve until their successors have been appointed.
- **Removal:** A commissioner may be removed "for cause" from the HPC by the County Executive.
- **Compensation:** Commissioners receive no compensation, but may be reimbursed for actual expenses incurred in performance of their duties.

2. The Record of Appointments. Individuals appointed to the HPC since 1983 represent a broad cross-section of County talent and expertise. Table 2 (page 16a) and Table 3 (page 16b) show the expertise represented on the HPC, and the geographic distribution of HPC members by year since 1983.*

The law, as currently written, requires that, "the four fields of history, architecture, preservation, and urban design shall be represented by a minimum of one member qualified by special interest, knowledge, or training." In practice, this language has been interpreted as requiring four separate individuals to be appointed, i.e., one expert in each of the four fields listed. (As currently written, the law could also be interpreted as allowing one person to fulfill more than one requirement, e.g., allowing an architectural historian to fulfill both the requirements for expertise in architecture and expertise in history.)

* Resumes of HPC appointees prior to 1983 were not available.

Table 2

Expertise of HPC Members Appointed
1983 - 1990

<u>Year</u>	<u>Number of Commissioners Representing Each of the Four Fields of Expertise Required by Law</u>				<u>Expertise of Other Commissioners*</u>
	<u>History</u>	<u>Architecture</u>	<u>Preservation</u>	<u>Urban Design</u>	<u>Other</u>
1983	1	1	2	0	4 Attorneys, 1 Police Officer
1984	1	1	2	0	4 Attorneys, 1 Police Officer
1985	1	1	3	1	3 Attorneys
1986	3	2	2	0	1 Attorney, 1 Horticulturist
1987	2	2	3	0	1 Horticulturist, 1 Journalist
1988	2	2	2	0	1 Horticulturist, 1 Builder, 1 Journalist
1989	2	2	3	0	1 Horticulturist, 1 Builder, 1 Journalist
1990	1	1	2	0	1 Horticulturist, 1 Builder, 1 Real Estate Agent/ retired Police Officer, 2 Attorneys

* The law requires the other HPC members appointed to represent the geographical, social, economic, and cultural concerns of the residents of the County.

Source: Resumes of HPC appointees, 1983 - 1990.

Table 3

**Geographic Distribution of HPC Commissioners
1983 - 1990**

POSTAL ADDRESS	1983	1984	1985	1986	1987	1988	1989	1990
Bethesda						1	1	1
Chevy Chase	1	1	1		1	1	1	1
Clarksburg	2	2	1					2
Gaithersburg			1	1	1	1	1	1
Garrett Park			1	1	1	1	1	
Germantown	1	1	1	1				
Kensington			1	2	1	1	2	1
Rockville	2	2	2	2	2	1	1	1
Silver Spring	1	1	1	1	2	3	2	2
Takoma Park	1	1		1	1			
Washington Grove	1	1						
No. of Commissioners Residing in Master Plan Site/District	1	1	1	0	1	2	2	4

Source: Resumes of HPC appointees, 1983 - 1990.

The data compiled in Table 2 indicate that the requirements for expertise on the HPC in the fields of history, architecture, and preservation have been met each year by at least one HPC member qualified by special interest, knowledge, or training. The requirement for expertise in the field of urban design, however, has been met only once during the past eight years, and this individual resigned after serving for only one year.

County law requires that HPC members not specifically appointed because of their expertise in history, architecture, preservation, or urban design should, to the extent possible, represent the geographical, social, economic, and cultural concerns of County residents. The record shows that:

- Other members appointed to the HPC during the past eight years have represented a variety of professions including law, horticulture, journalism, and real estate;
- HPC appointees have represented different parts of the County geographically; during the past decade, except for one year (1986), the HPC has included at least one Commissioner residing in either a Master Plan site or historic district; and
- Since 1983, there have been 16 men and nine women appointed to the HPC 1983; only two of the HPC appointees since 1983 have been racial minorities.

To date, no HPC member has been removed for cause. However, ten of the 25 citizens appointed to HPC between 1983 and 1990 resigned before their full three-year terms was completed. Interviews with a number of former HPC members indicate that the most common reason for resigning was that serving on the HPC was "too time consuming." One HPC member resigned because of a family illness, and another resigned because he was elected to a municipal council seat. One individual stated that his resignation was submitted in part because of frustrations with what was perceived as inadequate staff support for the Commission, and another resigned because the Council passed a resolution that prohibited County employees from serving on County boards and commissions.*

3. Compensation: A Comparative Perspective. Current law specifies that HPC members shall serve without compensation, but may to be reimbursed for actual expenses incurred in performance of their duties. Beginning this year, in accordance with standard procedures implemented for all boards, committees, and commissions staffed by Executive branch staff, HPC members have been provided with forms on which to submit for reimbursement for mileage, parking, and baby sitting expenses.

* This Council resolution (No. 10-560), adopted January 31, 1984, was later rescinded by another Council resolution (No. 11-108), adopted February 24, 1987.

The provision in Chapter 24A that specifies HPC members shall serve without compensation was, until enactment in October 1990 of Bill 46-90, "Boards, Committees, Commissions, and Advisory Councils," inconsistent with provisions contained in Chapter 2 of the County Code. Prior to passage of Bill 46-90, Chapter 2 defined four categories of County-appointed committees, (adjudicatory, licensing, program direction, and advisory), and stated that "members who serve in the adjudicatory category shall be compensated." As a commission that "adjudicates factual and legal matters," HPC fit the definition of an adjudicatory committee.

As part of Bill 46-90, the requirement that all adjudicatory committees be compensated was deleted. Specifically, Bill 46-90 eliminated the committee category system, and provided the County with greater discretion with respect to compensating committee members. As amended, Section 2-145 now provides that:

Unless a law expressly precludes compensation, the Council may establish compensation for members of a particular committee by an appropriation that funds a line item in the budget. An appropriation may establish levels of compensation by categories or subcategories of committees.

Chapter 2 is now consistent with the County's practice of compensating members of certain adjudicatory boards and not others. At present, members of some adjudicatory boards and commissions receive an established payment per meeting (e.g., Landlord-Tenant Commission, Human Relations Commission Panels), while others receive an established amount per year (e.g., Board of Appeals, Merit System Protection Board). In addition to HPC, other adjudicatory commissions that currently receive no compensation are: the Animal Matters Hearing Board, the Ethics Commission, and the recently created Commission on Common Ownership Communities. Bill 46-90 also phases out the current compensation for members of the Sign Review Board.*

Interviews with HPC members indicate that they each spend, on average, between 25-30 hours per month on Commission business; the HPC Chair spends an additional 20-25 hours per month preparing for meetings, drafting correspondence, and consulting with staff. A typical month for an HPC member involves two evening meetings of the full Commission, plus meeting preparation time, which includes reviewing written material and conducting site visits. HPC members also take turns representing the Commission at Planning Board and Council public hearings and worksessions, some of which take place during the day.

In addition to the routine workload, HPC members frequently put in extra time to, for example: meet in executive sessions to discuss and draft HPC decisions on complex cases; meet with staff to discuss procedures for processing HPC's work; and serve on HPC subcommittees appointed for special projects.

* During the legislative debate on Bill 46-90, the Council indicated its intent to direct the next Committee on Committees to analyze the issue of equitable compensation for members of County boards and committees.

4. HPC Committees. Current law does not empower the HPC to make decisions by committee, and therefore, all of HPC's decision-making is done by the Commission sitting as a whole.

At various times during the past decade, however, HPC committees have been formed for the purpose of working on discrete tasks, and making recommendations back to the full Commission. HPC committees, composed of one to four HPC members have been appointed for tasks such as:

- Reviewing grant applications;
- Drafting rules and procedures;
- Interviewing applicants for the DHCD staff position assigned to support the work of the HPC; and
- Interviewing candidates who have applied for appointment to the HPC.*

5. The Local Advisory Panels. Current law (Section 24A-5(d)) authorizes the HPC "to appoint members to local advisory panels to assist and advise the Commission on the performance of its duties."

In 1983, the HPC wrote procedures governing the role of "Local Advisory Committees" (LACs), and appointed LACs for the historic districts of Kensington, Capital View Park, Brookeville, Hyattstown, and the City of Takoma Park.** The number of members on each LAC ranged from five to nine, with at least one member qualified in history or architecture. Members were appointed for staggered three-year terms.

During most of the 1980s, the LACs performed a range of functions related mostly to Historic Area Work Permits (HAWPs).*** The Chair of the LAC was authorized to receive HAWP applications within the historic district, and to determine if the application was complete. LACs were authorized to hold review sessions on HAWPs and to encourage applicants to appear before them. The LACs made recommendations to the HPC on whether HAWP applications in their respective districts should be approved. Other duties of the LAC included: assisting with the research on historic properties; and helping to draft design review guidelines.

* The County Executive has traditionally requested that HPC provide recommendations on appointments.

** An amendment to designate an historic district in Takoma Park on the Master Plan is pending before the Planning Board.

*** For more information about the HAWP process, see pages 27-35.

During the Fall of 1989, acting upon advice of the Office of the County Attorney, the HPC revised the role of the LACs; in addition, the LAC in Takoma Park was disbanded. A draft executive regulation outlining a revised role of the LACs was written in November 1989. The regulation, which renames the advisory groups Local Advisory Panels (LAPs), proposes changes in procedures to clarify that LAPs are appointed to perform an advisory function only, that HAWP applications no longer are submitted to LAPs, and that applicants are not required to attend LAP meetings.

Some LAP members have reacted negatively to the proposed regulation. In particular, LAP members voice objection to no longer being able to accept HAWP applications at the local level, and feel that LAPs no longer have sufficient time to review HAWPs. LAP members had become accustomed to being the entry point for HAWPs, and feel they had served an important function by working closely with their neighbors early on in the process.

Comments from LAP members were obtained at a special retreat held between HPC and LAP members in February 1990. As of this writing the executive regulation regarding the role of the LAPs is in the process of being finalized, and is expected to be transmitted to the Council for final action before the end of the year.

C. Procedures and Recordkeeping

1. Written Procedures, Guidelines, and Regulations. Soon after the HPC convened its first meeting in January 1980, attention was given to establishing written procedures to outline how the Commission would accomplish its duties. In February 1980, the HPC formally adopted its first written Rules of Procedure. These Rules included application procedures for Historic Area Work Permits (HAWPs) and general meeting guidelines.

HPC's initial Rules of Procedure were formally amended only once by the HPC, and additional statements of Commission policy were set forth by separate resolutions adopted by the HPC at various times during the 1980's. The issues addressed in these resolutions are summarized in Table 4 (page 20a).

While the record evidences that the HPC has, since its inception, paid attention to establishing written procedures, one impression shared by many of those interviewed throughout this OLO study is that the HPC has few, if any, written procedures. Perhaps this perception is because the various resolutions constituting HPC's adopted procedures and guidelines have never been compiled into one document that is readily available to both Commissioners and members of the public. Another factor that has likely contributed to a perception that the HPC does not have written procedures is that the HPC has never adopted County-wide standards and guidelines for making decisions on HAWPs.

Table 4

Rules of Procedure, Commission Policy Statements,
and Guidelines Adopted by the Historic Preservation Commission
1980 - 1989

Subject	Date Adopted	Date(s) Amended	Highlights
Rules of Procedure	2/21/80	11/5/81	<ul style="list-style-type: none"> ● Established HPC procedures for officers, meetings, HAWP consideration and notification. ● 1981 amendment established procedures for advertisement of public appearances regarding HAWPs.
Ordinary Maintenance	3/27/80	5/21/81 9/31/81 3/7/85 7/21/88	<ul style="list-style-type: none"> ● Defined the types of projects which, as "ordinary maintenance", would not require a HAWP. ● 1985 amendment delegated authority to determine what constituted "ordinary maintenance" to DHCD staff and the LACs, "in an attempt to relieve the workload of the Commission."
Substantial Alteration	7/17/80	5/21/81 6/4/87	<ul style="list-style-type: none"> ● Established definition of "substantial alteration" of historic resources. This definition was used to review building permit applications for work on <u>Atlas</u> resources. ● This practice was discontinued in 1989 at the advice of the County Attorney's Office.
Historic Districts*	10/16/80	4/1/82	<ul style="list-style-type: none"> ● Specified that historic districts need not be contiguous by definition, and that age should be an important consideration. ● 1982 amendment redefined HPC's position on district boundaries.

(continued)

Subject	Date Adopted	Date(s) Amended	Highlights
HPC Participation	4/7/83	n/a	<ul style="list-style-type: none"> ● Provided guidelines to HPC members on effective participation in the Master Plan Amendment process.
Local Advisory Committees/Panels (LACs/LAPs)	5/83	4/84 4/88	<ul style="list-style-type: none"> ● Prior to 1989, the LACs served as the body for consideration of HAWP applications within historic districts; HAWPs were forwarded to the HPC with a recommendation by the LAC.**
Trees Located Along Rights-of-Way	6/21/84		<ul style="list-style-type: none"> ● Instituted policy regarding trees that have been moved along rights-of-way.
Historic Preservation Fund*	6/21/84	9/6/84	<ul style="list-style-type: none"> ● Established policy for HPC selection and staff administration of the Historic Preservation ("Mini-Grant") Fund.
Conflicts of Interest*	1/23/86	n/a	<ul style="list-style-type: none"> ● Policy concerning potential conflicts of interest.
Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*	2/5/87		<ul style="list-style-type: none"> ● Adopted Department of the Interior's standards for use in considering proposals affecting historic sites.

* Actual documents not located in DHCD or County Attorney's files; record of action was noted in HPC minutes.

** In November 1989, draft Executive Regulations proposed changing the role of the LACs (now known as "LAPs") in response to concerns raised by the County Attorney's Office over the legality of the pre-1989 arrangement.

Source: DHCD and County Attorney's historic preservation files, HPC minutes 1980-1989.

In September 1989, Chapter 24A was amended to require that the HPC adopt rules, regulations, and guidelines for the administration of its responsibilities in the form of method (2) executive regulations.* In November 1989, the HPC forwarded drafts of two executive regulations to the Office of the County Attorney and members of the Local Advisory Panels for review: one regulation deals generally with Commission procedures, and the other deals specifically with the role of Local Advisory Panels. These executive regulations, should be forwarded to the Council for action before the end of the year.

In contrast to the Rules of Procedure adopted in 1980, HPC's recently drafted executive regulations evidence greater similarity to regulations of other County adjudicatory boards. For example, the regulations address such issues as: allowable evidence, ex parte communications, cross-examination, and right to counsel. When adopted by the Council, these executive regulations will supersede any procedures previously adopted internally by the HPC.

2. Assessment of HPC's recordkeeping. Minutes of HPC's meetings have, with the exception of a brief period in late 1988 and early 1989, been well kept and serve as the best record of HPC's decisions during the past ten years. The minutes, which are maintained chronologically in binders, include records of HPC's decisions on HAWPs, and summaries of HPC's discussions of advisory matters, e.g., master plan designations, subdivision proposals. HPC's records of research conducted on individual historic resources are also well organized.

Substantial progress has been made during the past year to improve other records of HPC business, which were not consistently organized prior to 1989. Current DHCD staff characterize the pre-1989 records as having few "standard operating procedures." For example, file drawers were mislabeled, there was no cross-referencing between HAWP applications and the related photos and slides, and except for searching through every file, there was no tracking of whether an individual property had applied for and/or received more than one HAWP.

An effort is currently underway to organize all files by site and historic district. In addition, all HAWP applications since mid-1989 have been entered into a computerized database to allow for better tracking of workload and case histories.

* With method (2) executive regulations, the Council has 60 days to approve or disapprove by resolution the proposed regulations; if the Council has not acted within 60 days, then the proposed executive regulations are deemed approved.

D. Workload

This section provides an overview of HPC's workload since 1980. Sections E through J will then review in more detail how HPC performs its major adjudicatory, advisory, and administrative responsibilities.

1. Workload Data. Table 5 (page 22a) lists, by year, the number of Historic Area Work Permit (HAWP) applications, substantial alteration cases, and subdivision applications reviewed by the HPC since 1980. In addition, the table lists the number of proposed Master Plan sites researched each year.

The number of HAWP applications considered by the HPC steadily increased from 1980 through 1989. The increase in HAWP applications has paralleled the increase in the number of sites designated on the Master Plan during the past decade. The number of HAWP applications is likely to increase in future years, especially if proposed historic districts currently under review (e.g., Takoma Park, Garrett Park, Chevy Chase) are designated on the Master Plan.

Interviews with DHCD staff and HPC members indicate that, during the past ten years, the amount of Commission time needed to review HAWP applications has steadily increased. During the past year, it is estimated that consideration of HAWPs consumed 75 to 80 percent of the HPC's time.

Until August 1989, the HPC spent time discussing applications for building permits that affected historic resources listed on the Atlas. These applications were listed on the HPC's agenda as "substantial alteration cases." The number of substantial alteration cases considered by the HPC between 1984 and 1989 was a significant component of HPC's workload, ranging from 25-41 cases each year. As will be discussed later in this report, upon advice of the County Attorney, the HPC stopped discussing these substantial alteration cases in August 1989.

The number of subdivision applications reviewed by the HPC has ranged between three and 36 each year; and the number of proposed Master Plan sites evaluated each year by the HPC has ranged from 15 to 92. Between January 1980 and June 30, 1990, a total of 510 historic resources were reviewed by the HPC, which averages out to almost 50 a year.

A review of HPC's agendas and minutes indicate that in addition to the items listed on Table 5 (page 22a), the Commission has spent time on other matters, to include:

- Holding preliminary consultations with HAWP applicants; the number of preliminary consultations each year has ranged from one to six;
- Evaluating properties nominated for inclusion on the National Register of Historic Places;

Table 5

**Selected Historic Preservation Commission Workload Indicators
1980 - 1990**

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990*
HAWPs	4	9	4	10	28	22	21	43	55	76	66
Substantial Alterations	0	5	6	11	29	33	41	25	35	38	0
Subdivision Applications	8	10	3	8	7	10	16	14	36	14	20
Proposed Master Plan Sites	56	92	33	56	89	49	37	38	15	32	26

* Data for 1990 is projected based upon doubling workload data collected for the time period January 1 to June 30, 1990.

Source: HPC minutes and agendas, 1980-1987, 1988 (Jan-Sep), 1989, and 1990, and transcripts of HPC meetings 1988 (Oct-Dec).

- Administering the Preservation Grant Program, reviewing historic preservation tax credit applications, discussing the allocation of grant funds, and discussing a proposed public education program.

Commission time has also been consumed by internal administrative matters, e.g., developing procedures and policies, appointing members to Local Advisory Panels, and discussing the role of staff assigned to support the work of the HPC.

2. Number and length of HPC's meetings. The data outlined in Table 6 (page 23a) shows increases in both the number and length of HPC meetings during the past decade. The HPC met formally in public session at least 15 times each year 1980-1985, and met at least 19 times each year 1986-1989. If the number of meetings during the second half of 1990 continues at the rate for the first six months, the HPC will meet 24 times this year. The length of HPC meetings has also increased during the past ten years, currently averaging more than four hours.

It is important to note that the number of public HPC meetings does not include HPC worksessions held to discuss a particular issue or case, or HPC committee meetings. Interviews with DHCD staff and HPC members indicate that, during the past two years, Commissioners have each attended six to eight additional meetings to discuss HPC business. As discussed earlier in this report, HPC members report spending an average of 25-30 hours per month on HPC matters; the Chair devotes an additional 20-25 hours per month.

A review of HPC minutes indicates that Commissioner attendance at HPC meetings has, overall, been good. On average, seven of nine Commissioners are in attendance at HPC meetings. During 1989, a majority of Commissioners attended all 22 meetings held, and the highest number of meetings missed by any one Commissioner was six.

E. Evaluating Historic Resources for Master Plan Designation

1. Statutory Requirements. Section 24A-3 provides that the County shall prepare, adopt, and approve a Master Plan for Historic Preservation. Chapter 24A also outlines the criteria that shall be applied in considering historic resources for designation.

Section 24A-5 assigns the HPC with the responsibility to research historic resources, and to recommend to the Planning Board which ones should be designated as historic sites or historic districts on the Master Plan. In addition, the HPC is charged with recommending to the Planning Board updates to the County's inventory of historic resources, the Locational Atlas and Index of Historic Sites.*

* For background on the Atlas, see page 6.

Table 6

**Number and Length of
Historic Preservation Commission Meetings
1980 - 1990**

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990*
Number of Meetings	17	18	15	19	18	18	19	20	21	22	24
Total Hours	49	51	42	52	53	54	58	62	85	95	104
Average Length (Hr:Min)	2:45	3	2:45	3	3	3	3	3	4	4:15	4:20

* Data for 1990 is projected based upon doubling reported data collected for the time period January 1 to June 30, 1990.

Note: Data represents only formal public HPC meetings; it does not include HPC worksessions or committee meetings.

Source: HPC minutes and agendas, 1980-1987, 1988 (Jan-Sep), 1989, and 1990, and transcripts of HPC meetings 1988 (Oct-Dec).

As an amendment to the General Plan, the process of designating sites on the Master Plan for Historic Preservation must adhere to the procedures outlined in State and County law for all General Plan amendments. The steps in the designation process are summarized in Table 7 (page 24a).

2. Evaluating Historic Resources for Designation in Practice: General. Table 8 (page 24b) lists, by year, the number of historic resources listed on the Atlas reviewed by the HPC since 1980. The data show that the number of Atlas resources evaluated each year by the HPC ranged between 15 and 92, for a total of 510 Atlas resources evaluated during the past decade.

As shown on Table 9 (page 24c), of the 995 resources listed on the Atlas, 240 have been placed on the Master Plan, and 268 have been removed from the Atlas; 107 resources are "in process", and there remain 380 Atlas resources yet to be evaluated by the HPC.

During the early 1980's, research on historic resources was provided by the Office of the Park Historian. Since 1983, almost all research has been conducted by consultants on contract to DHCD; some research has been funded with Certified Local Government (CLG) funds.

The process of evaluating Atlas resources has taken a good deal longer than originally anticipated. At the time the County's first Master Plan for Historic Preservation was adopted, it was expected to take no longer than five years to evaluate the almost 1,000 resources listed on the Atlas.

The number of Atlas resources evaluated each year by the HPC has depended upon the availability of staff and funds for research, and the number of competing demands on the HPC's time. During the past three years, because a special staff effort has been made to integrate historic designations into area and sector master plans, the number of resources reviewed has also depended upon the Planning Board's approved master plan work schedule.

3. Length of Processing Time. Data collected on a sample of 80 Atlas resources confirm a commonly held perception that designating historic sites on the Master Plan is a lengthy process. Specifically, as shown on Table 10 (page 24d), the length of time between HPC's recommendation on an Atlas resource and the County Council's final decision has averaged between 848 days (2 years, 4 months) for sites designated on the Master Plan, and 1,348 days (3 years, 8 months) for resources removed from the Atlas.

The length of the Master Plan designation process is not out of line with the length of time that it has taken to complete some other General Plan amendments during the past decade. Amendments to the Master Plan for Historic Preservation appear to follow the pattern of other master plan amendments, that is, once a staff draft of the amendment has been introduced, the process tends to keep moving.*

* For additional information on how master plan amendments are approved, and data on the length of time to prepare master plan amendments, see OLO Report No. 88-4, The Preparation of Master Plans in Montgomery County.

Table 7

The Process of Amending
the Master Plan for Historic Preservation

- 1) The HPC researches historic resources and recommends to the Planning Board whether resources should be designated as historic sites or historic districts on the Master Plan for Historic Preservation.
- 2) M-NCPPC staff prepares a Preliminary Draft Master Plan Amendment that outlines the historic resources being recommended for designation on the Master Plan for Historic Preservation, and identifies the resources recommended for removal from the Atlas. The Planning Board holds a public hearing on the proposed Amendment, for which notice must be given within 30 to 60 days prior to the date of the hearing.
- 3) Following closure of the record, the Planning Board holds a worksession on the proposed Amendment. Upon completion of the worksession process, the Planning Board approves a Final Draft Amendment and transmits it to the County Executive, with a copy to the County Council.
- 4) Within 60 after receiving the Final Draft Amendment, the County Executive submits to the Council the Final Draft Amendment, indicating any changes and a statement of the reasons for each change.
- 5) After receiving the Final Draft Amendment, the Council has 180 days within which to approve, modify, or disapprove the amendment. Within 45 days, the Council sets a public hearing, for which public notice must be given 30 to 60 days before the date of the hearing. Following closure of the public record, the Council is required to hold a worksession on the Final Draft Amendment.
- 6) If the Council modifies the Final Draft Amendment, it must be returned to the County Executive, who then has 10 days in which to approve or disapprove the modified Amendment. If the County Executive disapproves the Amendment, it must be returned to the Council with written reasons; the Council then has ten days within which to override the Executive's veto by a vote of five members.
- 7) Within 60 days following the approval of the Final Draft Amendment, the Planning Board and then the full M-NCPPC formally adopt it as an amendment to the Master Plan for Historic Preservation; once formally adopted, the amendment is considered an amendment to the General Plan for the Maryland-Washington Regional District.

* The County Council will expand to nine members in December 1990; an override of the Executive's veto will then take six votes.

Table 8

Number of Atlas Resources Evaluated
by the Historic Preservation Commission
1980 - 1990*

1980	56
1981	92
1982	33
1983	56
1984	89
1985	49
1986	37
1987	38
1988	15
1989	32
1990	<u>13</u> **

Total Number of Atlas Resources
Evaluated by HPC 1980-1990: 510

* In addition, 61 Atlas resources were recommended for inclusion in the Master Plan for Historic Preservation as part of the original 1979 Master Plan.

** Includes data on master plan evaluations completed through June 27, 1990.

Source: HPC minutes and reports to the Maryland Historical Trust.

Table 9

Status of Historic Resource Designations
As of June 30, 1990

Number of resources on <u>Locational Atlas</u>	995
Number of resources either placed on the Master Plan for Historic Preservation or removed from the <u>Atlas</u> *	508
Number of resources in process**	107
Number of resources yet to be evaluated by the HPC	380

* As of June 30, 1990, 240 resources (including 13 districts) have been placed on the Master Plan for Historic Preservation, and 268 resources have been removed from the Atlas.

** This includes resources that have already been reviewed by the HPC, and are either awaiting Planning Commission, County Executive, and/or Council action.

Source: M-NCPPC files.

Table 10

**Processing Time for Sample of Atlas Resources
Considered for Designation in the Master Plan for Historic Preservation
1980 - 1989**

- Atlas Resources Designated for Inclusion in the Master Plan
(sample size = 40 resources)

Average Processing Time (in days)

	From HPC Recommendation to Planning Board Recommendation	From Planning Board Recommendation to County Council Decision	Total Processing Time
Days	563	285	848

- Atlas Resources Not Designated for Inclusion in the Master Plan
(sample size = 40 resources)

Average Processing Time (in days)

	From HPC Recommendation to Planning Board Recommendation	From Planning Board Recommendation to County Council Decision	Total Processing Time
Days	848	482	1,348

Source: M-NCPPC records of HPC and Planning Board recommendations, and County Council decisions, 1980 - 1989.

The most time consuming part of the designation process has been between the time the HPC has completed its recommendation, and the time the Planning Board forwards its recommendation as a formal Final Draft Amendment. Once a Final Draft Amendment is forwarded from the Planning Board, there are statutory time limits established for the County's Executive and County Council's review; i.e., the County Executive has 60 days, and the Council has 180 days.

The sample data also show that resources removed from the Atlas have taken significantly longer to process than resources designated as historic sites on the Master Plan. The practical explanation for this is that, in order to use the Council's time most efficiently, M-NCPPC staff have tended to compile resources recommended for removal from the Atlas and send them forward as a package. It should also be noted that although State and County law make it clear that County Executive and Council action is required to designate an Atlas resource on the Master Plan, the law is unclear as to whether Executive and Council action is similarly required to remove properties from the Atlas.

4. Correlation of HPC's Recommendation on Designation with Final Action. Although examples can be found of disagreement among the parties, the record shows that final Council action on the designation of historic sites and districts on the Master Plan has, in the great majority of cases, concurred with recommendations by the HPC, the Planning Board, and the County Executive.*

Table 11 (page 25a) summarizes the recommendations and action taken on the 13 historic districts designated on the Master Plan as of June 30, 1990. The data indicate that all of the historic districts recommended by the HPC for designation were placed on the Master Plan; and in a majority of cases, the HPC, the Planning Board, the County Executive, and the Council all concurred about the boundaries of the district. There is only one example (the Germantown Historic District), where final Council action on the boundaries of the historic district can be characterized as significantly modifying the original recommendation of the HPC.**

Data collected on the sample of 80 individual Atlas resources either removed from the Atlas or designated on the Master Plan between 1980 and 1989 indicate that:

* The formal review by the County Executive of all master plan amendments has only been required by law since 1986 changes to the Regional District Act provided the County Executive with the authority to participate fully in the preparation and review of master plans, which includes the authority to veto Council decisions on master plans.

** As of June 30, 1990, there was only one example, the pending amendment to designate the Cedar Grove Historic District, where the County Executive's recommendation on district designation differed from the recommendation of the Planning Board.

Table 11

Summary of Action on Designation of Historic Districts

<u>District Recommended by HPC (year)</u>	<u>Planning Board Recommendation</u>	<u>County Executive's Recommendation</u>	<u>County Council Action</u>
N/A	National Seminary (1979) Proposed by Planning Board	N/A	Adopted as recommended by HPC and Planning Board
Brookeville (1980)	Adopt as recommended by HPC	N/A	Adopted as recommended by HPC and Planning Board
Capitol View (1980)	Adopt as recommended by HPC	N/A	Adopted as recommended by HPC and Planning Board
Polychrome Houses (1985)	Adopt as recommended by HPC	N/A	Adopted as recommended by HPC and Planning Board
Boyds (1985)	Adopt as recommended by HPC	N/A	Adopted as recommended by HPC and Planning Board
Kensington (1986)	Adopt as recommended by HPC	N/A	Adopted district boundaries as recommended by HPC and Planning Board, but excluded area of contemporary houses from regulation
Hyattstown (1987)	Adopt as recommended by HPC	N/A	Adopted as recommended by HPC and Planning Board
Sandy Spring (1987)	Two lots excluded; one incorporated as an individual site	Adopt as recommended by HPC and Planning Board	Adopted as recommended by Planning Board and County Executive
Germantown (1988)	One lot excluded; one lot incorporated as an individual sites	Adopt as recommended by Planning Board	Reduced proposed district boundaries; incorporated three lots as individual sites
Beallsville (1989)	Expanded boundaries to include six additional lots and part of another	Adopt as recommended by Planning Board	Adopted as recommended by Planning Board and County Executive
Somerset (1990)	Six lots excluded	Adopt as recommended by Planning Board	Adopted as recommended by Planning Board and County Executive
Glen Echo (1990)	Adopt as recommended by HPC	Adopt as recommended by HPC and Planning Board	Adopted as recommended by HPC, Planning Board and County Executive
Clarksburg (1990)	Adopt as recommended by HPC	Adopt as recommended by HPC and Planning Board	Adopted as recommended by HPC, Planning Board, and County Executive except for one structure

Source: M-NCPPC files; data reflects action through June 30, 1990.

- 95 percent of Atlas resources designated as historic sites on the Master Plan by the Council were positively recommended for designation by the HPC, the County Executive, and the Planning Board; and
- 88 percent of resources removed from the Atlas were also recommended for removal by the HPC, Planning Board, and County Executive.

Out of the 80 resources examined, there were only three examples of resources recommended by HPC for inclusion on the Master Plan that were not also recommended by the Planning Board for inclusion; and only one example of a resource that was not recommended by the HPC for inclusion on the Master Plan, but was recommended for designation by the Council. In every case reviewed, the County Executive's recommendation concurred with that of the Planning Board.

4. Public Perceptions. The two most common problem areas noted by those interviewed about the process of designating historic sites on the Master Plan were: the continued existence of a large number of resources on the Atlas; and the criteria in the law for determining whether historic resources should be designated.

a. Properties remaining on the Atlas. As noted above, the process of evaluating Atlas resources has taken a good deal longer than originally anticipated. The continued existence of a relatively large number of historic resources on the Atlas poses a number of problems.

Properties listed on the Atlas are, in essence, placed in "limbo" to the extent that after being reviewed by the HPC, Planning Board, County Executive, and Council, the properties may or may not be eventually designated on the Master Plan. It is argued that listing a property for an indefinite period of time on the Atlas places a restriction on the owner's use of that property.

Although concerted efforts have been made at various times during the past decade to inform all owners of properties listed on the Atlas about the status of their properties, there are examples of individuals who have purchased an Atlas resource without knowing that the property was listed on the Atlas and subject to certain provisions of Chapter 24A. The land records do not contain any notice about the Atlas status of a property.

From the perspective of historic preservation advocates, indefinite listings on the Atlas pose a different problem. Specifically, because the protections that apply to Atlas resource are significantly less than those that apply to Master Plan sites, there is a greater chance that a valuable historic resource listed on the Atlas will be altered and/or deteriorate before the County has reached a final decision about its ultimate Master Plan status.

b. The criteria in the law. Section 24A-3(1)* lists nine criteria for determining whether an historic resource has historical, cultural, architectural, and/or design significance, and should therefore be designated as an historic site on the Master Plan.* While the majority of those interviewed voiced support for the current criteria, a number of individuals voiced a perception that the County's criteria are overly broad and subjective.

The criteria outlined in the County's historic preservation ordinance were modelled after the standards established by the Department of Interior for National Register designations. In addition, a comparative review of preservation statutes in other jurisdictions indicates that the County's designation criteria are very similar to those found in other places. Some jurisdictions have, however, added additional standards, such as age of the resource, visibility of the resource, and the economic impact of designation.

Supporters of the County's current criteria maintain that the benefits of broad designation criteria are that they provide the elected officials with the latitude to decide for themselves whether a resource deserves the protections of Chapter 24A. In particular, it is seen as important to have broad criteria because the County's inventory of historic resources is extremely diverse in character, e.g., designations on the Master Plan range from a gold mine in Brookeville to a 20th century gas station in Glen Echo to an 1820's federal manor house located in the County's rural area.

F. Acting Upon Historic Area Work Permit Applications

1. Statutory Requirements. Code Section 24A-5(c) authorizes the HPC to act upon applications for Historic Area Work Permits (HAWPs). Code Sections 24A-6 through 24A-8 describe, in general terms, what type of work on an historic site requires an HAWP, the application and appeal procedures, and the criteria that the HPC is to follow in reaching its decision to either approve or deny an HAWP application. By law, HAWPs are actually issued by the Director of DEP, who is bound by the decision reached by the HPC.

In addition to the requirements outlined in statute, the Rules of Procedure adopted by the HPC in 1980 outlined general application and review procedures for HAWPs. As reviewed earlier in this report, draft executive regulations developed by the HPC, with assistance from the Office of the County Attorney, further detail the HAWP application process, and address such issues as ex parte communications, rules of evidence, right to counsel, and cross-examination.

* See Appendix A for list of designation criteria.

2. Historic Area Work Permits in Practice: General. Table 12 (page 28a) describes the steps in the HAWP application and review process.

As noted earlier, the number of HAWP applications has increased significantly during the past decade as the number of historic sites and districts designated on the Master Plan increased, Table 5, (page 22a). HPC members estimate that 75 to 80 percent of the Commission's time is currently spent on HAWPs. It can reasonably be predicted that if the proposed historic districts of Takoma Park, Garrett Park, and Chevy Chase are designated on the Master Plan, then the HAWP workload will almost certainly increase in future years.

In addition to noting the increase in the volume of HAWP applications, HPC members and citizens interviewed observed that the complexity of HAWP applications has also increased. In particular, the past several years have seen a number of controversial HAWP applications for new construction in the Kensington historic district that have raised complex preservation and land use issues. One of these cases, in which the HPC denied the HAWP application, is currently pending appeal before the Board of Appeals.

Data compiled on HAWP decisions since 1986 indicate that the HPC has reached its decision on the majority of HAWP applications in one meeting. As Table 13 (page 28b) shows, 196 (86%) of the 228 HAWPs considered by the HPC since 1986 were decided upon in one meeting, 23 (10%) in two meetings, and only 9 (4%) in more than two meetings. The data do evidence, however, that an increasing number of HAWPs are taking more than a single meeting to resolve.

Table 14 (page 28c) lists the outcome of the HAWP applications considered by the HPC since 1986. The data show that the HPC has denied only a handful of HAWP applications. Specifically, the record since 1986 shows that the HPC has approved almost half of all HAWPs as submitted, and denied only 11 (5%) of the 228 HAWP applications considered since 1986. The remaining HAWPs were either approved with conditions, or approved in part. Examples of the types of conditions placed on the issuance of HAWPs during the past four years are contained in Table 15 (page 28d).

The law requires that HPC's decisions be in writing only in the event of a denial (Section 24A-7(f)(3)). The record indicates that HAWP decisions have been recorded as part of HPC's minutes, and any conditions attached by the HPC onto the issuance of a permit have usually been directly written onto the permit itself. All of HPC's denials have been accompanied by a written decision of the HPC, and in a number of recent contested cases, the HPC's approval of a permit was also in writing.

3. The record of HAWP appeals. Appeals of HPC's decisions on HAWPs originally went directly to Circuit Court. In 1989, Chapter 24A was amended so that the first level of appeal is now to the Board of Appeals; by law, the Board of Appeals hears the HAWP application on a de novo basis.

Historic Area Work Permit Application Process

Code Section 24A-6 requires that an Historic Area Work Permit (HAWP) be obtained for certain types of work to be performed on public or private property containing an historic site designated on the Master Plan for Historic Preservation. The HAWP must be approved by the Historic Preservation Commission before it can be issued. In practice, the HAWP application procedure is as follows:

- 1) An owner applies for a building permit from DEP. If the property is designated as an historic site on the Master Plan (either as an individual site or as part of an historic district), DEP provides the applicant with an HAWP application.
- 2) The owner completes the HAWP application and submits it to DEP. Within three days, DEP forwards the completed application to DHCD staff assigned to support the HPC.*
- 3) Upon receipt of an HAWP application, DHCD staff schedule a public appearance before the HPC; the public appearance is scheduled within 45 days from the day the application was filed with DEP. Notice of the scheduled public appearance is published in a local newspaper, and sent by mail to the applicant, owners of adjacent properties, and the appropriate Local Advisory Panel if the site is located in an historic district.
- 4) The HPC holds a public appearance on the HAWP application. The applicant and any other interested party is offered the opportunity to testify before the HPC. If there is opposition to the application, an opportunity for cross examination is made available.
- 5) Following the close of the record, the HPC has 15 days within which to make its decision public; this deadline may be extended with the consent of the applicant. (In practice, the HPC most often votes on the application in public session directly following the public appearance.) HPC's options are to instruct DEP to: issue the permit as submitted; issue the permit subject to certain conditions; or deny the permit. If the HPC votes to deny the permit, the HPC is required to provide the applicant with written notice of the reasons for the denial.
- 6) HPC's decision is transmitted to DEP staff, who then officially issue or deny the HAWP in accordance with HPC's direction.
- 7) An applicant may appeal the HPC's decision to the Board of Appeals within 30 days from the date the Commission's decision is made public. The appellate body for the Board of Appeals' decision is the Circuit Court.

* Chapter 24A also requires DEP to forward a copy of all HAWP applications to the Planning Board for its review and comment; this provision of the law is not currently followed.

Table 13

HAWP Applications Considered by the
Historic Preservation Commission
1986 - 1990

Number of HAWP Applications Decided Upon in:	1986	1987	1988	1989	1990*	Total
One Meeting	18	40	50	64	24	196
Two Meetings	2	3	5	6	7	23
More Than Two Meetings	1	0	0	6	2	9

* Includes data for HPC decisions through June 30, 1990.

Source: HPC minutes and agendas, 1986, 1987, 1988 (Jan-Sep), 1989, 1990, and transcript of HPC meetings, Oct-Dec 1988.

Table 14

**The Historic Preservation Commission's Decisions on HAWPs
1986 - 1990**

	1986	1987	1988	1989	1990*	Total
Approved as Submitted	15	16	15	41	24	111
Approved with Conditions	5	24	34	31	6	100
Approved in Part/Denied in Part	1	2	1	2	0	6
Denied	0	1	5	2	3	11
Total:	21	43	55	76	33	228

* Includes data for HPC decisions through June 30, 1990.

Source: HPC minutes and agendas, 1986, 1987, 1988 (Jan-Sep), 1989, 1990, and transcript of HPC meetings, Oct-Dec 1988.

Table 15

Examples of Conditions Placed on HAWP Approvals*
1986 - 1990

1986

- a. 9/18/86: 10019 Menlo Avenue: HAWP granted "provided that the new window would be the same size as the existing top sash and the wooden mutton match that is in the existing window...amended to include the provision for LAC approval before the issuance of a permit."
- b. 12/18/86: 4501 Olney-Laytonsville Road: HAWP granted "with the condition that the entire vine on the front door of the house be removed, that the repointing of brick be done with a mortar mixture approved by HPC staff, and that brick and wood trim be replaced only with identical materials."

1987

- a. 2/19/87: Rockland: HAWP granted with the following conditions:

"1) As much siding on the front (east) and right (north) side as possible should be retained. 2) Remove and replace windows as necessary with windows of like material and like design. As many existing windows as possible should be saved and reused. 3) Reconstruct the front porch as per Circa 1900 photo using appropriate materials. 4) Remove additions on rear of house. 5) Rebuild chimneys on both sides of the main house. 6) Reconstruct dormers on the main facade. 7) Install gravel driveway to the right side of the house. 8) Install painted louvered shutter on front of the house. 9) Reconstruct left wing of the house symmetrical with right wing; materials to be used will be similar in kind and color. 10) Re-side the existing milk house. 11) Relocate log building on the property."
- b. 7/16/87: 15200 Barnesville Road: HAWP granted "with the condition that the configuration of the front fence, currently proposed to be of wrought iron, be approved by the Local Advisory Committee and HPC staff."

* Quotation marks indicate decision as recorded in HPC's minutes.

1988

- a. 1/17/88: 10549 St. Paul Street: HAWP granted "on the condition that the offset of the chimney, if necessary, be done inside the house and the exterior portion of the chimney continue straight up parallel to the wall a sufficient distance from the wall so as not to break the eaveline. The pipe could be either painted to match the house or painted matte black."
- b. 7/21/88: 10005 Pratt Place: HAWP approved "on the condition that gates be installed to contribute to the public traffic flow through the public common area."

1989

- a. 3/16/89: 10300 Fawcett Street: HAWP approved "with the stipulation that an alternative solution for front gable skylights be researched and presented to staff for further review and that the location of all exterior HVAC elements be presented to staff for further review; and that the information on height and materials of the proposed chimneys be presented to staff for final review and approval. Commissioner Miskin added that the proposed front door be in style No. M7990DD or another manufacturer's equivalent; that the proposed kitchen expansion be clad in wooden lap siding; and that no changes be permitted to the front gable window."
- b. 6/1/89: 3308 Olney - Sandy Spring Road: Removal of tree approved "with the condition that an acceptable landscape plan be submitted and approved by Commission and/or staff prior to the removal of the tree."

1990

- a. 2/14/90: 16501 Norwood Road: HAWP approved "with the proviso that the proposal for lighting the area facing the mansion be sensitive... [and] that the applicant [M-NCPPC] return to the Commission for all aspects of the project."
- b. 6/13/90: 10415 Darnestown Road: HAWP approved "with the condition that the high gable glazing in both the front and rear elevations be excluded from the final design."

The record indicates that since the HPC was established, five HAWP decisions have been appealed. All five appeals have been cases where the HPC voted to deny an HAWP application. In the two appeals filed prior to the 1989 change in the law, the HPC's decision to deny the HAWP application was upheld by the Circuit Court. The other three appeals (all of which have been filed in recent months) are pending before the Board of Appeals.

4. Intake of HAWP Applications. HAWP applications are now submitted to the Department of Environmental Protection (DEP), as required by Chapter 24A. In practice, however, until January of 1990, the intake of HAWP applications was performed either by DHCD staff assigned to support the HPC, or by members of the local advisory groups in historic districts appointed by the HPC, (called Local Advisory Committees or LACs until 1989, when they were renamed Local Advisory Panels or LAPs).

Interviews with those involved with the HPC throughout the 1980's suggest that the intake of HAWP applications by DHCD staff began because it appeared practical for staff knowledgeable in preservation and familiar with the concerns of the HPC to be working with HAWP applicants. The LACs were brought into the process to help with a growing HAWP workload, and also because it was felt that applicants could be assisted by their neighbors who were serving as LAC members.

In January of 1990, upon advice of the County Attorney, the responsibility of handling the intake of HAWP applications was assumed completely by DEP staff. While this change brought practice into conformity with current law, it also created a number of problems. Specifically, with more than 30 permit processors responsible for processing almost 30,000 permits each year, the DEP intake staff has neither the time nor the training in historic preservation to effectively provide technical assistance to HAWP applicants. In addition, as mentioned earlier in this report, members of the LAPs are dissatisfied with a process that no longer allows them to accept HAWP applications.

A related issue that arose during the past several months has been the question of what information is to be required as part of an HAWP application. The law does not explicitly state whether DEP or the HPC has the authority to decide what information is "necessary", and/or who is responsible for designing the application forms. Since January 1990, DEP and a member of the HPC have been trying to reach agreement as to what the HAWP application should look like, and what information must be provided before the application is deemed "complete." (As of this writing, a final agreement has not been reached.)

5. Legal processing deadlines. Current law contains the following language regarding the processing time for HAWPs:

Within 45 days after the filing of an application, or in the event the record is left open by the commission, within 15 days after the close of the record, the commission shall make its decision public (Section 24A-7(f)).

The law provides that failure of the HPC to act on an application within the time periods provided by law means that the application is deemed granted. The time period for HPC action may be extended by written consent of the applicant.

At various times during the past ten years, questions have been raised about the timing of HAWP processing. It has been argued that the statutory language is unclear as to exactly what events the time requirements apply to, i.e., does the law require the HPC to reach a decision within 45 days after an HAWP application is filed, or does the law simply require the HPC to open the record within 45 days after an application is filed. In addition, there have been questions about whether the record for an HAWP application officially opens at the time of filing, or at the time of the public hearing.

Based upon the Office of the County Attorney's interpretation of the current statute, it is the County's practice to open the record for an HAWP application as soon as it is filed with DEP, and to hold a public appearance on the HAWP within 45 days from the time a completed application is accepted by DEP. Unless consent is obtained from the applicant, HPC renders a decision within 15 days from the time the record is closed.

Interviews with DHCD staff and HPC members indicate frustration with the current timing requirements. In particular, HPC members have found it difficult to reach decisions on complex HAWPs within 15 days from the close of the record; this is especially true in cases where the HPC has needed to produce a written decision that includes formal findings of fact. In addition, the current timing requirements prevent the HPC from scheduling HAWPs for one meeting each month, and reserving the other meeting for other HPC business, e.g., designations, subdivisions, grant applications.

Table 16 (page 30a) compares statutory deadlines for HAWPs to those established for a number of other land-use related decisions made either by DEP, the Planning Board, or the Board of Appeals; and to requirement included in the Administrative Procedures Act (APA). The data show that:

- The 14-day hearing notice requirement for HAWPs is longer than the 7-10 days notice required for variances, special exceptions, site plans, and subdivisions, and less than the 30 days notice required by the APA;

Table 16

Comparison of Time Limits Defined by
County Code, Executive Regulations, or Rules of Procedure

<u>Application for:</u>	<u>Decision-Making Body</u>	<u>Minimum Time for Notification</u>	<u>Time Limit Between Filing and Hearing</u>	<u>Deadline for Decision</u>
HAWPs	HPC	Notice to be published and notification given to applicant 14 days before hearing ¹	Code does not explicitly establish time limit between filing and public appearance	45 days after filing or 15 days from close of record ²
Building Permits	DEP	---	No hearing necessary	Within reasonable time after filing
Site Plans	Planning Board	10 days before hearing	Before 45 days after filing	45 days after filing
Special Exceptions	Board of Appeals	Notice to be published not less than 7 days before hearing	No sooner than 60 days after filing ³	30 days from close of record ⁴
Subdivisions	Planning Board	10 days before hearing	Preliminary plan must be submitted at first regular meeting after 60 days of filing	30 days from filing of final plats ²
Variances	Board of Appeals	Notice to be published not less than 7 days before hearing	No sooner than 30 days after notice of filing ³	30 days from close of record ⁴
---	Committees under APA ⁵	30 days before hearing	---	45 days from close of record ⁴

1. As in practice and draft regulations.

2. Deadline can be extended by written consent of applicant.

3. Notice of filing is given in no more than 7 days after filing.

4. Deadline can be extended by resolution of decision-making body.

5. Administrative Procedures Act, MCC Chapter 2A.

Source: County Code, HPC Draft Executive Regulations, and M-NCPPC Rules of Procedure.

- In comparison to HPC's deadline of 45 days after filing or 15 days from the close of the record, the Board of Appeals has 30 days from the close of the record to render its decisions on special exceptions and variances, as does the Planning Board in rendering its decisions on subdivisions; the APA allows for an even longer period, 45 days from the close of the record, for a decisions to be rendered;
- The only other statutory deadline that, similar to that for HAWPs, links the timing of a decision to the date of filing is the deadline for site plans, which is set at 45 days after an application is filed; and
- The decision deadline for subdivisions, similar to that for HAWPs, can be extended by written consent of the applicant; in contrast, the APA allows the decision deadline to be extended unilaterally by resolution of the decision-body.

6. Enforcement. Section 24A-11, Violations and penalties, states that any person who violates a provision of Chapter 24A shall be subject to punishment for a Class A violation as set forth in Section 1-19 of the County Code. A Class A violation is punishable as a civil violation by a fine of \$250 for an initial offense and \$500 for each repeat offense; and as a criminal violation by a \$1000 fine and/or a maximum six months jail term.

Ideally, enforcement of the HAWP provisions of Chapter 24A should occur both before alteration work commences on an historic site, and after an HAWP is approved for issuance. Specifically, action is required:

- To ensure that an HAWP is obtained when required for work on public or private property designated on the Master Plan; and
- To ensure that any conditions placed on the issuance of an HAWP are adhered to.

The remainder of this section will discuss what steps have, in practice, been taken to enforce the HAWP provisions of Chapter 24A.

a. At time of building permit application. When a property owner applies for a building permit, DEP is responsible for informing the applicant when he/she must also obtain an HAWP. In practice, DEP should be able to accomplish this because DEP's data base of premise addresses include a code to identify historic properties.

DEP and DHCD staff have recently worked together to update and correct DEP's data base so that it will contain all addresses of properties listed on the Master Plan. The data base has posed difficulties because, over time, addresses of certain historic properties have changed; and because some historic properties, in the rural sections of the County were never given a premise address.

In May 1990, OLO tested 50 Master Plan addresses and found that DEP's data base, while probably much improved over what it had been, is still not entirely accurate. Specifically, OLO found that:

- 47 (94%) out of the 50 Master Plan historic sites tested were listed as historic in DEP's computer;
- Two (4%) were listed in DEP's computer, but not as historic sites; and
- One (2%) were not listed in DEP's system at all.

DEP and DHCD staff are continuing their efforts to improve DEP's data base of historic resources.*

Once DEP's data base correctly lists all addresses of historic sites designated on the Master Plan, then there will be a reasonable system in place for ensuring that DEP can inform citizens who apply for a building permit when they must also apply for an HAWP. However, this will not address the challenge of enforcing the provision of Chapter 24A that requires that an HAWP be obtained for certain work that does not require a building permit, e.g., demolition of a porch, window modifications, or removal of a live tree. At present, this latter provision is enforced strictly on a complaint basis.

b. Adherence to HAWP conditions. At present, there is no routine enforcement of HAWPs decisions rendered by the HPC. Once an application is deemed approved by the HPC, a notice of the HPC's decision is sent to DEP; this notice includes any conditions placed by the HPC on the issuance of the HAWP. The HAWP is then formally issued by DEP.

According to DEP staff, once an HAWP is issued, the only enforcement of the permit as approved for issuance by the HPC is on a complaint basis. As a routine matter, building permit inspections conducted by DEP inspectors do not include inspection of the HAWP; and records on compliance with HAWP conditions have not been maintained.

* See page 38 for information about the accuracy of DEP's Atlas resource listings.

7. Miscellaneous HAWP Issues

a. Consistency between building permit and HAWP. Under current procedures, a property owner may apply simultaneously for an HAWP and a regular building permit. Because an HAWP is not a prerequisite for obtaining a building permit for work on a Master Plan site, it is currently possible for a property owner to receive one set of building plans approved by DEP, and a different, perhaps even conflicting set of plans approved by the HPC. In recent months, the Chief of DEP's Permit Processing Section, recognizing the problems this could cause, has implemented internal procedures to try and ensure that an applicant for work on a Master Plan site receives one set of consistent approved plans.

b. Requirement for Planning Board review and comments. Section 24A-7(d) requires that:

Upon being advised by the commission of the scheduling of a public appearance, the DEP Director shall forward the application and all attachments to the Planning Board for its review and comments which, if any, are to be made to the Commission prior to the public appearance.

In practice, this section of law is not currently followed. The Planning Board is not formally notified and invited to comment on HAWP applications; and the record shows that the Planning Board does not submit written comments to the HPC on HAWPs.

c. Potential problems if the issuance of an HAWP is appealed. The law provides that either the denial or approval of an HAWP may be appealed to the Board of Appeals. However, in the event that the approval of an HAWP is appealed, the law does not provide for withholding of either the HAWP, or the accompanying building permit, pending the outcome of the appeal. In practice, this means that, even if an appeal is filed, the applicant could still receive both his/her HAWP and building permit, and proceed at his/her own risk. Although to date this has not happened, the problem with proceeding with alteration work on an historic site is that action could be taken that irreparably harms the resource intended to be protected, e.g., a old tree is cut down, vegetation is destroyed, a structure is demolished.

8. Public perceptions. Public perceptions of how HPC acts upon HAWPs vary considerably. Many community members regard the HPC as a hardworking, dedicated, and knowledgeable Commission, and regard DHCD staff assigned to support the HPC as helpful and considerate. On the other hand, there are other community members who have concerns about the HAWP application process and the manner in which the HPC considers those applications.

OLO conducted a phone survey of 20 citizens who submitted applications for an HAWP between 1987 and 1989.* The survey included

* These 20 HAWP applications represented an 11.5 percent sample of the 174 HAWP applications decided upon by the HPC 1987-1989.

questions about the HAWP application process, staff assistance, and the applicant's public appearance before the HPC; applicants were also asked to rate their overall experience of applying for an HAWP on a five point scale. A profile of the applicants surveyed and the results of the survey are summarized below.

- Sample profile. The survey consisted of 20 HAWP applicants: six owners of individual Master Plan sites, and 14 owners of historic sites located within historic districts. The sample included properties located in the historic districts of Kensington, Capital View Park, Brookeville, and Hyattstown. Fourteen of the 20 applications reviewed in the survey were approved by the HPC as submitted, three were approved with conditions, two were denied, and one was approved after a revised proposal was submitted.

- Learning that an HAWP was required. Applicants learned of the need to apply for an HAWP in a number of different ways. Three of the applicants surveyed were familiar with the process because they had, or were currently, serving on a Local Advisory Panel (LAP) appointed by the HPC; four other applicants learned about the process from LAP members in their neighborhood; and three applicants were aware of the process from previous work done on their properties.

Three applicants were informed about the need for an HAWP when they applied for a building permit. Two others were informed by a mailing from the HPC, which they had received following the placement of their homes on the Master Plan. The remaining five applicants did not recall how they had learned about the need to apply for an HAWP.

- Processing time. For purposes of the survey, processing time was defined from the date the application was received by DHCD to the date the applicant was informed of the HPC's decision. The average processing time was 32 days in 1987, 53 days in 1988, and 29 days in 1989; the average processing time for the entire sample of 20 HAWP applications was 37 days. According to DHCD staff, the increased processing time in 1988 was at least partially attributable to staff transitions that took place that year.

Of the 20 applications reviewed in the sample, 15 (75%) were decided upon by the HPC in one meeting, four (20%) in two meetings, and one (5%) in three meetings.

- The public appearance before the HPC. Of the 20 applicants surveyed, 13 (65%) appeared before the HPC either alone or with a family member. Two (10%) applicants were accompanied by an architect to testify on the proposed work, and one applicant, representing an incorporated municipality, was accompanied by the mayor and several citizens. Four (20%) applicants did not appear before the HPC at all; in one of those cases, a member of a Local Advisory Panel appeared on the applicant's behalf.

Of the 16 applicants who appeared before the HPC, nine (56%) reported waiting one hour or less for the HPC to begin consideration of their application; four applicants (25%) reported waiting between one and two hours, while three (19%) applicants reported waiting more than two hours.

A majority of the applicants interviewed felt that the public appearance was conducted in a professional manner, and that HPC members appeared knowledgeable and well-prepared. However, approximately one fourth of those interviewed reported feeling that certain members of the HPC were ill-prepared, inattentive, or rude to applicants.

● Overall ratings. Applicants were asked to rate their overall experience of applying for an HAWP on a five point scale, with "one" being the highest rating and "five" being the lowest. A majority (13 out of 20, or 65%) of applicants surveyed rated the HAWP process either a "one" or "two", and in general, these applicants voiced few complaints. The average rating for the entire sample was 2.6. The ratings did not vary significantly among the three years surveyed.

In general, owners of individual Master Plan sites rated the HAWP process somewhat higher than owners of properties located within historic districts. The harshest criticism of the HAWP process came from owners of properties located in the historic district of Kensington; three of the six applicants surveyed from Kensington rated the HAWP process a rating of "five", the lowest rating available. The primary concern voiced by Kensington applicants had to do with confusion about the role of the Kensington Local Advisory Committee (LAC), and a perceived discrepancy between criteria employed by the LAC and the HPC.

Other concerns voiced by applicants who rated the HAWP process with either a "four" or "five" included :

- A perception that the HAWP process is "bureaucratic" and interferes with homeowners' property rights;
- A perception that the HPC takes "too long" to render a decision;
- A perception that the HPC bases its decisions on subjective criteria, and not on a known set of standards and guidelines; and
- Substantive differences of opinion with HPC's decisions.

G. Reviewing Building Permit Applications for Work on Atlas Resources

1. Statutory requirements. At the time Chapter 24A was enacted in 1979, the Atlas listed almost 1,000 historic resources. Until final decisions were made about which Atlas resources should be designated on the Master Plan, it was argued that a procedure was needed to prevent Atlas resources from either being demolished or substantially altered. In 1979, as stated earlier in this report, it was anticipated that the evaluation of all Atlas resources would be completed within five years.

Section 24A-10, Moratorium on alteration or demolition, was included in the original historic preservation ordinance to provide a procedure for dealing with situations where a property owner submits an application for either a demolition permit, or a building permit that, if approved, would result in "substantial alteration" to the exterior features of an historic resource listed on the Atlas. Section 24A-10 outlines an accelerated schedule for deciding whether to place such Atlas resources on the Master Plan. As amended in 1989 by Ordinance 11-59, the procedure currently in law is summarized below:

- If DEP receives an application for a demolition permit or an application for a building permit that constitutes a proposal to "substantially alter" the exterior features of any historic resource listed on the Atlas, then DEP refers the application to the Planning Board, and temporarily withholds issuing the permit requested.

- The Planning Board holds a public hearing on whether the historic resource listed on the Atlas should be recommended for designation as an historic site on the Master Plan; (Since 1989, this public hearing has been allowed to serve as the public hearing on the application to demolish or substantially alter the resource, as well as the public hearing on a preliminary draft amendment to the Master Plan for Historic Preservation.)

- If the Planning Board determines, after the public hearing and after "due consideration" of the HPC's recommendation on the significance of the historic resource, that the Atlas resource should not be recommended for inclusion on the Master Plan, then DEP can issue the permit requested.

- If, however, the Planning Board determines that the Atlas resource should be recommended for inclusion on the Master Plan, then DEP is instructed to withhold the permit for a maximum period of 195 days (counted from the day the application was filed). The Planning Board then proceeds with processing the Atlas resource as an amendment to the Master Plan for Historic Preservation.

2. In practice from 1981 through August 1989. From 1981 until August 1989, applications for building permits on Atlas resources were forwarded to the HPC for review.* The record shows that applications for building permits on Atlas resources that were determined by the HPC to "substantially alter" the historic resource were handled by the HPC much like applications for HAWPs on Master Plan sites, i.e., the HPC scheduled a public appearance and advised DEP whether to grant, grant with conditions, or deny the permit.

Interviews with staff and HPC members indicate that processing substantial alteration cases much like HAWP applications evolved during the 1980's as a way to enable owners of Atlas resources to make improvements to their properties without waiting for the lengthy Master Plan process to be completed. Especially in cases where the probability was high that an Atlas resource would eventually be designated on the Master Plan, it was seen as appropriate to review proposed alterations as if the property was already designated.

The record shows that questions about the HPC's authority to make determinations about building permits for Atlas resources were raised as early as 1983. The practice, however, continued until August 1989, when the County Attorney explicitly advised the HPC that applications for building permits on Atlas resources should no longer be handled as if they were HAWPs; and that it was DEP, not the HPC, that by law had been given the authority to make determinations of substantial alterations.

3. In practice since August 1989. Since August of 1989, the procedure outlined in law has been followed. In practice, the only additional step is that before reaching a decision as to whether a building permit application constitutes a proposal to "substantially alter" an historic resource, DEP staff routinely consult with DHCD staff assigned to support the HPC. To date, the advice of DHCD staff as to whether a proposal should be considered "substantial alteration" has always been followed.

Since the deadlines for action were changed in 1989,** only two applications for demolition permits and one application for a building permit that DEP determined would "substantially alter" the historic resource have been filed. In one case, the Planning Board acted to remove the resource from

* See Table 5 (page 22a) for the number of substantial alteration cases reviewed each year by the HPC.

** Ordinance 11-59 changed the deadline from 180 days from the date the application was sent to the Planning Board to 195 days from the date the application was filed.

the Atlas, and the demolition permit was issued. In the other two cases, the historic resources were designated as historic sites on the Master Plan within the deadlines established in law, so that any requests to alter the sites will be reviewed by the HPC as part of an HAWP.

In May 1990, OLO ran a test of 50 Atlas addresses in DEP's data base of premise addresses and found that not all Atlas resources are correctly listed; specifically: only 32 (64%) of the Atlas properties were correctly listed as historic resources in DEP's data base; nine (18%) were listed in the data base, but not as historic resources; and nine (18%) were not listed in the data base at all. As noted earlier in this report, DEP and DHCD staff are working together to improve the accuracy of DEP's premise address data base.

H. Investigating and Enforcing Demolition by Neglect Cases

1. Statutory requirements. Section 24A-9 permits the Director of DEP to issue a notice of "demolition by neglect" to any owner of an historic site or resource. As defined in Chapter 24A, "demolition by neglect" is:

The failure to provide ordinary and necessary maintenance and repair to an historic site or an historic resource within an historic district, whether by negligence or willful neglect, purpose or design, by the owner or any party in possession of such a site or resource which results in the following conditions:

(a) The deterioration of exterior features so as to create or permit a hazardous or unsafe condition to exist.

(b) The deterioration of exterior walls, roofs, chimneys, windows, the lack of adequate waterproofing or deterioration of interior features or foundations which will or could result in permanent damage, injury, or loss of or to the exterior feature

A demolition by neglect notice must specify minimum measures needed to prevent further deterioration, and order that corrective action begin within 30 days. Failure to perform the work is a Class (A) violation, with each day the violation continues considered a separate violation.

The law provides that if the work is not done by the owner, it may be performed at County expense. The expense of such work becomes a lien against the property with the owner obligated to reimburse the County; any default in payment subjects the property to foreclosure and public sale.

Within 10 days after receiving a notice, an owner may request a public hearing before the HPC on the need for repairs. After holding the hearing on the necessity of improvements to prevent demolition by neglect, the HPC can either: order the repairs to be made, or make a finding that requiring improvements would impose a "substantial hardship" on the owner. If the HPC makes a finding of "substantial hardship" and is unable to seek an

alternative method to preserve the historic site, then no further action is to be taken by the County pursuant to Chapter 24A.*

The demolition by neglect provisions apply somewhat differently to Atlas resources. If an Atlas resource is cited for demolition by neglect, then the Director of DEP advises the Planning Board which, after receiving HPC's recommendation, conducts a public hearing to determine whether the site should be recommended for designation on the Master Plan. If the Planning Board determines that the historic resource should not be recommended for designation, then no further action is taken pursuant to Chapter 24A. If, however, the Planning Board recommends that the resource should be designated and such an amendment is formally adopted, then the demolition by neglect procedures for Master Plan sites is to proceed.

2. In practice. On December 18, 1985, DHCD and DEP entered into a written memorandum of understanding that authorizes DHCD to enforce the demolition by neglect provisions of Chapter 24A. Within DHCD, the responsibility is delegated to the Division of Code Enforcement.

Prior to the 1985 memorandum of understanding, little was done to enforce the demolition by neglect provisions of Chapter 24A. Table 17 (page 39a) lists the number of demolition by neglect investigations initiated each year by the Division of Code Enforcement since FY86. According to Code Enforcement staff, almost all of the demolition by neglect investigations originated as referrals from the HPC, although the code inspectors are instructed to remain alert for other potential demolition by neglect situations.

The largest number of demolition by neglect investigations were initiated in FY86; these eight cases included a number of deteriorating properties that had gone without enforcement action during the years before the Division of Code Enforcement assumed responsibility for the function. In recent years, the incoming workload has declined. Since the first quarter of FY89, the Division of Code Enforcement has initiated only one demolition by neglect investigation.

According to a recent report prepared by the Division of Code Enforcement, approximately half of the 15 demolition by neglect cases for which enforcement action was begun since FY86 have been closed; the remaining cases are still in the process of being resolved.

No demolition by neglect citation issued by the Division of Code Enforcement has ever been appealed to the HPC, so there is no record of how the HPC has approached making a determination of "substantial hardship." In addition, because the County Government has never proceeded with its authority to perform improvements itself, there is no record of how this provision works in practice.

* Depending upon the situation, the County can continue to pursue enforcement action aimed at correcting unsafe conditions, using its authority to enforce the Housing and Building Maintenance Standards, as contained in Chapter 26.

Table 17

Record of Demolition by Neglect Investigations
Conducted by Division of Code Enforcement, DHCD
FY86 - FY90

<u>Year</u>	<u>Number of Demolition by Neglect Investigations Started</u>	<u>Number of Cases Resolved as of 7/1/90</u>
FY86	8	5
FY87	2	1
FY88	4	2
FY89	1	0
<u>FY90</u>	<u>0</u>	<u>0</u>
Total:	15	8

Source: DHCD files.

I. Providing Information and Public Education Materials on Historic Preservation

1. Statutory requirements. One of the HPC's statutory responsibilities is:

To serve as a clearinghouse for information on historic preservation for County Government, individuals, citizens' associations, historical societies and local advisory committees; to provide information and educational materials for the public; and to undertake activities to advance the goals of historic preservation in the County. (Section 24A-5(g))

Undertaking a public education program to inform the public about historic preservation was a major recommendation included in the original Master Plan for Historic Preservation, which specifically recommends that a public education program include:

- Displays, films, and literature on history and architecture for the schools, libraries, recreation centers, commercial areas, shopping centers, churches, hospitals and service organizations;
- Touring information in a County guidebook or cassette to be widely distributed through County libraries and the Chambers of Commerce;
- Road markers, plaques, signs, and certificates to identify sites designated on the Master Plan for Historic Preservation;
- A historic preservation center representing the County's history, architecture, arts and crafts, and industries and natural resources, and serving as a visitors center supplying leaflets and maps;
- A series of articles/or programs on historic preservation that can be used in serial form in newspapers, radio and television;
- Museums of working industries, such as working farms and mills;
- A volunteer historical research program; and
- A County-wide competition with awards for the district, community, or neighborhood for the best interpretive or most imaginative preservation program or the best maintained environment. The County could give awards for the most livable community, the best local preservation program, or community living history and architecture award.

2. In practice. The HPC has undertaken or sponsored a number of public education activities during the past ten years. However, DHCD staff and HPC members agree that much more could and should be done in the area of public education. The primary reasons cited for the relative lack of attention to the public education function are competing workload demands, combined with lack of staff time and resources dedicated to promoting public education. The major public education efforts undertaken in recent years by the HPC are summarized below.

The Preservationist is a bi-monthly newsletter that reports on County preservation issues.* A concerted effort has been made this year to establish a mailing list policy. Beginning with the September-October 1990 issue, The Preservationist will be mailed free of charge to owners and residents of individual sites and districts designated on the County's Master Plan for Historic Preservation, County elected and government officials, County libraries, municipalities containing historic districts, Local Advisory Panel members, private non-profit preservation organizations, local newspapers, and other individual citizens who have expressed an interest in receiving the newsletter. As of September 1, 1990, The Preservationist had a mailing list of approximately 1,100.

The HPC sponsors booths at the Montgomery County Fair and the County's Ethnic Festival, which publicize information about the HPC and historic preservation in general. Several years ago, the HPC developed a slide-tape presentation that details the work of the Commission, and the County's preservation laws.

As discussed in the following section of this chapter, many of the activities supported through the HPC's grants are aimed at developing public education materials. Examples include: exhibits, oral and written history presentations, publications and videos, historical tours, and historical collections.

During 1987, the HPC awarded a contract to a consultant to develop an "Education and Special Project Plan", which was accepted in October 1987 by the HPC as a statement of the goals and objectives of the HPC's public education function. The report identifies target groups for education and public outreach programs, and proposes specific projects that, "depending upon additional funding," could be undertaken to further educate the public about historic preservation and the work of the HPC.

In February 1988, copies of the HPC's Education Plan were sent to members of the County Council. Although, to date, little action has been taken to implement the specific recommendations contained in this report, the HPC recently indicated its intent to give increased attention to public information efforts during the coming year.

* The Preservationist, written on contract to the County, is funded by Certified Local Government grant monies.

J. Administering Historic Preservation Tax Credit, Easement, Loan and Grant Programs

1. Statutory requirement. Since 1979, HPC has been charged with the responsibility: "To administer any revolving funds or grant programs to assist in historic preservation." HPC's powers and duties included this program administration component as part of what the original Master Plan called a "system to protect and enhance the County's heritage." Specifically, the Master Plan advocated using existing and proposed government programs to promote historic preservation; and envisioned the HPC assuming an integral role in administering whatever programs eventually got created and funded.

Three additional and specific program administration responsibilities were assigned by law to the HPC during the 1980's. In 1984, HPC was made responsible for reviewing all historic preservation tax credit applications, and for approving all loans awarded from the Historic Preservation Loan Fund. In 1988, Bill 15-88 assigned HPC responsibility for administering an historic preservation easement program.

2. In Practice: The Historic Preservation Tax Credit, Easement, and Historic Preservation Loan Fund Programs. During the past ten years, the County established a number of programs to provide financial assistance to historic preservation efforts in the County: a tax credit program; an easement program; and a revolving loan program. In addition, for the past decade, the County has allocated funds to a non-departmental account that is used to fund a number of historic preservation related activities, including (since FY85) a grant program administered by the HPC. The remainder of this chapter briefly describes each of these programs and outlines the HPC's role in administering them.

a. Historic preservation tax credit program. In June 1984, the Council amended Chapter 52, Taxation, to add a new article, "Tax Credit for Historic Preservation." This law established a real property County tax credit for the "restoration and preservation" of historic sites designated on the Master Plan. The tax credit is equal to ten percent of the total amount expended on the restoration and/or preservation of an individual sites or property located within an historic district, and is credited towards the taxpayer's real property tax bill. In October 1989, legislation (Bill 13-89) extended the availability of the County's historic preservation tax credit to property owners in municipalities that have the authority to establish their own historic district commissions.*

* For more about the application of County preservation laws in municipalities, see page 11.

Table 18 (page 43a) summarizes the procedures for filing and evaluation of applications for an historic preservation tax credit. Table 19 (page 43b) lists data on the historic preservation tax credits granted from FY88 through FY90.* During the past three fiscal years, the County has granted 28 historic preservation tax credits worth a total of \$54,808. The amount of tax credit granted to individual property owners has ranged from \$140 to \$13,942; this past year, the average historic preservation tax credit was \$3,025.

b. Historic Preservation Easement Program. In July 1988, legislation was enacted to establish a County historic preservation easement program. The law also allows the County to hold a preservation easement jointly with the Maryland Historical Trust.

As stated in Section 24A-13, an owner of an historic resource or site may offer the County a preservation easement to "protect or conserve interior or exterior features of the historic resource and its environmental setting or appurtenances." An easement benefits the owner of an historic resource by providing a tax benefit in the form of a lowered property assessment or possible charitable tax deduction.

The legislation that established the easement program (Bill 18-88) also amended the list of HPC's responsibilities to include the administration of the easement program, and specifically authorized the County Executive, with the advice of the HPC, to adopt method (2) executive regulations to administer the easement program. Draft regulations for the easement program were prepared by a consultant on contract to DHCD; however, the regulations have not yet been promulgated.

The legislative record indicates that the historic preservation easement program received strong support from the Maryland Historical Trust (MHT) as well as the HPC. The MHT has had an easement program since the 1960's and finds it is a cost-effective tool for preservation. During the public hearing held on the bill proposing to establish the easement program, the Montgomery Farm Women's Cooperative Market also testified in favor of the easement program on the grounds that the tax benefits that could be received from the easement would allow them to continue to operate in downtown Bethesda, and to promote the historic value of their building. Despite the show of support for the program at the time of enactment, to date, the County's historic preservation easement program has never been used.

c. Historic Preservation Loan Fund. In June 1984, the Council enacted Bill 67-83, "Restoration of Historic Properties", to make the rehabilitation of historic structures or properties an eligible activity for

* DHCD's tax credit program records did not include the amounts of historic preservation tax credits granted prior to FY88; however, HPC minutes show that the Commission recommended four tax credits for approval in FY85, five in FY86, and seven in FY87.

Table 18

Historic Preservation Tax Credit Process

- (1) The property owner obtains an application form from DHCD staff assigned to support the HPC. The application includes requirements for photographs of the completed work (if available), and copies of original receipts.
- (2) The property owner submits the completed application form to DHCD staff, who review the material to ensure that all necessary documentation has been included. The law states that a properly documented application for a tax credit must be submitted by the first day of April immediately preceding the taxable year for which a tax credit is sought to be applied.
- (3) The HPC evaluates each application to determine whether the work meets the eligibility requirements established by law. Specifically, the HPC must certify that the property is designated on the Master Plan and is either work for which an Historic Area Work Permit was approved, or for ordinary maintenance work that costs at least \$1,000 and is determined to have "historic, architectural, or cultural value." HPC then forwards the application, all accompanying material, and its recommendation on eligibility to the Department of Finance.
- (4) The final decision on the tax credit application is made by the Director, Department of Finance. The Department of Finance may request additional documentation from the applicant, which must be provided by the applicant within 30 days from the date of the request; the Director has the authority to reject all or part of the claimed expenditures for lack of proper documentation.
- (5) An approved tax credit is calculated to equal ten percent of eligible expenses, as recommended by the HPC and approved or modified by the Department of Finance. The amount of the approved tax credit is provided to the property owner on an Historic Preservation Tax Credit Certificate; this certificate must be included at the time of payment of the owner's real property tax bill to be calculated against the total amount due.
- (6) Applicants who wish to appeal the Department of Finance's decision may file an appeal with the Property Tax Assessment Appeal Board. The appeal must be filed within 30 days after the date of the notice of decision by the Department of Finance.

Source: Chapter 24A, Executive Regulation 35-86, and interviews with DHCD staff.

Table 19

Historic Preservation Tax Credits Granted
FY88 - FY90

<u>Year</u>	<u>Number of Credits Granted</u>	<u>Total Amount Credited</u>	<u>Average Tax Credit</u>	<u>Range of Tax Credits</u>
FY88	7	\$10,986	\$1,569	\$220 - \$ 7,485
FY89	9	\$ 7,523	\$ 836	\$220 - \$ 2,634
FY90	12	\$36,299	\$3,025	\$140 - \$13,942

Source: DHCD files.

loans from the already existing Rehabilitation Loan Fund.* Specifically, this legislation authorizes the making of loans to organizations that own or operate historic structures and properties within the County for the rehabilitation or refurbishment of those historic properties. The law provides that such loans must be approved by the HPC.

Executive Regulation 10-1211, "Administrative Guidelines for Historic Preservation Loan Fund for Organizations," was promulgated by DHCD and adopted by the Council in March 1985. The regulations provide that the Historic Preservation Loan Fund (HPLF) will be administered by DHCD, with the Department of Finance delegated responsibility for the disbursement and collection of funds, and the keeping of permanent records for each HPLF recipient. The regulations specify that the HPC will solicit and review loan proposals and recommend to the Director of DHCD acceptance or rejection of all HPLF applications.

The regulations state that funds allocated to the HPLF may be used for two major types of activities:

- Seed Loans (not to exceed \$5,000) defined as money to be expended for the purpose of developing a detailed application for an historic preservation loan or other source of funds; eligible activities include: land percolation tests, property surveys, legal fees, architects design fees, and property appraisals; or
- Historic Preservation Loans (not to exceed \$20,000) defined as loans to owners or operators of historic structures for rehabilitation or refurbishment of the historic structures.

Funds were explicitly allocated to the HPLF in FY85 and FY86, for a total of \$50,000 each year. DHCD records indicate that one HPLF loan for \$15,347 was granted in FY86, and another HPLF loan for \$20,000 was granted in FY87; in both cases, the recipients of the loans were churches. There has been no activity in the HPLF since FY87.

3. In Practice: The Historical Activities Support/Nondepartmental Account(s). Table 20 (page 44a) reports the levels of funding allocated each year since FY81 to nondepartmental accounts for historic preservation activities. Nondepartmental funds have consistently been provided in the form of grants to: the Maryland Historical Society, the Montgomery Historical Society, and the Salvage Depot. In addition, during FY90, the Glen Echo Foundation received a one-time grant to install a fire-sprinkler system on the carousel located in Glen Echo Park.

* The other purpose of the Rehabilitation Loan Fund, as stated in Section 56-1(a)(1), is to make loans available to low income homeowners to finance the rehabilitation of their homes in order to meet County Code requirements, if no other financing is available.

Table 20

**Historical Activities Support/Nondepartmental Account
FY81 - FY91**

	<u>Total</u>	<u>Allocation of Funds</u>	
FY81	\$50,000	Historic Preservation Commission	\$25,000*
		Montgomery County Historical Society	\$20,000
		Maryland Historical Society	\$ 5,000
FY82	\$51,000	Historic Preservation Commission	\$25,000*
		Montgomery County Historical Society	\$21,000
		Maryland Historical Society	\$ 5,000
FY83	\$29,000	Historic Preservation Commission	\$ -0- *
		Montgomery County Historical Society	\$22,000
		Maryland Historical Society	\$ 7,000
FY84	\$29,910	Montgomery County Historical Society	\$22,600
		Maryland Historical Society	\$ 7,210
FY85	\$37,500	Historic Preservation Grant Fund	\$20,000
		Montgomery County Historical Society	\$10,000
		Maryland Historical Society	\$ 7,500
FY86	\$89,200	Historic Preservation Grant Fund	\$39,200
		Montgomery County Historical Society	\$10,000
		Local Government Archives Project	\$50,000
FY87	\$36,200	Historic Preservation Grant Fund	\$19,200
		Montgomery County Historical Society	\$10,000
		Salvage Depot	\$ 7,000
FY88	\$75,400	Historic Preservation Grant Fund	\$25,400
		Montgomery County Historical Society	\$35,000
		Maryland Historical Society	\$20,000
		Salvage Depot	\$ 5,000

* In FY81 and FY82, funds were allocated in a nondepartmental account for HPC site surveys, HPC meeting support, and public hearing support. In FY83, money for HPC support was transferred to the DCHD's budget.

(continued)

	<u>Total</u>	<u>Allocation of Funds</u>	
FY89	\$72,900	Historic Preservation Grant Fund	\$25,400
		Montgomery County Historical Society	\$35,500
		Maryland Historical Society	\$10,000
		Salvage Depot	\$ 1,500
FY90	\$104,500	Historic Preservation Grant Fund	\$27,500
		Montgomery County Historical Society	\$36,000
		Maryland Historical Society	\$10,000
		Salvage Depot	\$ 2,500
		Glen Echo Foundation	\$30,000
FY91	\$74,000	Historic Preservation Grant Fund	\$27,500
		Montgomery County Historical Society	\$35,000
		Maryland Historical Society	\$10,000
		Salvage Depot	\$ 500

Source: FY81 - FY91 Operating budgets.

Table 21

Summary of Historic Preservation Grant Fund Activity
FY87 - FY90

<u>Year</u>	<u>Total Fund Allocation</u>	<u>Amount of Grants Awarded</u>	<u>Number of Grants Awarded</u>	<u>Number of Grant Applicants</u>	<u>Average Grant Size</u>	<u>Grant Range</u>
FY87	\$19,200	\$19,200	11	12	\$1,746	\$850-2,833
FY88	25,400	25,000	20	22	1,250	640-2,500
FY89	25,400	25,160	15	15	1,677	300-4,000
FY90	<u>27,500</u>	<u>27,500</u>	<u>14</u>	<u>16</u>	<u>1,964</u>	<u>407-6,150</u>
TOTAL:	\$97,500	\$96,860	60	65	\$1,614	\$300-6,150

Source: DHCD files.

Table 22

Historic Preservation Grant Fund Procedures

- (1) The availability of grants from the Historic Preservation Grant Fund (HPF) is advertised each year in local papers. In addition, an information sheet is mailed to previous grantees and others who inquire about the program.
- (2) DHCD staff assigned to support the HPC provide application forms to potential HPF grantees. The application deadline for receiving a grant is August 1 of the year in which a grant is requested.
- (3) DHCD staff examine applications for completeness, and forward to the Department of Finance, Division of Risk Management to identify the potential insurance requirements for each grant request.
- (4) A Grants Subcommittee, composed of three HPC members, evaluates all HPF applications, and forwards funding recommendations to the full HPC.
- (5) The full HPC evaluates the HPF applications along with the Grants Subcommittee's recommendations, and formally votes on the allocation of HPF funds in public session.
- (6) Depending upon the size of the grant, DHCD staff implements the HPC's allocation decisions following one of three procedures. If a grant is:
 - a) Less than \$1,000: the grant is disbursed through the Office of Procurement as a direct payment;
 - b) Between \$1,000 and \$5,000: the grant award is reviewed by the County Attorney's Office for form and legality, and then disbursed by the Office of Procurement as a purchase order;
 - c) More than \$5,000: the grant is reviewed by the County Attorney's Office and drafted in contract form. The contract is then sent to the grantee for signature, returned to DHCD, and forwarded to the Office of Procurement and processed as a contract award.
- (7) Oversight of HPF grants is exercised by DHCD staff. All grant recipients are required to report on the progress of their grant project on a bi-monthly basis, and must notify DHCD staff of any changes to the project's proposed timetable, scope, or personnel.

Source: DHCD records and interviews with staff.

Since FY85, funds from the Historical Activities Support/Nondepartmental Account have also been allocated annually to the Historic Preservation Grant Fund, which the HPC has the primary responsibility for administering. (See following section for description.) Other recipients of grants from the Historical Activities Support/Nondepartmental Account are approved each year by the Council as non-competitive grantees, pursuant to the County's procurement law (Section 11B-42, Cooperative purchasing, public entity contracting and grants).

4. In Practice: The Historic Preservation Grant Fund. As noted above, every year since FY85, funds from the Historical Activities Support/Nondepartmental Account have been allocated to the Historic Preservation Grant Fund, administered by the HPC. These funds have been used by the HPC for what is sometimes referred to as the "Mini-Grant Program".

Table 21 (page 44c) summarizes the total level of funding and activity of the Historic Preservation Grant Fund for FY87 through FY90. Appendix B lists the individual grant recipients with a description of the specific projects funded during the past four years. The data show that:

- The allocation of County funds to the Historic Preservation Grant Fund increased 35 percent between FY87 and FY90, from \$20,000 to \$27,500;
- Over 90 percent of those who apply each year receive some level of funding from the program;
- The number of grants awarded each year has ranged between 11 and 20, with a total of 60 grants awarded between FY87 and FY90; and
- The average grant size since FY87 has been \$1,614; grant awards have ranged from \$300 to \$6,150.

The process established by the HPC for administering the Historic Preservation Fund is summarized on Table 22 (page 44d). A review of program records indicates that the HPC has awarded grants to a variety of projects to include publications, video productions, oral or written history projects, landscaping plans or historic district designs, and education programs. The following organizations have received multiple grant awards during the past four years: the Chevy Chase Historical Society, the Woodside Historical Commission, the Historic Medley District, the Gaithersburg Heritage Alliance, and the Ad Hoc Committee to Save Hawkins Lane.

K. Staff Support

This section is organized into five parts:

Part 1, reviews the history of staff support for the HPC;

Part 2, examines the responsibilities and estimated cost of Department of Housing and Community Development (DHCD) staff assigned to support the HPC;

Part 3, examines the staff support for historic preservation provided by other County Government departments: the Office of the County Attorney, the Department of Environmental Protection, the Office of Planning Policies, and the County Council staff;

Part 4, reviews the staff support for historic preservation provided by M-NCPPC; and

Part 5, analyzes three staffing issues: the adequacy of staff support provided to the HPC; the relationship between HPC members and DHCD officials, and staffing alternatives.

1. History of Staff Support

County law requires the County Government to provide staff support to the HPC. The statute identifies the County Attorney as the HPC's legal counsel, but does not identify which office or department of County Government shall be assigned to provide the HPC with other professional or administrative staff support.

When members were first appointed to the HPC in late 1979, the task of providing administrative support to the HPC was assigned to an Assistant Chief Administrative Officer. Advice regarding the evaluation of historic resources was provided initially by Montgomery County Parks Department staff who had worked to compile the Atlas of historic resources.

In early 1981, the lead responsibility for providing staff support to the HPC was transferred within the Executive branch from the Office of the Chief Administrative Officer (CAO) to DHCD because the staff time needed to support the HPC was more than was available on a part-time basis from the CAO's office. From early 1981 until January 1983, staff support for the HPC was provided primarily by one of DHCD's planners, with continued assistance from the Parks Department's Office of the Park Historian.

In January 1983, recognizing that the needs of the HPC were increasing, DHCD hired a part-time Grade 18, Program Assistant, to provide support to the HPC; this marked the beginning of DHCD's hiring of staff dedicated to supporting the HPC. In FY84, the working title of this Program Assistant became: "Executive Director of the Historic Preservation Commission", and in FY86, the Program Assistant position was upgraded from a Grade 18 to a Program Assistant II, Grade 21. The Program Assistant worked increasing numbers of hours each year, so that by FY88, while technically still only a part-time position, the Program Assistant was working almost on a full-time basis.

The Program Assistant position assigned to staff the HPC was originally located administratively in the Office of the DHCD Director; the Program Assistant reported directly to the Director of DHCD, and clerical support for the HPC was provided by the Director's office. During FY88, the function of providing support to the HPC was administratively transferred to the Division of Community Planning and Development (CPD); and the Program Assistant assigned to staff the HPC was placed under the direct supervision of the Chief of CPD.

In August 1988, the Program Assistant who had been assigned to staff the HPC since 1983 resigned. Following the resignation, DHCD staff worked with the Office of Personnel to create a full-time position to provide staff support to the HPC; and in February 1989, a full-time Grade 21, Program Assistant II, with the working title of Historic Preservation Specialist, was hired. At that time, a Grade 13, Administrative Aide in the CPD Division was also assigned to support the HPC.*

Coincident with this OLO evaluation, at the request of the DHCD Director, the Office of Personnel performed a grade classification study of the two positions assigned to support the HPC. As a result, in July 1990, the Grade 21, Program Assistant II position was upgraded to a Grade 23, Program Manager I position; and the Grade 13, Administrative Aide position was upgraded to a Grade 15, Office Services Manager position. Both of these positions continue to report to the Chief of the CPD Division.

In July 1990, the Historic Preservation Specialist hired in February 1989 resigned. At the time of this writing, the recruitment for this recently upgraded Grade 23, Program Manager position has begun. During this interim period, which is expected to last approximately six months, a DHCD planner has been assigned on a full-time basis to provide professional staff support to the HPC.

2. Responsibilities and Cost of DHCD Staff Support for the HPC

a. Staff responsibilities. As described above, two workyears (one Grade 23, Historic Preservation Specialist, and one Grade 15, Office Services Manager) within the Division of Community Planning and Development (CPD) are assigned to provide professional and administrative staff support to the HPC. During the past six months, a Public Administration Intern has also been assigned to assist with HPC-related activities.

In addition to the staff dedicated on a full-time basis to the HPC, time is spent on HPC business by the CPD Division Chief, a DHCD grants coordinator, the DHCD's Administrative Services Coordinator, the Deputy Director of DHCD, and the Director of DHCD. DHCD's Code Enforcement Division also supports the work of HPC by enforcing the demolition by neglect provisions of Chapter 24A. (This function was reviewed earlier in this report, see page 38.)

* Between the time that the Program Assistant resigned, and the new Historic Preservation Specialist was hired, other DHCD staff were assigned on an interim basis to provide staff support for the HPC; individuals who helped out during this period included the CPD Division Chief, and an assistant to the DHCD Director.

Estimates of the time spent on various job responsibilities were obtained through interviews with the incumbents and a review of written position descriptions. The time of the Historic Preservation Specialist assigned to support the HPC is allocated as follows:

- Prepare materials for HPC's consideration of HAWPs, to include ensuring applications are complete, providing technical assistance to applicants, conducting site visits, and preparing staff recommendations (60% of time);
- Work with the County Attorney's office to develop executive regulations, draft decision, etc. for the HPC (10% of time);
- Develop and monitor contracts to conduct research on historic resources (10% of time);
- Serve as liaison to other County offices and State agencies (5% of time);
- Make recommendations to DEP regarding building permit applications for work on Atlas resources (5% of time); and
- Perform various other tasks to support HPC's work, to include maintaining HPC's records, helping the Chair set the agenda, answering questions posed by County staff or members of the public, and drafting correspondence for the Chair's signature (10% of time).

The time of the Office Services Manager assigned to support the HPC is allocated as follows:

- Provide information on laws and regulations concerning historic preservation, to include information on HAWPs, the Master, and the County's historic preservation tax credit program (30% of time);
- Keep minutes of HPC meetings and maintain other HPC records (15% of time);
- Coordinate meeting of legal requirements for advertising and public notification of matters pending before the HPC (10% of time);

- Process HAWPs approved/denied by the HPC (10% of time);
- Maintain updated listing of individual sites and historic districts designated on the Master Plan (5% of time);
- Monitor Historic Preservation Grant Fund projects (10% of time); and
- Assist Historic Preservation Specialist with various other assignments (20% of time).

b. Estimated Cost of Providing Staff Support to the HPC.

Table 23 (page 49a) contains data on DHCD's costs of supporting the work of the HPC since FY88. Part I of the Table lists staff and operating expenses, and Part II of the Table lists the level of the County's Certified Local Government (CLG) grant approved each year by the Maryland Historical Trust, along with the County's match.* Table 23 excludes the level of County appropriations to the Historical Activities Support/Nondepartmental Account, which was discussed earlier in this chapter (see page 44).

The salaries/fringe numbers include only the cost of the two staff positions assigned on a full-time basis to support the HPC.** The operating expense data includes funds allocated in DHCD's budget to support the work of the HPC, plus an estimate by DHCD's Administrative Services Coordinator of additional support provided elsewhere in DHCD's budget for such necessities as: copying material for HPC meeting packets, and use of the motor pool by the Historic Preservation Specialist to perform field work.

The CLG grant plus the County's matching grant can reasonably be considered additional operating expenses because these funds are spent on projects that assist the HPC to perform its statutory responsibilities. For example, as listed in Table 24 (page 49b), CLG funds have been used for the past four years to fund research on historic resources and to publish the Preservationist.

* For background on the CLG program, see page 12.

** As noted above, other DHCD staff do spend a proportionate share of their time on HPC business. However, the cost of time spent by others (e.g., the Chief of CPD, DHCD's grants coordinator, the Deputy Director of DHCD, and the Director of DHCD) is not easily quantified.

Table 23

Estimated DHCD Expenditures for Historic Preservation
FY88 - FY91

I. DEDICATED STAFF AND OPERATING EXPENSES

	<u>FY88</u>	<u>FY89</u>	<u>FY90</u>	<u>Projected FY91</u>
Salaries/Fringe	\$46,510	\$49,780	\$ 77,020	\$ 84,180
Operating Expenses	<u>31,750</u>	<u>38,315</u>	<u>35,000</u>	<u>39,500</u>
Total:	\$78,260	\$88,095	\$112,020	\$123,680

II. CERTIFIED LOCAL GOVERNMENT (CLG) FUNDS AND COUNTY MATCH*

	<u>FY88</u>	<u>FY89</u>	<u>FY90</u>	<u>Projected FY91</u>
CLG Grant From State	\$12,875	\$13,750	\$18,000	\$20,900
County CLG Matching Grant	<u>12,875</u>	<u>13,750</u>	<u>18,000</u>	<u>20,900</u>
Total:	\$25,750	\$27,500	\$36,000	\$41,800

* Figures represent grant and County match amounts enumerated in County's contracts with Maryland Historical Trust.

Source: DHCD files.

Table 24

Projects Funded by Certified
Local Government Program Grants
FY88 - FY91

<u>Year</u>	<u>Projects</u>
FY88	<ul style="list-style-type: none">● Publishing <u>The Preservationist</u>● Researching historic resources● Creating historic design guidelines for Hyattstown● Producing slide/tape presentation
FY89	<ul style="list-style-type: none">● Publishing <u>The Preservationist</u>● Researching historic resources
FY90	<ul style="list-style-type: none">● Publishing <u>The Preservationist</u>● Researching historic resources● Cataloging and producing maps and photos of County Master Plan sites● Surveying development of 20th century themes of ecclesiastical buildings● Reorganizing HPC's filing system
FY91 (proposed)	<ul style="list-style-type: none">● Publishing <u>The Preservationist</u>● Researching historic resources● Updating and republishing HPC brochure on the historic preservation process and programs

Source: HPC files of CLG grants, FY88 - FY91.

The data show that staff and operating expenses dedicated to support the work of the HPC have increased during the past four years. DHCD's FY91 allocation of \$84,180 to support two full-time staff represents a significant increase over the FY88 allocation of \$46,510 to support two part-time staff. If DHCD's expenses plus the CLG and County match are added together, operating support for HPC activities increased almost 30 percent within the past four fiscal years.

3. Staff Support for Historic Preservation from Other County Government Departments and Offices

Direct staff support for HPC activities extends beyond DHCD to the Office of the County Attorney and the Department of Environmental Protection. In addition, although not directly in support of HPC's activities, staff in the Office of Planning Policies, Department of Transportation, and Office of the County Council spend time on historic preservation issues.

a. Office of the County Attorney. The law establishing the HPC specifies that the County Attorney shall serve as legal counsel to the Commission. This policy is consistent with Section 213 of the County Charter, which states that the County Attorney shall be the legal advisor to the County Executive, all departments, and other instrumentalities of the County Government.

Soon after the HPC was appointed in 1979, an Assistant County Attorney was assigned to provide legal advice to the HPC. During the past eleven years, this responsibility has been rotated among five different attorneys. For the most recent two year period, an Assistant County Attorney from the Personnel/Civil Rights Team was assigned to provide advice to the HPC; as of August 1990, the responsibility was transferred to an Assistant County Attorney from the Land Use Team.*

The Office of the County Attorney estimates that this fiscal year, approximately \$25,000 worth of staff time will be spent on HPC business. Service from the Office of the County Attorney to the HPC includes providing legal advice on specific HAWP cases, reviewing/editing HPC decisions, and answering procedural questions. The amount of time spent by the Office of the County Attorney on HPC business has varied depending upon factors such as the competing workload demands of the attorney assigned to the HPC, the nature of HAWP applications filed, and the overall working relationship between the Office of the County Attorney, DHCD, and the HPC.

* Attorneys in the Office of the County Attorney are assigned to work on one of seven "teams" - Land Use, Claims, Personnel/Civil Rights, Finance/Contract, District Court, Opinion/Legislation, and Public Safety.

During the past two years, there has been a notable increase in the time spent by the Office of the County Attorney on HPC business. In particular, this has involved: assisting the HPC write a number of HAWP decisions involving complex legal issues, defending HPC decisions that have been appealed, reviewing draft executive regulations, and initiating legal advice on procedural matters.

b. The Department of Environmental Protection. DEP staff currently support the work of the HPC in the following ways:

- As part of maintaining a premise address data base, DEP is responsible for tracking which properties are designated on the Master Plan and which are listed on the Atlas;
- DEP staff distribute HAWP applications; receive "completed" HAWP applications; and forward HAWP applications to DHCD staff assigned to support the HPC;
- In accordance with instructions received from the HPC, DEP staff issue or deny an HAWP application;
- DEP staff determine whether an application for a demolition or building permit to perform work on an historic resource listed on the Atlas constitutes "substantial alteration", and if so, forwards the application to the Planning Board for further review;* and
- DEP staff are responsible for conducting inspections and issuing civil citations for violations of Chapter 24A.**

The Office of the DEP Director estimates that during this fiscal year, when the above responsibilities are aggregated, approximately one DEP workyear, equal to approximately \$28,000 in staff time will be spent on historic preservation-related tasks. In citing this estimate, it is important to note that the work is absorbed by numerous staff in the Division of Construction Codes Enforcement, and no DEP staff is expressly dedicated to performing historic preservation work.

c. Other County Government Departments and Offices. Although not directly in support of the HPC, staff from a several other County Government departments spend time working on issues that affect the preservation of historic resources in the County.

* For more about substantial alteration cases, see page 36.

** The absence of a routine inspection program was discussed earlier; see page 32.

A task that regularly involves staff from numerous Executive branch departments plus County Council staff is the processing of amendments to the Master Plan for Historic Preservation.*

Within the Executive branch, the Office of Planning Policies (OPP) is responsible for coordinating the review of master plan amendments, which includes obtaining comments from various Executive branch departments and offices. OPP estimates that last year (FY90), approximately \$3,000 in Executive branch staff time was spent processing amendments to the Master Plan for Historic Preservation.

County Council staff time spent on historic preservation matters also focuses on the processing of amendments to the Master Plan for Historic Preservation. This includes time staffing public hearings, Council worksessions, and final Council action.

Other Executive and legislative branch initiatives at times concern the preservation of historic resources. Some recent examples are: the Rural Roads Task Force, the adaptive reuse of the historic Jessup Blair house for single parent housing, and the federal government's proposal for new construction at the historic Walter Reed annex located in Forest Glen. In addition, there are numerous examples of where the potential location of a public facility could impact an historic site. These projects can involve staff from many different executive and legislative branch offices.

4. M-NCPPC staff support for historic preservation

This section summarizes the historic preservation activities of the Montgomery County Planning Department and the Montgomery County Parks Department, and explains how the work of M-NCPPC staff relates to the work of the HPC.

a. The Planning Department. Staff of the Historic Preservation section within the Urban Design Division provide technical support to the Planning Board on historic preservation issues, which include: the evaluation and designation of historic sites and districts, and development projects on designated and proposed site plans, subdivisions, potential historic resources, the impact of proposed road projects on historic resources, and the development of legislation regarding preservation programs.

* For description of the Master Plan designation process, see Table 7, page 24a.

As shown in Table 25 (below), the Planning Department's commitment to historic preservation activities has increased during the past four fiscal years. In FY88, an estimated 1.6 position years costing \$96,320 was allocated in the budget to historic preservation; this year's approved operating budget allocates 2.3 position years costing over \$153,000 to historic preservation.

Table 25

Estimated M-NCPPC Planning Staff
and Operating Expenses for Historic Preservation
FY88 - FY91

	<u>FY88</u>	<u>FY89</u>	<u>FY90</u>	<u>FY91</u>
Position Years	1.6	1.2	2.0	2.3
Salaries/Fringe	\$96,320	\$73,920	\$130,400	\$153,180

Source: M-NCPPC records.

During the past several years, HPC's evaluation of historic resources listed on the Atlas has become more closely coordinated with the work of M-NCPPC's Planning Department. In particular, HPC's schedule of Atlas resource research and evaluation is established in conjunction with M-NCPPC's Historic Preservation Planner. This coordination has helped to reduce the interval of time between the HPC's and the Planning Board's evaluation of Atlas resources, and has worked to minimize the need for M-NCPPC staff to conduct duplicative research of Atlas resources.

The Planning Department staff also assists the HPC with its statutory role to review subdivision applications. In particular, M-NCPPC's Historic Preservation Planner reviews all subdivision applications, and forwards to the HPC only those applications that have the potential for affecting an historic site designated on the Master Plan, or an historic resource on the Atlas. This screening of subdivision applications eliminates the need for either HPC members and/or DHCD staff to inspect all subdivision applications (totaling 250-300 each year in recent years) in order to find the applications appropriate for HPC review.

b. The Parks Department. As noted earlier in this chapter, from 1980-1983, staff from the Parks Department provided professional staff support to the HPC. The advice from the Parks Department was primarily in terms of HPC's research and evaluation of historic resources listed on the Atlas.

Today, staff of the Office of the Park Historian only occasionally interact with the HPC; most often to apply for an HAWP for work on one of M-NCPPC's historic sites. The FY91 budget allocates three workyears to historic preservation activities in the Office of the Park Historian, which is currently located within the Park Department's Division of Natural Resource Management.

The Office of the Park Historian administers departmental programs relating to the identification, preservation, and interpretation of historic and archaeological resources on park land. Responsibilities include the restoration of historic structures, research and writing of reports and interpretive materials, acquisitions and care of collections, display of historic exhibits, and the identification, inventory and mapping of archaeological resources. In addition, the Office coordinates historic interpretive programs throughout the park system.

5. Analysis of Staffing Issues

a. Adequacy of Staffing. As evidenced by the data reviewed in this chapter, County resources dedicated to supporting historic preservation, and in particular, to supporting the work of the HPC, have increased during the past decade. However, this evaluation finds that the current complement of staff assigned to support the HPC does not enable HPC to perform all of its statutory responsibilities.

The growing volume and complexity of HAWP applications has increased the staff time required to review and prepare HAWP applications for HPC action. As a result, the staff time necessary to prepare material for the HPC's bi-weekly meetings leaves little staff time for other projects.

At present, a number of HPC's statutory responsibilities are not being carried out as effectively as they could be. In particular, substantially more could be done at the staff level to expedite the HPC's review of HAWPs and HPC's evaluation of historic resources. In addition, as discussed earlier in this chapter, more needs to be done in terms of providing information and educational materials to the public about historic preservation, and administering existing programs to encourage historic preservation.

DHCD staff and HPC members agree that the primary reason these responsibilities are not being carried out effectively is a lack of staff time. DHCD officials and HPC members also agree that it is unreasonable to expect the HPC members themselves to perform these functions without staff support provided by the County Government.

Based upon personal observation and extensive interviews with DHCD staff, it is apparent that the individuals assigned to support the HPC work many hours trying to complete their job assignments. The individual who held the job of Historic Preservation Specialist from February 1989 through July 1990 voiced the view that while the job was a challenging and often rewarding one, it was also very frustrating because the demands of the job exceed the time available in a 40-hour work week.

In addition to citing the need for additional staff support from DHCD, a number of HPC members voiced dissatisfaction with the overall level of service from the Office of the County Attorney during the past ten years. While acknowledging that the situation has improved recently, HPC members expressed frustration with the lack of continuity, (i.e., the turnover in legal staff assigned to the HPC), and concern that the HPC has at times been assigned attorneys who are relatively inexperienced in land use law.*

The feeling that the HPC needs access to additional legal advice was also expressed by others interviewed during the course of this OLO study, including lawyers who appear before the HPC, citizens, and DHCD staff assigned to support the HPC. The primary reason cited for needing additional legal assistance is the increasing complexity of selected HAWP applications, as evidenced by increased citizen opposition, and increased participation of attorneys and expert witnesses in the HAWP proceedings.

b. The Relationship Between HPC Members and DHCD Officials. Interviews with County Government staff and HPC members (past and present) indicate that since 1987, the relationship between HPC members and DHCD management has, at times, been notably strained. However, it appears that during the course of this OLO study, while some problems remain, the overall working relationship between HPC members and DHCD officials has improved.

It appears that friction between members of the HPC and County officials initially developed out of several substantive differences of opinion about the historic designation and future development of specific sites in the County. The friction continued in part because of an apparent lack of clarity and mutual understanding about the appropriate role of staff assigned to support the HPC, and perhaps broader differences of opinion about the overall role of the HPC.

HPC members perceive that, at times, the County has not fully supported the work of the HPC, and has treated Commissioners "inappropriately". For example, HPC members report feeling frustrated that: additional staff have not been assigned to support historic preservation; DHCD officials have not consistently consulted the HPC about the allocation of

* As noted earlier, as of August 1990, an attorney from the Land Use Team has been assigned to provide legal advice to the HPC.

County resources on historic preservation-related matters; and the Office of the County Attorney took six months to complete its review of executive regulations drafted by the HPC.*

In turn, County officials perceive that, at times, the HPC has not understood its role, and has treated citizens and staff assigned to support the HPC "inappropriately". For example, DHCD officials perceive that: the HPC has not always understood or appreciated the many competing budgetary pressures and workload demands on the department; the HPC has, at times, criticized DHCD staff in public when staff was making a sincere effort to perform a difficult task; and that certain HPC members have acted in a rude or condescending manner in public session to DHCD staff, as well as to citizens applying for an HAWP.**

A recurring source of friction between HPC members and DHCD officials has been an apparent lack of mutual understanding about the role of DHCD staff assigned to support the work of HPC. This misunderstanding has included confusion about whether DHCD staff can take directives from HPC members, and disagreement over whether DHCD staff can appear in public on behalf of the HPC. HPC members express frustration that it has been difficult to get staff support for special projects, while DHCD officials express frustration that HPC members have not consistently understood how much staff time is needed just to provide support to the HPC on routine matters. HPC members also voice frustration that, if the position of the HPC is contrary to that of the County Executive, then DHCD staff assigned to the HPC are not allowed to speak in public on behalf of the HPC.***

While certain disagreements have not been entirely resolved, it appears that, as noted above, the working relationship between DHCD and HPC members has recently begun to improve. As is often the case, the evaluation process during the past few months has itself afforded an opportunity for improved communication and a forum for an exchange of ideas. At this time, all parties appear to be making a genuine effort to forget past differences, and to develop a more constructive approach to working together.

* Executive regulations were drafted by the HPC and sent to the County Attorney for review in November 1989; the regulations were not returned to the HPC until May 1990.

** In early 1990, recognizing that some problems existed between DHCD officials and HPC members, the DHCD Director proposed hiring a consultant to help identify areas of disagreement and improve communication. At the recommendation of OLO, this initiative was placed on hold pending the outcome of this study.

*** For a number of years in the mid-1980's, the Program Assistant assigned to the HPC routinely appeared in public on behalf of the HPC; since mid-1988, however, the practice has been that DHCD staff are permitted to appear in public on behalf of the HPC only when HPC's position is consistent with that of the Executive.

6. A Discussion of HPC Staffing Alternatives

As part of this study, OLO sought the opinions of those interviewed on alternatives for providing staff support to the HPC. The three options most frequently discussed were:

- Option (I): Keeping the responsibility for providing staff support to the HPC within the Department of Housing and Community Development;
- Option (II): Changing the law to assign M-NCPPC's Montgomery County Planning Department with responsibility for providing staff support to the HPC; or
- Option (III): Changing the law to establish HPC as an independent commission with its own staff located either within the executive or legislative branch of County Government.

The remainder of this chapter discusses the pros and cons of these three alternatives.

a. Option I. In general, the primary reasons cited for keeping the responsibility for providing staff support for the HPC within the Department of Housing and Community Development are that:

- Current law places the responsibility for staffing the HPC with the Executive branch;
- HPC members are appointed by the County Executive and confirmed by the Council, and the HPC is therefore appropriately staffed by Executive branch employees;
- HPC's responsibilities require coordination among Executive branch departments, and this can most efficiently be accomplished if the staff supporting the HPC is also located within the Executive branch;
- An increasing percentage of HPC's time is spent acting upon HAWPs, which is a regulatory function related to the building permit function handled by the Executive branch;
- The staff of DHCD includes professionals with appropriate background and expertise, (e.g., planners, architects, grants managers) who can supplement the work of staff assigned to support the HPC; and

- Being a relatively large department, DHCD currently "subsidizes" historic preservation by not specifically charging all operating expenses (e.g., use of the motor pool) to the HPC function.

The primary negative factors to be considered in keeping the current staffing arrangement are that:

- DHCD has multiple responsibilities, and when compared to some of the department's other demanding missions (e.g., creating affordable housing), historic preservation is competing for resources against other very important objectives;
- The arrangement continues the current assignment of historic preservation activities to two different agencies (DHCD and M-NCPPC), which results in some duplication of staff effort and confusion to the public about which agency is responsible for what function;
- The friction between DHCD officials and HPC members (as discussed earlier in this chapter) has created stress during the past three years that must be overcome if a more productive working relationship is to be established; and
- It is feasible that future situations will arise where the goals of historic preservation conflict with other important goals of DHCD, and such conflicts of purpose may create a difficult working climate for both DHCD staff and HPC members.

b. Option II. The primary advantages cited to assigning responsibility for providing professional and administrative staff support to M-NCPPC's Planning Department are that:

- The County's historic preservation ordinance was enacted pursuant to authority contained in the Regional District Act, and M-NCPPC is a logical place to administratively locate staff support for a function that is part of the County's land use and planning function;
- Staffing the HPC by the M-NCPPC Planning Department appears to work well in Prince George's County, which is governed by the same network of State enabling legislation;

- Consolidating the County's historic preservation efforts would reduce the public's confusion about where to go with questions concerning historic preservation, and eliminate duplication of staff effort by County Government staff and M-NCPPC staff;
- This location would provide greater opportunities for coordination and economies with respect to HPC's legally-mandated role to provide advice to the Planning Board on historic designations and subdivision applications; and
- The M-NCPPC staff includes experts in the appropriate subject areas such as: historic preservation, urban planning, community planning, architecture, landscape architecture.

The primary disadvantages cited to relocating the staffing responsibility to M-NCPPC's Planning Department are that:

- It would likely be more difficult to coordinate HPC's work with that of Executive branch departments;
- Although HPC members (appointed by the Executive and approved by the Council) would presumably continue to make decisions on HAWPs, the change would be perceived as moving a regulatory function from the Executive branch to the Planning Board;
- There would continue to be the potential for staff to become caught in between conflicting views of decision-makers; e.g., the HPC could take a position contrary to that of the Planning Board, and the Planning Department staff could feel caught in the middle; and
- M-NCPPC's Silver Spring offices are already very crowded, and it would be a challenge to provide adequate space for additional staff.

c. Option III. A third staffing option would be to establish the HPC as an independent commission, either as part of the Executive or Legislative branch. The primary advantage of this alternative is that it would provide the HPC with greater public visibility and identity as a separate commission, not affiliated with any particular department or agency. Advocates for this change argue that it would also provide the HPC members with more direct control over budgetary resources, and would reduce the potential for conflict between HPC goals and departmental goals. Examples of other adjudicatory boards that have been set-up as independent entities are: the Ethics Commission, the Board of License Commissioners, the Board of Appeals, and the Merit System Protection Board.

A major disadvantage of establishing the HPC as an independent entity would be the fiscal impact of such a change. In addition to costing more in terms of staff and operating expenses, establishing HPC as an independent commission could result in an increased isolation of the historic preservation function, instead of an increased coordination of HPC's actions with other County activities that affect the preservation of historic resources. Finally, staff assigned to support to the HPC would continue to be merit system staff hired by either the Chief Administrative Officer (e.g., Ethics Commission staff) or the Council Staff Director (e.g., Board of Appeals staff), which means that the potential for having staff feel split loyalties, although perhaps reduced, would not be eliminated.

V. COMPARATIVE INFORMATION

Section A compares the structure, staffing and responsibilities of the Montgomery County HPC to the Prince George's County HPC, as the only other preservation commission governed by the Regional District Act;

Section B summarizes data collected from historic preservation staff in 12 other jurisdictions. The sample, which was selected on the basis of recommendations from the Maryland Historical Trust, the National Alliance of Preservation Commissions, and DHCD and M-NCPPC staff, includes two other Maryland counties (Anne Arundel, Howard), three Maryland cities (Frederick, Hagerstown, Rockville), the District of Columbia, and five additional jurisdictions known for their historic preservation activities.

A. Comparison of HPCs in Montgomery and Prince George's Counties

Montgomery and Prince George's Counties both derive the authority to enact local laws governing the preservation of historic resources from the Regional District Act.* Prince George's County enacted its own historic preservation ordinance several years after Montgomery County, and the two laws are similar in many respects.

A comparison of the composition and statutory responsibilities of the Montgomery and Prince George's historic preservation commissions is contained in Appendix C. The comparison shows that:

- Both HPCs have nine members, but Prince George's membership requirements are more restrictive and detailed;
- Both HPCs are assigned a range of regulatory, advisory, and administrative responsibilities, to include serving as a clearinghouse for information on historic preservation and to generally undertake activities to advance the goals of historic preservation;

* For more about the Regional District Act, see page 4.

- Both HPCs have authority to decide whether an HAWP is issued or denied; in both counties, the department that actually issues the HAWP is the department that issues building permits; by law, HAWP applications in Prince George's are filed with the Department of Licenses and Permits, and in Montgomery HAWP applications are filed with the Department of Environmental Protection;*
- The appeal of an HAWP decision is to the Board of Appeals in Montgomery County and to the Circuit Court in Prince George's;
- In Montgomery County, the HPC's role with respect to the designation of historic sites on the Master Plan is purely advisory; in contrast, in the Prince George's HPC has authority to designate sites on the Master Plan, with their decision being appealable to the Council;
- In Montgomery County, the Planning Commission is responsible for maintaining the Atlas, whereas in Prince George's County, the HPC is responsible for maintaining the County's inventory of historic resources; and
- In both counties, legal support for the HPC is provided by the Office of the County Attorney; in Montgomery County, administrative and technical support for the HPC is provided by the County Government, specifically by the Department of Housing and Community Development; in Prince George's administrative and technical support for the HPC is provided by the Planning Department of M-NCPPC.

B. Comparison of HPCs in Other Jurisdictions

During May and June 1990, OLO conducted telephone interviews with historic preservation staff in 12 jurisdictions. The data obtained is summarized in Table 26, beginning on page 61a.

In the jurisdictions surveyed, the number of historic sites and resources protected by local ordinance ranges from 12 (Cobb County) to over 20,000 (D.C.). The average number of properties protected in the communities surveyed is approximately 2,500, which is comparatively less than the 4,450 properties protected in Montgomery County.**

* In practice, HAWP applications in Prince George's are filed with the M-NCPPC staff assigned to support the HPC, while in Montgomery, HAWP applications are submitted to DEP.

** The figure of 4,450 properties protected in Montgomery County includes sites designated on the Master Plan plus resources listed on the Atlas.

Table 26

A Survey of the Structure and Staffing of Historic Preservation Programs - Part I

Jurisdiction	Historic Preservation Entity	Date Established	Number of Members on Board/Commission	Required Fields of Expertise on Board/Commission	Estimated # of Sites Protected ¹
Anne Arundel County, MD	Office of Planning & Zoning	1985	N/A	N/A	1,960
Cobb County, GA	Historic Preservation Comm.	1985	5	None	12
District of Columbia	Historic Preservation Review Board	1983	11	1 architect 1 architectural historian 1 archeologist 1 historian	20,500
Frederick City, MD	Historic District Commission	1954	7	1 architect	1,250
Galveston, TX	Galveston Historic Review Board (residential) Strand/Mechanic Historic Review Board (commercial)	Residential - 1976 Commercial - 1988	Residential - 7 Commercial - 7	Residential: 1 architect Commercial: 1 architect	1,000
Hagerstown, MD	Preservation Design District Commission	1987	7 voting, 2 non-voting	At least 2 members with expertise in either architecture, history, architectural history, or archeology.	450
Howard County, MD	Historic District Commission	1972	7	None	150
Kansas City, MO	Landmarks Commission	1977	9	1 architect 1 attorney 1 realtor 1 mortgage banker 1 art or architectural historian	1,000
Liberty, MO	Historic District Review Commission	1986	7	1 realtor 1 historian 1 attorney 1 architect	300
Montgomery County, MD	Historic Preservation Commission	1979	9	1 historian 1 architect 1 preservationist 1 urban designer	4,450
Rockville, MD	Historic District Commission	1983	5	None	150
San Antonio, TX	Board of Review for Historic District and Landmarks	1967	11	6 in architecture, history, architectural history, or land-use planning. 5 in community development or real estate, banking or accounting, law, consumer advocacy, neighborhood conservation or preservation.	3,000
Seattle, WA	Landmarks Preservation Board	1973	11	2 architects 2 historians 1 representative from the City Planning Commission 1 realtor 1 banker/financier	850

¹ Includes both individual sites, and sites located within historic districts, that receive any form of protection under the jurisdiction's historic preservation law (e.g., in Montgomery County, this includes sites and districts protected by the Master Plan for Historic Preservation or resources listed on the Locational Atlas and Index of Historic Sites).

Source: Phone interviews with historical preservation administrators in the jurisdictions surveyed, conducted by OLO during May/June, 1990.

(continued)

A Survey of the Structure and Staffing of Historic Preservation Programs - Part II

Jurisdiction	Decision Authority on HAWPs	Role in Historic Site Designation	Appeals Body for HAWPs	Administrative/Technical Support for Preservation Entity		Legal Support for Preservation Entity
				Bureaucratic Location	Staff	
Anne Arundel County, MD	Yes ¹	None. Uses State historical designation process.	Circuit Court	Office of Planning & Zoning	1 Historic Sites Planner 1 County Archeologist 1 Asst. Co. Archeologist 1 GIS Technician (P/T)	County Attorney
Cobb County, GA	Yes	Advisory to County Commission.	Board of Commissioners	Planning and Zoning Dept.	1 Historic Preservation Planner	County Attorney
District of Columbia	No ²	Final designation authority.	D.C. Court of Appeals	Department of Consumer and Regulatory Affairs	1 Division Chief 1 Architect 1 Archeologist 4 Architectural Historians 1 Grants Manager 2 Grants Staff 2 Support Staff	Corporation Attorney
Frederick City, MD	Yes	Advisory to Planning Commission and City Council.	Circuit Court	Planning Department	1 Staff Consultant (P/T) 1 Secretary (P/T)	City Attorney
Galveston, TX	Yes	Advisory to Planning Commission and City Council.	Board of Adjustments	Planning Department	1 Senior Planner (P/T) 3 Assistant Planners (P/T) 2 Enforcement Ofcs. (P/T) 2 Sec. Admins. (P/T)	City Attorney
Hagerstown, MD	Yes	Advisory to Planning Commission and City Council.	Circuit Court	Planning Department	1 Senior Planner (P/T)	City Attorney
Howard County, MD	Yes	Advisory to Zoning Board and Planning Board.	District Court	Planning Department	1 Historic Preservation Planner 1 Secretary	County Attorney
Kansas City, MO.	Yes	Advisory to Planning Commission and City Council.	None specified	City Development Department	1 Administrator 1 Secretary 1 Intern	City Attorney
Liberty, MO	Yes	Advisory to Planning Board and City Council.	Appeals Board	Department of Community Development	1 Community Development Coordinator (P/T)	City Attorney
Montgomery County, MD	Yes	Advisory to Planning Board and County Council.	Board of Appeals	Department of Housing and Community Development	1 Program Manager 1 Office Services Manager	County Attorney
Rockville, MD	Yes	Advisory to City Council.	Circuit Court	Planning Department	1 Planner I (P/T)	City Attorney
San Antonio, TX	Yes	Advisory to Zoning Commission and City Council.	City Council	Department of Building Inspections	1 Historic Preservation Officer 1 Assistant to the H.P.O. 1 Secretary	City Attorney
Seattle, WA	Yes	Final Designation Authority.	Hearing Examiner	Department of Community Development	5 Urban Conservation Planners	City Attorney

¹ In Anne Arundel County, Office of Planning and Zoning staff evaluate building permit applications and proposed subdivisions affecting historic and archeological resources as part of the permit review process.

² The D.C. Historic Preservation Review Board has the authority to deny "certificates of appropriateness", i.e., HAWPs, but positive recommendations must be forwarded to the Mayor's Agent for approval.

Source: Phone interviews with historic preservation administrators in the jurisdiction surveyed, conducted by OLO during May/June, 1990.

1. Structure and Composition. Of the 12 jurisdictions surveyed, all but one have at least one board or commission composed of citizen members to review resources for historic designation, and to authorize the issuance of permits for work on historic sites. One jurisdiction (Galveston, Texas) has two review boards, one for residential historic properties and one for commercial historic properties. In Anne Arundel County, where there is no preservation commission, building permits affecting historic or archaeological resources are handled at the staff level as part of the regular building permit process.

A majority of the jurisdictions surveyed established their historic preservation board or commission within the past ten years. Four jurisdictions, similar to Montgomery County, created an historic preservation commission during the 1970's.

The size of the historic preservation boards/commissions in the jurisdictions surveyed vary from five members (Cobb County) up to 11 members (D.C., San Antonio, Seattle). The average of seven members is somewhat smaller than the nine-member HPC in Montgomery County.

Similar to Montgomery County, a majority of jurisdictions surveyed require certain fields of expertise to be represented on the board/commission; four of the twelve jurisdictions have no specific requirements for expertise. The most common requirement is for expertise in architecture. Other expertise frequently required include citizens with special training or knowledge in: archaeology, architectural history, history, and urban design. A number of the jurisdictions surveyed (Kansas City, Liberty, San Antonio, Seattle) require that the historic preservation board/commission include a representative from a business-related field.

2. Statutory Authority and Staffing. All of the jurisdictions surveyed that have an historic preservation commission have granted decision-making authority to the commission on permits for alteration/improvement to an historic site. In the District of Columbia, the Historic Preservation Review Board has final authority to deny such permit requests, but approval must be forwarded to the Mayor's Agent.

Eleven of the twelve jurisdictions surveyed have a process for appealing decisions on historic area work permits. In six jurisdictions, appeals go directly to the courts. In three jurisdiction, appeals go to a local administrative appeal board (similar to the County's Board of Appeals) or a hearing examiner. In the other two jurisdictions, the appeal is to the locally elected legislative body.

Nine of the historic preservation commissions surveyed are similar to the County's HPC in that their role with respect to designating historic sites and districts is purely advisory. In the District of Columbia and Seattle, however, the historic preservation commission has final designation authority. Anne Arundel County relies upon the Maryland Historical Trust's designation process.

In all of the jurisdictions surveyed, legal support for the historic preservation function is provided by the city or county attorney. The location of staff providing administrative and technical support to the historic preservation commission does, however, vary. In seven jurisdictions, staff support for historic preservation is provided by the local planning department. Three jurisdictions (Kansas City, Liberty, Seattle), similar to Montgomery County, provide support through the local government's department of community development. In San Antonio, staff support is provided by the Department of Building Inspections, and in D.C., staff support is provided by the Department of Consumer and Regulatory Affairs.

The average number of staff assigned to provide administrative and technical support to a preservation board/commission is three full-time employees. By far, the jurisdiction that allocates the largest number of staff to support its historic preservation review board is the District of Columbia, with eight professionals and four grant and support staff. In five jurisdictions, staff is only allocated on part-time basis, and the smallest allocation of staff is one part-time planner. (Hagerstown and Rockville.)

In seven of the jurisdictions surveyed, there is at least one planner assigned to provide professional support to the historic preservation commission. Three jurisdictions instead assign an administrator or coordinator. Only one jurisdiction (Galveston) has enforcement officers assigned to the historic preservation function.

VI. CONCLUSIONS

A. General

The basic structure of the HPC and range of responsibilities assigned by law to the HPC are much the same today as they were when the HPC was established in 1979. The law assigns HPC with an unusually broad range of advisory, regulatory, and administrative responsibilities.

OLO's evaluation of the structure, staffing, workload, and general conduct of the HPC supports the following general observations:

- The operation of the HPC during the past decade has been affected greatly by an increase in the volume and complexity of applications for Historic Area Work Permits (HAWPs); and the continuation of a significant number of properties on the Atlas not yet evaluated for Master Plan designation;
- HPC members take their role very seriously, and volunteer many hours to perform the duties assigned by law to the HPC;

- Although County resources dedicated to the work of the HPC and to historic preservation in general have increased during the past decade, the current staffing structure does not enable the HPC to effectively meet all of its statutory responsibilities; and
- The public's perception of how HPC performs its adjudicatory role varies considerably; while many regard the HPC as a hard-working, dedicated, and knowledgeable Commission, these are others who have concerns about the HAWP application process and the manner in which the HPC considers those applications.

The remaining sections of this chapter summarize OLO's major conclusions, which are grouped under headings that generally parallel the organization of this report.

B. The Structure and Composition of the HPC

1. Compared to other adjudicatory boards and commissions in the County, the nine-member HPC is relatively large. Only two other adjudicatory boards appointed by the County are composed of an equal or greater number of members: the 15-member Human Relations Commission (HRC), and the nine-member Commission on Landlord-Tenant Affairs.

2. In accordance with Chapter 24A, the HPC makes all decisions sitting as a commission of the whole. The HPC has, however, successfully used committees (composed of from one to five HPC members) to perform discrete tasks and make recommendations for action to the full Commission. In contrast to the HPC, several other County-appointed commissions, including HRC and the Commission of Landlord-Tenant Affairs, are authorized by law to conduct much of their business (to include final decision-making) in panels composed of three to five members.

3. HPC members are reimbursed for actual expenses incurred (e.g., mileage, parking, baby sitting), but not compensated. The provision in Chapter 24A that specifies HPC members shall serve without compensation is consistent with recent amendments to Chapter 2 (contained in Bill 46-90, enacted October 1990) that provide the County greater discretion with respect to compensating members of County boards, committees, and commissions. The Council plans to direct the next Committee on Committees to fully analyze the issue of equitable compensation for members of County boards and committees.

4. During the past ten years, individuals with impressive backgrounds and broad experience have been appointed to serve on the HPC. The HPC has consistently included members with special training or knowledge in the fields of history, architecture, and preservation; while HPC members have represented the County geographically, there have been few racial minorities appointed to serve on the HPC. (It should be noted that the current statutory requirements for expertise on the HPC are open to interpretation.)

5. Interviews with members of the public indicate that the HPC is perceived by many to be composed of preservation advocates. While not necessarily inconsistent with HPC's responsibilities, which include undertaking activities to advance the goals of preservation in the County, the public's perception of HPC members as preservation advocates may impair HPC's ability to be perceived as an objective, quasi-judicial body.

C. HPC's Written Procedures and Recordkeeping

1. Minutes of HPC's meetings have been well kept and serve as the best record of HPC's decisions during the past ten years. Substantial progress has been made during the past year to improve other HPC records, which were not consistently organized prior to 1989.

2. Although the record evidences HPC devoting significant attention to establishing written procedures for the conduct of Commission business, many of those who interact with the HPC are unaware of HPC's written rules and policies. This is likely because the various resolutions constituting HPC's adopted procedures were never compiled into one document and made readily available to members of the public; and because the HPC has never formally adopted County-wide design standards and guidelines governing decisions on HAWPs.

3. Information about HPC's meeting procedures will become more readily available to the public when the HPC (in accordance with a requirement added to Chapter 24A in September 1989) promulgates method (2) executive regulations that outline Commission procedures. These regulations are expected to be transmitted to the Council for final action later this year. In addition, the HPC has expressed its intent to develop and adopt County-wide design standards and guidelines for HAWPs.

4. The role of the Local Advisory Panels (LAPs) appointed by the HPC has changed at various times during the past ten years. At present, the role of the LAPs is not clearly defined by the HPC, and there is disagreement among HPC and LAP members as to what the role of the LAPs should be. The HPC is in the process of developing written executive regulations that clarify the role of the LAPs.

5. HPC agendas have generally been set by the HPC Chair, with assistance from DHCD staff assigned to support the Commission. For a short period of time during 1989, HPC used a consent calendar for selected HAWPs. This consent calendar approach was discontinued after the County Attorney raised concerns that approving HAWPs on a consent calendar did not allow appropriately for the opening and closing of each case record.

D. HPC's Workload in General

1. HPC's meetings have increased both in number and length during the past ten years, largely to accommodate an increase in the volume and complexity of HAWP applications. In contrast to the early 1980's when a majority of HPC's time was spent on evaluating historic resources, the HPC today spends an estimated 75-80 percent of its time on HAWPs.

2. The number of HAWP applications is likely to continue to increase in future years, especially if proposed historic districts currently under review are designated on the Master Plan, e.g., Takoma Park, Garrett Park, Chevy Chase.

3. As the amount of time required for HAWPs has increased, the amount of time available for other HPC business has declined. The record indicates that, comparatively less time is spent today on HPC's advisory and administrative responsibilities than was spent during the early 1980's.

4. The only aspect of HPC's workload that has declined in recent years is HPC's review of building permits submitted for work on Atlas resources. Based upon the advice of the County Attorney, HPC discontinued this practice in August 1989. Since that time, DEP staff, in consultation with DHCD staff, determine whether such applications constitute proposals to "substantially alter" an historic resource.

E. Rendering Advice on Master Plan Designations and Subdivision Applications

1. Between 1980 and June 30, 1990, the HPC evaluated more than 500 historic resources listed on the Atlas. The number of resources evaluated annually ranged considerably (between 15 and 90 resources), depending upon factors such as the availability of funds for research, the level of staff support for the HPC, the Planning Board's schedule, and the time available on the HPC's agenda.

2. Research on historic resources was originally provided by the Office of the Park Historian in M-NCPPC. Since the mid-1980's, most research has been conducted by consultants on contract to DHCD.

3. Approximately 90 percent of the time, the recommendations of the Planning Board and County Executive, and final decision of the Council on whether to designate an historic site or district on the Master Plan has correlated positively with the recommendation of the HPC. (While current law is clear that Council and Executive action is required to designate Master Plan sites, the law is unclear as to whether Council and Executive action is also required to remove historic resources from the Atlas.)

4. The process of designating historic sites on the Master Plan is lengthy. However, the time it takes to process an amendment to the Master Plan for Historic Preservation is not unlike the time it takes to process any amendment to the General Plan.

5. The time lag between HPC's evaluation of an historic resource and the processing of a formal master plan amendment has, in some instances, required M-NCPPC staff to update the research conducted on an historic resource. This has happened most often when interim alterations have been made to the historic resource that render HPC's evaluation outdated.

6. The almost 500 Atlas resources that remain to be evaluated by the Council for final designation is a serious problem. From the perspective of property owners, being listed on the Atlas for an indefinite period of time can be seen as placing a restriction on the use of private property. From the preservationists' vantage point, indefinite listings on the Atlas increases the possibility that valuable historic resources may be altered and/or deteriorate before a decision is reached on designation.

7. The criteria listed in Chapter 24A for determining whether an historic resource should be designated on the Master Plan are similar to the criteria adopted by most other jurisdictions around the country. However, some members of the community perceive the County's criteria to be overly broad and subjective.

8. HPC's review of subdivision applications remained relatively steady during the past decade. The practice of delegating the screening of subdivision applications to M-NCPPC staff, which began several years ago, has helped to focus HPC's time on those subdivision cases that have the greatest potential of affecting historic sites and resources.

F. Acting Upon Historic Area Work Permits (HAWPs)

1. To date, the HPC has denied only a handful of HAWP applications; approximately half of all HAWPs are approved as submitted and another 40 percent are approved with conditions. While the HPC reaches decisions on the majority of HAWPs within one meeting, during the past several years, an increasing number of HAWPs have required more than one HPC meeting to be resolved.

2. Since the HPC was established, five HAWP decisions have been appealed. In two cases, the Circuit Court upheld the HPC's decision to deny the HAWP. The other three appeals (all of which have been filed in recent months) are pending before the Board of Appeals.

3. Problems posed by the current procedures governing HAWPs include: DEP's data base of premise addresses does not accurately record all historic sites and resources; the DEP permit staff charged with the intake of HAWP applications has neither the time nor the training to provide technical assistance to HAWP applicants; conditions imposed on the issuance of an HAWP are not incorporated into the building plans approved as part of the building permit; and there is no routine enforcement of HAWPs. In addition, there are no written design guidelines governing HPC's decision-making on HAWPs.

4. The processing deadlines for HAWPs contained in current law also pose some problems. Besides being open to interpretation, HPC members have found it difficult to reach decisions on complex HAWPs within 15 days from the close of the record; in addition, the current requirements limit the HPC Chair's ability to better manage HPC's agendas. The time period for decision-making on HAWPs is shorter than the time allowed for other land-use regulatory decisions.

5. The legal requirement for the DEP Director to forward all HAWPs to the Planning Board for its review and comments is not currently followed.

6. In the event that the issuance of an HAWP is appealed, current law does not provide a mechanism for DEP to withhold the HAWP, or the applicant's building permit, pending the outcome of the appeal. This means that an applicant could proceed at his/her own risk, and before the appeal process is completed, take action that irreparably harms an historic site.

7. Public perceptions of how the HPC handles HAWPs vary considerably. While many regard the HPC as hardworking, dedicated, and knowledgeable, others have concerns about the HAWP application process and the manner in which the HPC considers those applications. Specific problems identified by applicants included: confusion about the role of the Local Advisory Panels; a perception that the HPC bases its decision on personal standards and not on a known set of standards and guidelines; and a perception that certain HPC members were ill-prepared, inattentive, or rude to applicants.

8. The penalties available for imposing upon violators of Chapter 24A are limited to those available for a Class A violation, as set forth in Section 1-19 of the County Code.

G. Demolition by Neglect

1. No inspections were conducted pursuant to the demolition by neglect provisions of Chapter 24A until a memorandum of understanding was negotiated in 1985 to delegate authority for enforcement from DEP to DHCD's Division of Code Enforcement. Since that time, approximately half of the cases for which enforcement action was begun have been closed, while the remaining cases are still in the process of being resolved.

2. The law is unclear as to whether appeals of demolition by neglect decisions are, similar to HAWPs, appealable to the Board of Appeals. No demolition by neglect citation has ever been appealed to the HPC, providing no evidence of how this appeal procedure works in practice.

H. Public Education and Administration of Historic Preservation Programs

1. Although not unique, it is unusual for the law to assign an adjudicatory commission, such as the HPC, additional responsibilities for public education and program administration.

2. The HPC has undertaken or sponsored a number of public education activities during the past ten years, including: publishing a newsletter; sponsoring booths at County events; and distributing grant funds for education projects. However, DHCD staff and HPC members agree that much more could and should be done to educate the public about historic preservation in the County.

3. Funds for the Historic Preservation Grant Fund (totaling between \$20,000-\$27,500 each year) are allocated in a nondepartmental account, and awarded by the HPC to support historic preservation projects; the average grant awarded since FY87 has been \$1,617 and projects funded have included publications, video productions, oral or written history projects, and education programs.

4. The HPC has performed its statutory role to review all historic preservation tax credit applications; however, the program is not well publicized and has been used to only a limited extent.

5. Both the Historic Preservation Loan Fund (HPLF) and the historic preservation easement program, established by law in 1984 and 1988 respectively, can best be described as "inactive". Although regulations for the easement program were drafted, final regulations have never been issued and the program has never been used. Executive regulations for the HPLF were issued in 1985 and two loans for preservation projects were issued in FY86; however, there has been no activity from the HPLF since that time.

I. Staffing Support

1. County law requires the Executive branch of the County Government to provide staff support to the HPC. The law identifies the County Attorney as the HPC's legal counsel, but does not identify which office or department shall be assigned to provide other professional or administrative staff support to the HPC. In addition, the law does not clarify which of the many responsibilities of the HPC are appropriately performed by staff and which are to be performed directly by HPC members.

2. County resources dedicated to support the work of the HPC as well as to support historic preservation in general have increased during the past ten years. Since 1981, the lead responsibility for providing professional and administrative staff support to the HPC has been delegated to DHCD, and since 1983, DHCD has hired staff dedicated to performing that function. At present, two workyears (one Historic Preservation Specialist and one Office Services Manager) within the Division of Community Planning and Development (CPD) are assigned on a full-time basis to provide staff support to the HPC. Staff from other County departments and M-NCPPC also support the work of the HPC and/or related historic preservation activities.

3. During the past two years, there has been a notable increase in the amount of time spent by the Office of the County Attorney on HPC business. Given the increase in the complexity of HAWP applications, the HPC will likely continue to need additional legal assistance from the Office of the County Attorney.

4. Positive aspects of locating administrative and technical staff support for the HPC within the Division of Community Planning and Development are that: additional staff are available to lend their expertise and support to the HPC; and the location also offers ready opportunities to coordinate historic preservation with other DHCD programs. However, it must also be recognized that locating support for the HPC within a division that has multiple functions provides little identity for historic preservation activities; and results in historic preservation staff being located (bureaucratically) several levels down from the Department Director.

5. Due primarily to a lack of staff time, under the current staffing arrangement a number of the HPC's functions are not being adequately performed. For example: the historic preservation tax credit, easement, and loan programs are not effectively publicized or promoted; inadequate attention has been given to the HPC's public education role; there is no routine enforcement of Chapter 24A; the HPC's activities are not well coordinated with other County functions that impact the preservation of the County's historic resources; and few new initiatives to encourage historic preservation have been developed.

6. Compounding the staffing level problem is that, since 1987, the relationship between HPC members and DHCD management has, at times, been strained. It appears that friction between members of the HPC and County officials resulted initially from several substantive differences of opinion about the designation and future development of specific historic resources in the County. The friction has continued in part because of an apparent lack of clarity and mutual understanding about the appropriate role of staff assigned to HPC, and disagreements about the role of the HPC in general.

7. It is important to note that during the course of this evaluation, the working relationship between DHCD officials and HPC members improved. There is evidence of resolution to some past disagreements, and an increased willingness from all parties to work together.

J. Staffing Alternatives

1. As outlined earlier in this report, there are pros and cons of continuing to assign the DHCD with responsibility for providing staff support to the HPC, and pros and cons for considering an alternative staffing arrangement.

2. While there are viable staffing alternatives to be considered, OLO concludes that at the present time, the arguments for retaining DHCD as the department charged with staffing the HPC outweigh the arguments for change. If the package of recommendations offered in the following chapter are adopted (e.g., to increase the level of staff assigned to the HPC; to enhance the identity of the historic preservation function within DHCD; and to improve certain procedures), DHCD should be in a position to more effectively provide staff support to the HPC.

K. Comparative Information

1. A comparison of Montgomery County's HPC to Prince George's HPC indicates that although the two are similar in terms of size and authority over HAWPs, there are some notable differences: Prince George's HPC membership requirements are more restrictive; Prince George's HPC has authority to designate historic sites on the Master Plan; and staff support for Prince George's HPC is provided by M-NCPPC Planning Department staff.

2. Compared to historic preservation boards and commissions surveyed in 12 other jurisdictions, the County's HPC is larger than average. The County's requirements for expertise on the HPC are generally similar to requirements in other places, except that the County currently does not require representation from a business-related field.

3. Eleven of the 12 jurisdictions surveyed, like the County, delegate the authority to act upon HAWPs to their historic preservation board or commission. The authority to designate historic sites varies as does the process for appealing a preservation commission decision.

4. Staff support for other HPCs in the jurisdictions surveyed most often comes from the planning department or the community development department. Legal support is consistently provided by the city or county attorney.

VII. RECOMMENDATIONS

Changes are required in order for the Historic Preservation Commission (HPC) to perform its statutory functions efficiently and effectively. Specifically, changes are needed: to enable the HPC to manage an increasing workload; to improve the processing of Historic Area Work Permits; to complete the evaluation of historic resources listed on the Atlas; and to better educate the public about historic preservation.

This chapter offers a package of recommendations for changes to the laws and regulations governing the HPC, the staff resources supporting the HPC, and other aspects of the HPC's operations. The shared goal of these changes, which will require a combination of legislative, administrative, and appropriation action to implement, is an Historic Preservation Commission that performs its statutory responsibilities effectively and efficiently, and in so doing:

- Maintains ongoing and appropriate lines of communication with the Council, the County Executive, Executive branch staff, and the Planning Board and M-NCPPC staff;
- Is respected by members of the community, and takes action to ensure that the Commission's procedures, recommendations, and decisions are well understood;
- Consistently receives sound legal and other professional staff advice upon which to base recommendations and decisions;
- Consistently meets legally mandated requirements for conducting business; and
- Makes recommendations and decisions in a timely manner, with opportunities for input from members of the community who may be affected by the HPC's action.

A final goal of these OLO recommendations is to ensure that HPC members' time is used efficiently, and for the work of the HPC to become more fully coordinated with other activities in the County that affect the preservation of historic resources.

Summary of Recommendations

The following list summarizes OLO's recommendations, which are grouped under headings that generally parallel the organization of this report; the remainder of this chapter then explains each recommendation in greater detail. Following each recommendation in parentheses is some combination of an "L", "A", and/or "\$". "L" indicates that the recommendation requires a change in the law; "A" indicates that the recommendation requires an administrative change; and "\$" indicates that the recommendation carries a notable fiscal impact.

Commission Structure and Procedures

1. Amend the law to require that the HPC also include representation from the fields of business, real estate, and law. (L)
2. Authorize the HPC to establish panels composed of three HPC members who are delegated decision-making authority. (L,A)
3. Authorize the HPC to send cases to the Hearing Examiner in the Office of Zoning and Administrative Hearings for report and recommendation. (L,A)
4. Clarify in regulation an expanded role for the HPC chair. (A)
5. Amend the law to enable HPC members to be compensated. (L,\$)
6. Finalize executive regulations that outline HPC's routine procedures, and the role of the Local Advisory Panels; and develop executive regulations that contain standards for HPC's review of Historic Area Work Permits. (A)
7. Amend the law to clarify that all HPC decisions are appealable to the Board of Appeals; and to clarify the intent of providing HPC with authority "to delineate the extent of appurtenances and environmental setting associated with an historic site or resource." (L)

Evaluation of Atlas Resources

8. Adopt a schedule for the review of all remaining Atlas resources, and establish a sunset date for the Atlas. At the same time, establish a process for nominating resources to be considered in the future for designation on the Master Plan. (L,A)
9. Delegate the responsibility for researching remaining Atlas resources to the Planning Department of M-NCPPC. (A,\$)
10. Clarify whether Council action is required to remove properties from the Atlas. (L)

Historic Area Work Permits

11. Where appropriate, include standards for future regulatory action in amendments to the Master Plan for Historic Preservation, and provide by law that the HPC must follow such standards in acting upon HAWPs. (L,A)
12. Amend the law to authorize HPC to delegate the approval of routine HAWP applications and minor modifications to staff. (L,A)
13. Simplify process for HPC action on relatively straightforward and non-controversial HAWP applications. (A)
14. Authorize the Director of DEP to delegate to DHCD: the intake of HAWP applications; and the inspections of HAWPs. (L,A)
15. Forward copies of selected HAWP applications to the M-NCPPC Planning Department staff to provide an opportunity for review and comment; it should be clear that the discretion whether to submit comments remains with the Planning Board and M-NCPPC staff. (A)
16. Amend the law to require that an approved HAWP is a prerequisite for receiving a building permit for historic sites designated on the Master Plan. (L,A)
17. Amend the law to clarify the allowable time period for HPC action on HAWP applications, and consider extending the deadline for HPC action. (L)
18. Amend the law to require that all HPC decisions on HAWPs be in writing. (L)
19. Authorize the Board of Appeals to stay the issuance of an HAWP pending the outcome of an appeal. (L)
20. Amend Chapter 24A to provide that in addition to levying fines, the penalty imposed by the County for violations of the Chapter can include orders to take corrective action to cause compliance with an approved HAWP. (L)

Public Education and Program Administration

21. Develop better techniques for informing the public about the status of properties designated on the Master Plan for Historic Preservation. (A)
22. Develop materials and programs to better educate the public about the County's historic preservation programs, to include improved publicity about the HPC, the Master Plan designation process, the HAWP application process, financial incentives for historic preservation, and the division of responsibilities between Executive branch and M-NCPPC historic preservation staff. (A)
23. Improve the administration of existing historic preservation programs. (A)

Staffing, Training, and Communication

24. Establish a separate Historic Preservation Office within DHCD, and authorize an additional senior staff position to manage the County's historic preservation efforts. The respective roles of DHCD's Historic Preservation Office and M-NCPPC's historic preservation planning staff must be clearly defined and communicated to the public. (A,\$)
25. Continue to provide HPC with an enhanced level of legal assistance. (A,\$)
26. Develop an annual training seminar for all commissioners that serve on the County's adjudicatory boards and commissions, and develop ongoing training for County staff who have primary responsibility for providing support to a County-appointed board, committee, or commission. (A,\$)
27. Schedule separate annual meetings between the HPC and: a County Council committee, the County Executive, and the Planning Board. (A)

Follow-up to Evaluation

28. Provide for a formal follow-up to this evaluation to take place during FY94.

The remainder of this chapter explains OLO's recommendations in greater detail.

COMMISSION STRUCTURE AND PROCEDURES

Recommendation 1: Amend the law to require that the HPC also include representation from the fields of business, real estate, and law. (L)

Current law (Section 24A-4) requires that the four fields of history, architecture, preservation, and urban design shall be represented on the HPC by "a minimum of one member qualified by special interest, knowledge, or training." In order to broaden the expertise represented on the HPC, the law should be amended to require that, to the extent possible, the fields of business, real estate, and law are also represented on the Commission.

Numerous jurisdictions around the County require that membership on an historic preservation commission or board include persons with a business, real estate, and/or legal background; such requirements have been adopted in Prince George's County, Kansas City, San Antonio, and Seattle. In addition to providing additional expertise, expanding the membership requirements to include expertise from a business-related field enhances the ability of an historic preservation commission to be perceived by the public as a balanced, adjudicatory body.

Section 24A-4 should also be amended to clarify whether the law allows an individual possessing expertise in more than one field to fulfill more than one requirement; e.g., whether an architect who also has a graduate degree in preservation can be appointed to fulfill the requirement for an expert in architecture as well as the requirement for an expert in preservation.

Recommendation 2: Authorize the HPC to establish panels composed of three HPC members who are delegated decision-making authority. (L,A)

To enable the HPC to handle an increasing workload, the HPC should be authorized by law to establish three-member panels with decision-making authority. This amendment would provide the HPC with the same authority extended to the Landlord-Tenant Commission in 1979; at that time, the Landlord-Tenant Commission, similar to the HPC today, faced an increasing workload and lengthy meetings.

The law should require HPC to promulgate method (2) executive regulations that detail how the panels would be appointed and conduct business.

Recommendation 3: Authorize the HPC to send cases to the Hearing Examiner in the Office of Zoning and Administrative Hearings for report and recommendation. (L,A)

To provide the HPC with another tool for handling an increasing workload, the law should be amended to authorize the HPC to refer HAWP applications and demolition by neglect appeals to the Hearing Examiner in the Office of Zoning and Administrative Hearings (OZAH) for report and recommendation. Final decision authority would remain with the HPC.

This change would provide the HPC with an option available to the Board of Appeals and the Human Relations Commission. The law should require the HPC to promulgate method (2) executive regulations that detail the procedures for referring cases to OZAH, e.g., upon a majority vote of the HPC, or upon recommendation of the Chair, with approval by the full Commission.*

Allowing the HPC to refer cases to OZAH would make the Hearing Examiner available to the Historic Preservation Commission as an "evidentiary traffic cop." The Hearing Examiner would conduct the public hearing, compile written findings of fact, and render a recommendation based upon the same laws

* The regulations governing referral of HPC cases to OZAH should also include a provision governing appeals. Specifically, if the Hearing Examiner hears an HAWP that is later appealed, then the BOA will have to hear the appeal directly and cannot refer the case to the Hearing Examiner.

governing HPC's decisions. In addition to providing the HPC with another way to manage an increasing volume of cases, the expertise of the Hearing Examiner is likely to prove increasingly useful to the HPC as the Commission confronts HAWP applications that raise complex legal land use issues.

**Recommendation 4: Clarify in regulation an expanded role for the HPC Chair.
(A)**

The HPC Chair should be expected to assume responsibility for: providing leadership to the HPC, moving the work of the HPC along expeditiously, and working closely with DHCD staff assigned to support the HPC. The Chair should also assume the lead in representing the HPC in public, and in resolving any conflicts that arise between the HPC and the County Government.

To reenforce an expanded role for the HPC Chair, executive regulations governing HPC's procedures should outline the authority and responsibility of the Chair to:

- Preside at all meetings of the HPC;
- Assign tasks to HPC members;
- Provide direction for managing the HPC's work; and
- Serve as the HPC's principal spokesperson and liaison to the County Government and other agencies.

**Recommendation 5: Amend the law to enable HPC members to be compensated.
(L,\$)**

The law should be amended to allow HPC members to be compensated. HPC members currently spend 25-30 hours per month on HPC business, a commitment that equals or exceeds the time spent by members of other adjudicatory boards and commissions that currently receive compensation, e.g., Landlord-Tenant Commission, Human Relations Commission, Merit System Protection Board.

It is recommended that HPC members be compensated at a rate of \$35 per meeting attended (comparable to Landlord-Tenant Commission); and that the HPC Chair be compensated at a rate of \$5,000 per year in recognition of the additional time and effort required to serve as Chair (an estimated additional 20-25 hours per month). Setting a separate compensation rate for the Commission Chair would parallel the practice followed with other quasi-judicial boards, such as the Board of Appeals and the Merit System Protection Board.

Recommendation 6: Finalize Executive Regulations that outline HPC's routine procedures, and the role of the Local Advisory Panels; and develop executive regulations that contain design standards for HPC's review of Historic Area Work Permits. (A)

Method (2) executive regulations that outline HPC's procedures have already been drafted by the HPC and reviewed by the Office of the County Attorney. A second set of executive regulations that outline the appointment and role of the Local Advisory Panels were originally drafted by the HPC in late 1989, and are in the process of being reviewed and rewritten based upon input from members of the Local Advisory Panels. These two sets of regulations should be finalized and promulgated through the standard procedures contained in Section 2A-15 of the Code.

With assistance from staff and/or a consultant, developing written design standards and guidelines for HAWPs should be a priority of the HPC during the coming year. In accordance with Section 24A-4(h), once drafted by the HPC, it would be appropriate for these standards and guidelines to also be formally adopted as method (2) executive regulations.

All the HPC's executive regulations should be compiled into a publication that is readily available to the public. This would address the perception voiced by some HAWP applicants that the HPC operates without written standards and procedures.

Recommendation 7: Amend the law: to clarify that all HPC decisions, including demolition by neglect appeals, are appealable to the Board of Appeals; and to clarify the intent of providing HPC with authority "to delineate the extent of appurtenances and environmental setting associated with an historic site or resource". (L)

The HPC is delegated decision authority in Chapter 24A to act upon HAWP applications, and demolition by neglect appeals. The law currently specifies that an HAWP decision may be appealed to the Board of Appeals, but does not specify where appeals of the HPC decisions on demolition by neglect appeals are forwarded. The law should be amended to explicitly state that all HPC decisions, including demolition by neglect appeals, are appealable to the Board of Appeals.

A second technical change to Chapter 24A involves Section 24A-5(k), which gives the HPC authority "to delineate the extent of appurtenances and environmental setting associated with an historic site or resource." It is unclear as to when this authority applies, i.e., is it with respect to resources recommended for designation on the Master Plan and/or to subdivision applications that affect an historic resource or site. The law should be amended to clarify the HPC's role in delineation.

EVALUATION OF LOCATIONAL ATLAS RESOURCES

Recommendation 8: Adopt a schedule for the review of all remaining Atlas resources, and establish by law a sunset date for the Atlas. At the same time, establish a process for nominating resources to be considered in the future for designation on the Master Plan. (L,A)

The HPC should recommend to the Planning Board, County Executive, and County Council a schedule for the review of all remaining Atlas resources. Once the schedule has been integrated into the Planning Board's work program adopted by the Council and County Executive, Chapter 24A should be amended to establish an appropriate sunset date for the Atlas.

Appendix D contains a draft schedule for reviewing the remaining Atlas resources during the next five years. OLO prepared this schedule, based upon the results of M-NCPPC's 1989 study of remaining Atlas resources; and in consultation with the HPC, and staff from M-NCPPC's Planning Department, DHCD, the Office of Planning Policies, and Office of the County Council. The draft schedule contained in Appendix D integrates the review of Atlas resources into the Planning Board's most recently approved master plan review schedule; other resources are grouped geographically by planning area into separate master plan amendments, each containing a reasonable number of resources.

Concurrent with establishing a sunset date for the Atlas, the law should be amended to provide a process for nominating resources in the future for designation on the Master Plan. The process should provide the County with the authority to place properties temporarily in moratorium from demolition, but also place a time limit on the County Government's time to reach a final decision about Master Plan designation.

Recommendation 9: Delegate the responsibility for researching remaining Atlas resources to the Planning Department of M-NCPPC, and provide the Planning Department with additional resources to fund the research needed to complete the review of Atlas resources as scheduled.(A,\$)

In order to minimize the duplication of staff effort and approach the task of researching the remaining Atlas resources efficiently, OLO recommends that the responsibility for researching Atlas resources be delegated to the Planning Department of M-NCPPC. Once the research is completed, the research would be available to the HPC, the Planning Board, the County Executive, and the County Council.

Based upon the draft schedule for the review of Atlas resources contained in Appendix D, it is estimated that \$20,000 will be needed for each of the coming five fiscal years to fund the research of remaining Atlas resources. It is recommended that the Planning Department consider hiring one part-time researcher to accomplish this task.

The Director of DHCD and the Planning Director should enter into a written memorandum of understanding that clarifies that the research conducted by Planning Department staff will be provided to the HPC. In addition, the memorandum should establish that efforts will be made to accommodate any special requests for research made by the HPC.

Recommendation 10: Clarify whether Council action is required to remove properties from the Atlas. (L)

A master plan amendment to designate an historic resource included in the Atlas onto the Master Plan is an amendment to the General Plan, and by State law clearly requires action by the County Executive and Council. However, current law should be amended to clarify whether Executive and Council action is similarly required to remove a property from the Atlas.

HISTORIC AREA WORK PERMITS

Recommendation 11: Where appropriate, include standards for future regulatory action in amendments to the Master Plan for Historic Preservation, and provide by law that the HPC must follow such standards in acting upon HAWPs. (L,A)

When designating either individual sites or districts on the Master Plan, the Planning Board, County Executive, and County Council should, where appropriate, include standards for future regulatory review, to provide the HPC and other applicable agencies (e.g., the County Department of Transportation) with guidance regarding the intent of historic designation. These standards should serve the purpose of providing the HPC with direction in reviewing HAWP applications; it must be recognized, however, that standards are not intended to be rigid design strictures, and each HAWP application will still need to be reviewed individually.

Standards provided in the Master Plan could include, for example, articulating what features of a property's architecture or environmental setting makes the property worthy of designating and therefore worthy of protection under Chapter 24A. Another form of guidance is to categorize sites designated in a district as either primary, secondary, or non-contributing resources, and to provide specific standards of review to be applied to resources in each category.

Consideration should be given to amending Chapter 24A to reenforce the connection between Master Plan designation and HAWPs. Specifically, the law could explicitly provide that in reviewing applications for HAWPs, the HPC should adhere to guidance contained within the approved and adopted Master Plan for Historic Preservation, as amended.

Providing such a legal connection would be similar to other statutory requirements that directly link master plan recommendations to actual land use decisions, e.g., the subdivision regulations require that the Planning Board must consider the applicable master plan when determining the acceptability of a preliminary plan proposal; and certain zones such as the mixed use development zone can only be applied in areas so designated on an approved and adopted master plan.

Recommendation 12: Amend the law to authorize HPC to delegate the approval of routine HAWP applications and minor modifications to staff. (L,A)

The HPC should be authorized to delegate to staff the approval of routine HAWPs and minor modifications to HAWP applications. This would provide another tool for processing more efficiently an increasing volume of HAWP applications, and reducing the workload of HPC members.

Chapter 24A should be amended to enable the delegation of various types of HAWPs to staff, and should provide a process for appealing HAWP decisions rendered at the staff level. The criteria for determining which HAWP applications are appropriate for review and decision by staff, without need for a public hearing and full Commission consideration, should be articulated either directly in Chapter 24A, or alternatively in the form of method (2) executive regulations.

A similar delegation of authority to staff to approve HAWPs has been implemented in Prince George's County since 1983. In Prince George's County, staff supporting the HPC are authorized to issue HAWPs, "for alterations to structures and environmental settings which will not significantly change the exterior features of an historic site or contributing structure within an Historic District or its environmental setting, and which will have no significant effect on its historical, architectural, cultural or archaeological value." Regulations adopted by the Prince George's HPC further define what categories of structural work can be approved by staff.

Recommendation 13: Simplify process for HPC action on relatively straightforward and uncontested HAWP applications. (A)

There are HAWP applications which are unlikely to meet the criteria for "routine" (and thereby not able to be handled at the staff level as recommended in Recommendation 12), but are nonetheless relatively straightforward and non-controversial. While the opportunity for a public hearing and full HPC discussion of these HAWPs should be afforded, the HPC Chair should conduct the HPC's meeting to allow for an expedited hearing and decision process on such HAWPs.

The Office of the County Attorney has advised the HPC that establishing a "consent calendar" for these straightforward and uncontested HAWPs violates the need for a separate record for each HAWP application. However, while taking care to establish a separate record for each HAWP application, the HPC Chair can expedite the process by efficiently opening the record, and if no comments are proffered, immediately closing the record and asking for a motion to approve.*

Recommendation 14: Authorize the Director of the Department of Environmental Protection to delegate to the Department of Housing and Community Development: the intake of HAWP applications; and the inspection of HAWPs. (L,A)

1. The intake of HAWP applications. The Director of DEP should be authorized to delegate the responsibility for accepting HAWP applications to DHCD. By law, the statutory review time for an HAWP should begin when the application is filed with DHCD staff, who would be legally responsible for forwarding a copy of completed HAWP applications to DEP within three days after filing.

This change would enable staff members who are trained in historic preservation and familiar with the concerns of the HPC to be responsible for accepting HAWP applications from members of the public. In addition to being in a better position to determine when an HAWP application is "complete," DHCD staff assigned to support the HPC, who have the appropriate expertise, are better able to offer technical assistance to citizens before an HAWP application is formally submitted.

2. The inspection of work performed with an approved HAWP. DEP does not currently conduct any routine inspections of HAWP-related work. The Director of DEP should be authorized to delegate the responsibility for inspecting work performed with an approved HAWP to DHCD staff. DEP should inform DHCD when work has commenced on an historic site that received an HAWP; inspection(s) performed by DHCD staff would be limited to the aspects of work addressed in the HAWP, and would be in addition to the building permit inspections conducted by DEP staff.

Within DHCD, the inspections of HAWP-related work could be shared by a combination of staff assigned to the HPC, and Code Enforcement staff. Similar to transferring the intake function, the advantage to shifting the inspection function is that the individuals performing inspections will be more familiar with the issues discussed by the HPC in issuing the HAWP, and the particulars of any conditions placed by the HPC on the permit.

* In July 1990, the HPC Chair implemented an expedited handling of straightforward and uncontested HAWPs similar to this recommendation.

Recommendation 15: Forward copies of selected HAWP applications to the M-NCPPC Planning Department staff to provide the opportunity for review and comment; it should be clear that the discretion whether to submit comments remains entirely with the Planning Board and M-NCPPC staff. (A)

The current legal requirement for the Director of DEP to forward all HAWP applications to the Planning Board for review and comment has never been implemented. Because HAWP applications sometimes raise broader questions concerning the County's planning, land use, and/or zoning policies, a procedure should be established to enable the HPC to seek advice from the M-NCPPC on selected HAWPs.* The decision of whether to submit comments should remain entirely with the Planning Board and M-NCPPC staff.

If HAWP applications are submitted to DHCD (see above Recommendation 14), then the HPC Chair, with DHCD staff assistance, should identify those incoming HAWP applications that the HPC would like to request the Planning Commission staff to review and comment on. Any such applications should then be forwarded to M-NCPPC's Historic Preservation Planner for possible comments from either the technical staff and/or the Planning Board. If the Planning Board and/or Planning Department staff decide to comment, such comments should be submitted to the HPC prior to the date of the public hearing on the application.

Recommendation 16: Amend the law to require that an approved HAWP is a prerequisite for receiving a building permit for historic sites designated on the Master Plan.(L,A)

The law should require that for properties designated on the Master Plan, obtaining an HAWP is a prerequisite for receipt of a building permit. In addition, DEP's permit staff should ensure that a property owner receives one consistent set of approved plans, and that such plans integrate any conditions placed on the issuance of the HAWP with any conditions placed on the issuance of the building permit.

* M-NCPPC's Historic Preservation Planner currently receives the upcoming HPC agenda and accompanying materials. The information, however, is not received far enough in advance of HPC's meeting to allow the Preservation Planner to develop formal written comments; in particular, the Preservation Planner would need sufficient time to seek input from other M-NCPPC staff and/or the Planning Board.

Recommendation 17: Amend the law to clarify the allowable time period for HPC action on HAWP applications, and consider extending the deadline for HPC action. (L)

Section 24A-7(f), Action by the Commission, should be rewritten to clarify the length of time that the HPC has to take action on an HAWP application. Consideration should also be given to extending the allowable time period for HPC action.

The current limit of 15 days after the close of the record for a decision on HAWPs is a shorter period of time than that allowed for other land-use regulatory decisions. In practice, the current deadlines also limit the HPC's ability to manage its agenda efficiently.

Extending the time period for HPC decision on HAWPs to either 60 days from the time of filing, or 30 days from the close of the record would make the HPC's deadlines more closely aligned with those imposed on the Board of Appeals for special exceptions and variances, and on the Planning Board for subdivisions. Some extension to HPC's processing deadline will be especially warranted if, as recommended below, all of HPC's decisions are required to be written.

Recommendation 18: Amend the law to require that all HPC decisions on HAWPs be in writing. (L)

Under current law, the HPC is required to provide a written explanation of its HAWP decisions only in cases of denial. In order to provide a better record of HPC's decisions that can be made readily available to the public, the HPC should be required to provide a written explanation of all HAWP decisions, both approvals and denials. For routine uncontested HAWPs, the HPC's written decision could, similar to routine variances decided upon by the Board of Appeals, be written using largely boiler plate language that cites the basic findings and criteria of the ordinance under which the HAWP is recommended for approval.

It is important to note that recommending written decisions for all HAWPs is compatible with Recommendation 13 above, which recommends the HPC continue its practice of expediting the process for action on relatively straightforward HAWPs. For these HAWPs, the Board of Appeals' current handling of routine variances again provides a constructive model. The Board of Appeals reaches its decision on routine variances in public session directly after the record is closed, a practice which enables the applicant to know the outcome of his/her application on the same day as the public hearing; the Board's formal written decision is then usually issued within 10-14 days following the public hearing.

Recommendation 19: Authorize the Board of Appeals to stay the issuance of an HAWP pending the outcome of an appeal. (L)

In cases where an HPC decision to issue an HAWP is appealed, there is nothing in current law to prevent the HAWP from being issued by DEP while the appeal is pending. To prevent some irreversible damage from being done to an historic site (e.g., the cutting down of an historic tree), the Board of Appeals should be authorized to stay the issuance of an HAWP pending the outcome of an appeal.

Recommendation 20: Amend Chapter 24A to provide that, in addition to levying fines, the penalty imposed by the County for violations of the Chapter can include orders to take corrective action to cause compliance with an approved HAWP. (L)

Current law classifies violations of Chapter 24A as Class A violations. In addition to levying a fine, the County should be authorized, by law, to require violators of Chapter 24A to take corrective action to cause compliance with an approved HAWP. This would be analogous to the authority granted to the Planning Board with respect to enforcement of an approved site plan; specifically, Section 59-D-3.6 of the County Code authorizes the Planning Board, after due notice to all parties concerned and a hearing: "to revoke approval of the site plan or approve a plan of compliance which would permit the applicant to take corrective action to cause compliance with the site plan."

PUBLIC EDUCATION AND PROGRAM ADMINISTRATION

Recommendation 21: Develop better techniques for informing the public about the status of properties designated on the Master Plan for Historic Preservation. (A)

The County should investigate techniques used successfully in other jurisdictions for informing the public about the status of properties designated on the Master Plan. This is especially important in terms of informing potential purchasers of historic sites about what it means to own property designated on the Master Plan.

One suggestion is to explore whether the Montgomery County Board of Realtors would agree to include in all sale contracts a statement that indicates whether a property is designated on the Master Plan for Historic Preservation. Alternatively, the status of designated properties could be entered officially as part of the land records.

Another technique worth exploring is the use of plaques that indicate a property has been designated as an historic site on the Master Plan. In addition to increasing the likelihood that a potential purchaser knows in advance that the property has been declared historic and worthy of protection, plaques have been found to foster a positive perception of designation.

Recommendation 22: Develop materials and programs to better educate the public about the County's historic preservation process and programs. (A)

Much could be done to better inform and educate County citizens in general about historic preservation, and in particular, about the Master Plan designation process, the HAWP process, the respective roles of Executive branch and M-NCPPC historic preservation staff, and County programs available to support and strengthen preservation efforts. The HPC, with staff assistance, should review and update its plan for public education, and take action to implement the plan during the next several years.

Recommendation 23: Improve the administration of existing historic preservation programs. (A)

Attention should be given to improving the administration of the County's existing easement program and Historic Preservation Loan Program (HPLF), both of which can currently be described as "inactive." Executive regulations for the easement program should be promulgated, and the executive regulations for the HPLF (most recently adopted in 1985), should be reviewed, updated, and re-promulgated. The level of funding available from the Rehabilitation Loan Fund for the HPLF must also be clarified in the budget.

Additional efforts to publicize the availability of the easement program, rehabilitation loan program, and tax credit program should also be made.

STAFFING, TRAINING, AND COMMUNICATION

Recommendation 24: Retain the Department of Housing and Community Development (DHCD) as the department assigned the lead responsibility for providing professional and administrative staff support to the HPC, but establish a separate Historic Preservation Office within DHCD; and authorize an additional staff position to manage the County's historic preservation efforts. In addition, the respective roles of the Historic Preservation Office within DHCD and M-NCPPC's historic preservation planning staff should be clearly defined and communicated to the public. (A,\$)

1. Establish an Historic Preservation Office within DHCD

A separate Historic Preservation Office should be established within the Department of Housing and Community Development. The mission of this office should be to manage the County Government's historic preservation efforts, an integral part of which is to provide staff support for the HPC. The Historic Preservation Office should report directly to the Office of the DHCD Director.

It is recommended that the Historic Preservation Office be responsible for providing general staff support to the HPC, to include:

- Preparing responses for the HPC Chair's signature on routine and non-routine correspondence;
- Working with the HPC Chair to set agendas and manage the HPC's workload;
- Attending all HPC meetings, and maintaining HPC minutes and HPC records;
- Managing the processing of HAWPS applications from intake through Commission review and inspection of the actual work performed;*
- Formulating and presenting professional staff recommendations for the HPC regarding HPC recommendations on designations/subdivisions and actions on HAWPs;
- Drafting HPC decisions for final HPC approval;
- Ensuring that all notice and other due process requirements are followed;
- Working with M-NCPPC staff to ensure that adequate research on historic resources is provided to the HPC (see Recommendation 9); and
- Organizing orientation sessions for new HPC members, and developing staff training to include knowledge of relevant laws and regulations, and other County programs and functions.

The Historic Preservation Office should also be responsible for carrying out the public outreach and program administration functions assigned to the HPC. In particular, this means that the Historic Preservation Office, in consultation with the HPC, would be responsible for:

- Managing the County's historic preservation grant and revolving loan programs;
- Managing the County's historic preservation easement and tax credit programs;
- Providing information and educational materials to the public about historic preservation; and
- Undertaking other activities to advance the goals of historic preservation in the county.

* See Recommendation 14.

The Historic Preservation Office staff should also be responsible for coordinating HPC's work with that of Executive branch departments and offices, the M-NCPPC staff, the Planning Board, the Council, and other County departments and agencies involved with activities that affect the preservation of historic resources.

It is important for a line of communication to remain open between HPC members and DHCD officials. As noted earlier in this report, DHCD officials and HPC members have made progress in recent months towards reaching a better understanding about the role of DHCD staff assigned to support the HPC. In particular, there should be a clear understanding about what functions HPC members themselves are going to perform, and which activities are appropriately performed by County Government staff working in consultation with the Commission. In addition, DHCD officials and HPC members should agree upon a procedure for resolving future differences of opinion or misunderstandings about the role of staff and support from the County.

2. Create a new senior professional staff position to manage the Historic Preservation Office.

Based upon study of the current staffing situation and taking into account the additional tasks that this report recommends be performed, OLO recommends that the functions of the Historic Preservation Office could reasonably be accomplished with the addition of one senior professional staff position to manage the Historic Preservation Office. Combined with the two staff currently assigned on a full-time basis to support the HPC, the staffing complement of the Historic Preservation Office would then total three workyears.

The newly created position should be a full-time professional staff person with the skills, education, and expertise to manage the Historic Preservation Office and coordinate the County's historic preservation efforts. To parallel the nomenclature adopted at the State level and in numerous other jurisdictions, the working title of this position could be the County's "Historic Preservation Officer"

The hiring process for this position should follow standard merit system advertising and selection procedures. County personnel regulations specify procedures for the Office of Personnel to determine the exact title and grade of this job. Recommended minimum qualifications for the Historic Preservation Officer position are included in Appendix E.

3. Provide some physical identification for the Historic Preservation Office.

To enhance the ability of County staff to educate the public about historic preservation, and the work of the HPC, it would be helpful to provide some physical identity for the Historic Preservation Office. Two specific issues to be addressed are: the need for some identifying sign outside the offices, and the need for a telephone line that is consistently answered "Historic Preservation Office."

4. Ensure the public understands the respective roles of the Historic Preservation Office within DHCD and M-NCPPC's historic preservation planning staff.

With staff supporting the HPC located within the Executive branch and preservation planning staff supporting the Planning Board located within M-NCPPC, it is important for the division of responsibilities to be clearly defined and communicated to the public.

At present, although there are some areas of overlap,* the focus of M-NCPPC's preservation planning staff is on the designation of historic sites on the Master Plan, and the review of subdivision proposals that potentially affect an historic site or resource. While the HPC advises the Planning Board on these matters, the focus of staff support for the HPC is predominantly on design review after an historic site has been designated; in addition, the staff assigned to support the HPC devotes time to the other program administration and public education responsibilities assigned to the HPC.

The respective roles and division of responsibilities between the Historic Preservation Office within DHCD and M-NCPPC's historic preservation planning staff should be more effectively communicated to the public as part of an enhanced public education program, (see Recommendation No. 22).

Recommendation 25: Continue to provide HPC with an enhanced level of legal assistance. (A,\$)

The increased level of legal support provided to the HPC during the past two years should be continued. The Assistant County Attorney assigned to advise the HPC should be available to provide the HPC with oral or written opinions, to provide procedural advice to the HPC, and to alert HPC members about statutory requirements that must be met. When requested by the HPC, this attorney should also be available to draft or review HPC decisions on HAWPs, especially in cases dealing with complex legal issues. The Assistant County Attorney assigned to the HPC should, when requested by the HPC, attend HPC's public meetings and executive sessions.

* OLO recommends that one area of overlap, the researching of historic resources, can be reduced by delegating the research function to M-NCPPC's preservation planning staff. (See Recommendation No. 9.) OLO recommends, however, that although it potentially qualifies as an area of overlap, it would be beneficial for M-NCPPC's preservation planning staff to have the opportunity to comment upon HAWPs that raise broader questions concerning the County's planning, zoning, and/or land use policies. (See Recommendation No. 15.)

In addition, the Assistant County Attorney assigned to the HPC should keep the HPC informed about relevant court decisions. It should be the responsibility of this attorney to prepare a briefing for incoming HPC members to explain the parameters of HPC's authority, and the case law involving the HPC and HPC decisions.

Finally, because appeals from the HPC now go to the Board of Appeals (BOA), the Office of the County Attorney must be conscious to assign staff consistent with the Attorney General's conflict guidelines for adjudicatory proceeding in order to minimize any perceived conflict of interest. In particular, during the time an attorney is assigned to the HPC, he/she should not also be providing advice to the BOA on any matter that may be later presented before the BOA.

Recommendation 26: Develop an annual training seminar for all commissioners that serve on the County's adjudicatory boards and commissions, and develop ongoing training for County staff who have primary responsibility for providing support to a County-appointed board, committee, or commission. (A,\$)

Each year, the County should offer a training seminar to all commissioners that serve on the County's adjudicatory boards.* The Office of Personnel, Division of Organization Development and Training, could organize such training, with in-house assistance from the Office of the County Attorney, the County Council staff, and other County departments.

A training session for board members should include information relevant to all boards that perform an adjudicatory function. For example, the agenda should cover: how to conduct meetings in accordance with the Administrative Procedures Act, an explanation of ex parte communication, and guidance on compliance with the County's Ethics law. The seminar should also include training sessions on how to chair a quasi-judicial proceeding, to include tips on dealing with angry citizens or board members.

* This includes the: Board of Appeals, Animal Matters Hearing Board, Human Relations Commission, Commission on Landlord-Tenant Affairs, Commission on Common Ownership Communities, Merit System Protection Board, Sign Review Board, Ethics Commission, Board of License Commissioners, and the Planning Board.

The Division of Organization Development and Training should also develop training opportunities for County staff assigned to provide support to the County's many boards, committees, and commissions. Providing the necessary and appropriate level of staff support to a group of appointed citizens is often a challenging task. This assignment grows especially difficult in situations when the stated position of a board or committee can be in conflict with the position of the County Government. Much of this training could be accomplished with the assistance of County employees, who have learned through experience the skills required to effectively staff citizen boards and commissions.

Recommendation 27: Schedule separate annual meetings between the HPC and: a County Council Committee, the County Executive, and the Planning Board. (A)

To encourage ongoing and appropriate communication, the HPC should meet annually with a Council Committee, the County Executive, and the Planning Board. Without violating the ex parte rules on any particular HAWP case, the general purpose of these meetings would be to generally discuss the legislative intent, along with any perceived problems, of the laws and regulations governing the HPC's decision making.*

Recommendation 28: Provide for a formal follow-up to this evaluation to take place in FY94. (A)

The Council should charge the Office of Legislative Oversight with monitoring the operations of the HPC over the next three years, and with conducting a follow-up evaluation during FY94. If, at that time, the problems identified in this evaluation have not been addressed, then consideration should be given to modifying the basic structure, administrative location, and/or authority of the HPC.

* The HPC has met with the Planning Board for the past several years, and has met occasionally with the Council during the past decade.

VIII. COMMISSION/DEPARTMENT/AGENCY COMMENTS

On September 4, 1990, OLO circulated a draft of this report to Historic Preservation Commission (HPC) members, appropriate Executive branch staff, the Planning Board Chair and the M-NCPPC's Montgomery County Planning Director, the Director of the Office of Zoning and Administrative Hearings, the Board of Appeals Chair, and Council staff. All technical corrections received either orally or in writing are incorporated into this final report.

Written comments received on the draft report are included in their entirety starting on page 93. While the comments indicate general concurrence with many of OLO's recommendations, they also evidence differing views on a number of important issues including: how best to research historic resources, certain aspects of the Historic Area Work Permit application and review process, and OLO's specific recommendations regarding staff support for the HPC. The HPC expresses support for selected recommendations, but withholds taking a formal position on a number of major recommendations; HPC members indicate they intend to provide further comments during worksessions with the Council.

The Executive branch's written comments appropriately include a reminder of the County's current tight fiscal situation. OLO concurs that, as the issues identified in the report are discussed during the coming months, it will be important to explore alternative ways to address the stated needs that also minimize the fiscal impact. In addition, OLO points out that many of the recommendations offered in this evaluation are for changes that can be accomplished within existing resources.

The Executive branch's written comments also include a suggestion that an interagency group be appointed to conduct a comprehensive review of Chapter 24A, Historic Resources Preservation. While OLO has no objection to this suggestion, OLO hopes that the appointment of such a group will not postpone action on OLO's report recommendations until the interagency group completes its work.

While expressing support for most of OLO's recommendations, the Planning Board Chair emphasizes that the division of responsibility between the HPC and M-NCPPC's preservation planning staff must remain clearly differentiated. OLO concurs and has added language to Recommendation No. 24 regarding the need to define and communicate to the public the respective roles of Executive branch staff assigned to support the HPC, and M-NCPPC's preservation planning staff.

The Chair of the Planning Board also comments that if it seems important for M-NCPPC staff to be involved in the design review process, then additional consideration of consolidating historic preservation activities in the County under "one roof" may be warranted. As noted in the Chairman's comments, the OLO report includes a discussion of on alternative staffing locations (pp. 57-60), which identifies the various problems and opportunities associated with each alternative.

The OLO staff once again expresses thanks to the many individuals who cooperated with this lengthy evaluation, and who contributed to the development of findings and recommendations.



Montgomery County Government

MEMORANDUM

TO: Andrew Mansinne, Director
Office of Legislative Oversight

FROM: Leonard Taylor, Chairperson
Historic Preservation Commission *Leonard Taylor*

SUBJECT: Office of Legislative Oversight Report No. 90-02 - Evaluation of
Historic Preservation Commission - Recommendations With Regard to
the Historic Preservation Commission

DATE: October 5, 1990

The Historic Preservation Commission has, over the time that the research was compiled for this report, devoted many hours to discussion with Karen Orlansky of your staff regarding the HPC and its role in the historic preservation efforts of the County.

The Commission devoted a portion of its meeting on September 26, 1990 to review the draft report and to provide comments. The Commission has reviewed all of the recommendations and has formed an opinion on many of them. Below are specific responses to the recommendations. The HPC reserves the right to provide additional comments in the future, particularly at the work sessions with the Council.

The HPC generally agrees with recommendations 4, 8, 10, 13, 14, 15, 16, 17, 19, 21, 22, 26, 27 and 28, and has no further comments on them at this time. The HPC agrees with recommendations 1, 2, 5 and 9, 15 and 26, subject to the following comments:

1. The HPC suggests that the law recommend such representation, but not require it. The HPC already has difficulty finding people willing to serve due to the major time commitment required.

Andrew Mansinne
Page 2
October 5, 1990

2. The Commission is concerned that establishment of panels not be mandatory.
5. Allow HPC members to be compensated. The HPC agrees that some form of honoraria is appropriate.
9. The HPC needs to be able to contract for research in order to carry out its functions. Resources must be allocated to the HPC for this important work. The HPC also agrees that it is appropriate for M-NCPPC to complete research on Atlas sites.
15. Gwen Marcus, Historic Preservation Planner at M-NCPPC, is presently mailed the same packet of information, including the agenda, that HPC Commissioners receive regarding HAWPs one week prior to the meeting.
26. The Commission feels that this would be most helpful and believes that the Chair of the Commission should be required to attend.

The HPC feels that issues raised in recommendations 3, 6, 7, 11, 12, 18, 20 and 24 may have a far-reaching impact on preservation in the County and require further study. The Commission will provide further comments during worksessions with the Council.

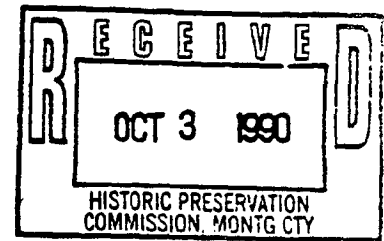
I want to thank you for the opportunity to comment on the OLO recommendations and look forward to being able to participate in the review of the report by the County Council. I have also attached comments received from Jeffrey Gross, Chairperson of the Boyds/Hyattstown Local Advisory Panel, for your information and review.

Attachment

cc: Karen Orlansky
Historic Preservation Commission
Richard J. Ferrara
Lewis T. Roberts

2144E

October 1, 1990



Leonard Taylor, Chairperson
Historic Preservation Commission
Suite 1001
561 Monroe Street
Rockville, Md 20850

Dear Mr. Taylor:

Thank you for submitting to me a draft copy of "A Description and Evaluation of the Montgomery County Historic Preservation Commission". As requested, I am submitting my comments on the document.

I presume that the facts, figures and History of the HPC is accurate. Therefore I am addressing the recommendations made by the O.L.O. report.

#1. Broadening the base of available professionals is always helpful; however, let's not forget that "Preservation" is our middle name.

#2. No comment.

#3. I believe this would help expediate H.A.W.P. etc. in the public's interest. Let's do it.

#4. Excellent recommendation.

#5. It's about time HPC members are compensated for their time.

#6. H.P.C. is still in a state of flux and written guidelines will always be of help.

#7. O.K.

#8. A schedule to complete the review of Atlas sites is fine but it should not be given a sunset date.

#9. Historic Preservation will be an on-going function of M.N.C.P.P.C. and they have experienced staff to review the sites.

October 1, 1990

"A Description and Evaluation of the Montgomery County
Historic Preservation Committee."

#10. The County Executive and the Council Members should be restricted to making History only, not changing it.

#11. This recommendation is particularly important to Hyattstown and I hope it is implemented.

#12. O.K.

#13. O.K.

#14. Of all the recommendations, I feel strongest about this one. M.N.C.P.P.C. should handle H.A.W.P. They have the expertise already, and there would be no "conflicts" in recommendations.

#15. O.K. but more time may be needed.

#16. Yeah!

#17. Good.

#18. I thought they were already.

#19. Excellent idea.

#20. Now you're putting some teeth into the Ordinance.

#21. Education is always best prevention.

#22. Same as #21.

#23. The existing programs are good but due to numerous "loop-holes", they are sometimes ineffective. Let's close the gaps.

#24. As I stated before, M.N.C.P.P.C. is the best place for H.P.C., although the rest of this recommendation is good.

#25. We're already behind the ball. This will help.

#26. Good

#27. Excellent idea.

#28. Good

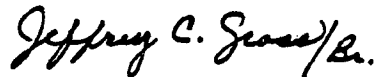
October 1, 1990

"A Description and Evaluation of the Montgomery Historic
Preservation Commission."

#29. The County may in the future need to "take under it's
wing" specific properties or entire Districts to ensure their
protection and survival. We need to make provisions for this
now.

Thank you for the opportunity to review the draft of
this Evaluation. If I can be of any further assistance,
please do not hesitate to give me a call.

Very truly yours,



Jeffrey C. Gross
Committee Member

JCG:ber
CC: File



Montgomery County Government

ROCKVILLE, MARYLAND 20850

M E M O R A N D U M

October 5, 1990

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

FROM: Lewis T. Roberts, Chief Administrative Officer *Lewis T. Roberts*

SUBJECT: DRAFT OLO Report #90-2, A Description and Evaluation of the
Montgomery County Historic Preservation Commission

Thank you for the opportunity to comment on the Draft OLO Report #90-2, A Description and Evaluation of the Montgomery County Historic Preservation Commission. The report provides a thorough analysis of the structure, staffing, workload and overall operations of the Montgomery County Historic Preservation Commission (HPC). Copies of comments from the Department of Housing & Community Development, the County Attorney's Office, the Office of Management and Budget, the Office of Planning Policies, the Department of Environmental Protection, and the Personnel Office are attached.

The Executive Branch believes that there is a need for a comprehensive review of the Historic Preservation Ordinance. I suggest that an interagency working group conduct this review and prepare revisions for Council consideration. Specifically, the Executive Branch is concerned about the combination in one commission of both program advocacy and adjudication responsibilities and believes the Council should consider separating these duties to ensure both the fact and appearance of fairness in adjudication and to free program advocacy efforts from the workload of cases to be judged.

With regard to specific recommendations, full discussion of the scope of the HPC's functions should precede allocation of additional resources. The fiscal impact of each recommendation would need to be calculated and acknowledged before final decisions could be made. In the event of tight fiscal circumstances, the Council, the HPC and the Department of Housing and Community Development may have to consider alternatives in addressing the stated needs while not being a significant burden to the County's budget.

The Executive Branch looks forward to discussing OLO Report #90-2 upon its release by the County Council. Thank you again for the opportunity to comment.


LTR/jw

Attachments

M E M O R A N D U M

October 2, 1990

TO: Andrew Mansinne, Director
Office of Legislative Oversight

FROM: Richard J. Ferrara, Director 
Department of Housing & Community Development

SUBJECT: OLO Report No. 90.2 - Evaluation of Historic Preservation
Commission - Summary and General Comments on Report

The Department of Housing and Community Development has reviewed the "description - Evaluation of the Historic Preservation Commission (HPC)" (O.L.O. Report No. 90.2) and agrees in general with the thrust of the report. We would point out, however, that the review did not take into consideration the need for a comprehensive review of the law.

The Historic Preservation Ordinance was originally promulgated in 1979. Since that time the Commission has changed from mainly an advisory commission (ie, recommendations for placement on the Master Plan) to a regulatory commission heavily involved in reviewing applications for historic area work permits. We expect this latter role to continue to increase in the future. When changes were made to the ordinance in 1989, the HPC and various county departments (primarily DHCD & OPP) identified the need for a complete revision to the law. Though the OLO report makes many recommendations which will affect the law, we still believe that there remains a need to study the law in detail, in the context of these recommendations.

The Department of Housing & Community Development in general concurs with the recommendations presented in the report, as outlined below:

- ° Agree in general with recommendations 1-7 on "Commission Structure and Procedures", with emphasis on modifications to the present HPC approval process for HAWPs. Clear standards should be delineated for HAWPs to ensure that only important cases and those of significant community concern and impact be subject to full HPC hearings. All others, probably the majority, should be handled by staff, utilizing guidelines approved and promulgated by the Commission. We also suggest that consideration be given to making the HPC subject to the Administrative Procedures Act (Chapter 2A of the County Code).
- ° Agree strongly with recommendations 8-10 on "Evaluation of Atlas Sites".

- Agree as follows with recommendations on "Historic Area Work Permits". We agree in general with recommendations 11 thru 13, 15 thru 17 and 19, 20. We do not agree with recommendation 14 because we believe that HAWPs are part of the building permit process, and as a consequence, need to be received by DEP with the actual work also to be inspected by DEP as part of that process. We disagree with recommendation 18 because of staffing considerations and the amount of time necessary to prepare findings of fact for all cases. We do agree that complicated cases should have a written decision.
- Agree in general with recommendations 21 thru 23 regarding "Public Education and Program Administration". However we note that both recommendations 21 & 22 do have costs associated with them.
- Agree in general with recommendations 24 thru 26, regarding staffing, training and communication. We take no position on recommendation no. 27.
- Agree in general with recommendation 28 regarding follow up evaluation.

We have also provided more detailed comments on the recommendations (attached). Many of these comments are technical in nature and may assist your staff in their work and in assessing what the department and the HPC are currently doing to address the concerns raised in the OLO report.

AVH/rap:2512B

TECHNICAL COMMENTS TO OLO REPORT 90-2

The technical comments are outlined below. We appreciate the opportunity to comment on the report and commend the OLO staff assigned to this project for a thorough and professional job.

- 1) Amend the law to include representation on the Commission from the fields of business, real estate and law. - The Department supports this recommendation. We point out that the law should be clarified to indicate that an individual commissioner may represent more than one field of interest, for example, an architect could represent both architecture and urban design since architects are generally trained in both disciplines, or a real estate closing attorney could represent both the law and real estate.
- 2) Authorize the HPC to establish panels. - The Department strongly supports this recommendation. The use of panels by the Landlord-Tenant Commission which is also staffed by DHCD has worked well and has streamlined the decision making process. It would also partially address the problem of the increasing workload of the HPC.
- 3) Authorize the HPC to send cases to the Hearing Examiner. - The Department supports this recommendation. The use of a hearing examiner for more complex cases of interest to the Commission as a whole should assist the HPC to establish facts and to rule in accordance with the law. If the law is changed to allow such a delegation, the time period by which the HPC makes its decision must be extended, since at present the law requires the HPC to render a decision within 45 days of receipt of the application or within 15 days of the close of the record.

Since the Hearing Examiner would put together the record and after completion of the record make a recommendation to the Commission, the Commission would need adequate time to review the record and to determine whether it concurs or not with the Hearing Examiner's recommendation. If the Commission should not agree with the Hearing Examiner, it would then need adequate time to formulate its own findings and recommendation. Therefore, in revising the law to allow this method of review, special consideration should be given to the time limits.

- 4) Clarify in regulation an expended role for the HPC chair. - The Department supports this recommendation.
- 5) Amend the law to allow members to be compensated. - The Department supports this recommendation with the following comments. Members should be paid for attendance at meetings, as opposed to a monthly salary. Also since the HPC also interacts with Planning Board and County Council, there is a need to reimburse members who represent the Commission before these bodies for their actual expenses. Recommendation no. 4 does

identify the chair as the chief spokesperson for the Commission and this recommendation does suggest a larger compensation for the chair. If both these recommendations are taken together, it could be argued that if the chair does all the representation the chair does receive extra compensation. However, realistically, the chair will not always be able to represent the Commission at these meetings, therefore, there has to be a way to at least reimburse commissioners who take on this role for the Commission.

- 6) Finalize Executive Regulations. - The Department concurs in general with this recommendation. The Executive Regulations which outline the HPC's routine procedures is presently at the County Attorney for final review prior to promulgation under Method 2. The regulations with regards to the role of Local Advisory Panels are presently the subject of a subcommittee of the HPC and should be ready for first review by the attorneys within the next few months. Regarding the Executive Regulations on LAPs, the department's concern is that the regulations governing the LAPs make it clear that the LAPs' role is advisory to the HPC and would not require appearances by applicants.

Also, the recommendation that design standards be published as executive regulations may not be practical. The HPC in certain cases believes that design standards/guidelines, particularly with regards to historic districts should be district specific. Also the term "standards" is probably too tight implying that if certain specific rules are followed, an application would be automatically approved. The Department believes that the HPC should promulgate general guidelines, similar to the general design guidelines originally promulgated by the Planning Board as part of the Master Plan for historic preservation. These guidelines should be published and made available to the public, but not as Executive Regulations.

- 7) Clarify the law that all HPC decision are appealable to the Board of Appeals and to clarify the intent of the ordinance with regards to the Commission's role in the area of appurtenances and environmental setting. The OLO report notes that the Commission's decisions with regards to demolition by neglect should be appealable to the Board of Appeals. The Commission's role with regards to demolition by neglect, however, is that of an appeals board. The law notes that DEP (or its designee, DHCD's Division of Code Enforcement) issues a citation for demolition by neglect. The party cited has the right to appeal this citation to the HPC. The HPC, however, is not an impartial

appeals board; rather it is a board with a specific point of view (it is charged with protecting the County's historic heritage). Consequently, we suggest that appeals of demolition by neglect actions should be taken directly to the Board of Appeals.

Regarding delineation of appurtenances and environmental setting, the department believes that the delineation should be made as part of the HPCs role in making recommendations to The Planning Board with regards to placement on the Master Plan. The Planning Board has recently started including maps indicating environmental setting as part of the Master Plan amendment. However, in many cases the amendment will identify the existing parcel as the environmental setting without taking into consideration any future subdivision. At a minimum, the HPC in its recommendations to the Planning Board, should note the minimum environmental setting, taking into consideration existing zoning and future subdivision. The Planning Board should include specific limits to the environmental setting in the Master Plan amendment, and this should be the final determination. Presently, the amendments often make reference to reduction of the environmental setting, allowing the HPC to undertake this role. The Department believes that the delineation of appurtenances and environmental setting is properly part of the Master Plan process. The Commission's role should be advisory in this process. The law should be clarified to reflect this.

Regarding the HPC's role as to Atlas resources and subdivision, the Commission currently makes recommendations with regards to environmental setting. To clarify and simplify the process, we believe that subdivision should be treated in the same way as substantial alteration or demolition of a structure. It should start the abbreviated Master Plan amendment process.

- 8) Adopt a schedule for review of Atlas sites, establish a sunset date for the Atlas and establish a process for future nomination of sites to the Master Plan.
- 9) Delegate responsibility for research to MNCPPC.

The Department agrees with these recommendations. Budgetary concerns may increase the time needed to complete the task, and the Department would work to explore partial funding for the survey task through the grants available from the Maryland Historic Trust. It is possible that approximately \$7,500 to \$10,000 a year, which must be matched on a one for one basis, could be made available through the Certified Local Government process. These funds could be provided to the Planning Board for this task.

It needs to be pointed out that the HPC's role is to make recommendations for placement on the Master Plan. As a consequence, it has to be clear that the Planning Board will share with the HPC the results of the research and allow the HPC to maintain its initial and primary role of recommending placement on the Master Plan.

Regarding a process for the addition of properties to the Master Plan, the process should be designed to allow a periodic review of structures or sites in the County which have attained a certain age and to identify these structures as potential master plan sites. The accelerated process should then be used if there was proposed substantial alteration, demolition or subdivision on one of these identified sites. MNCPPC could be charged to do such a review once every ten years, and at that time review all buildings of more than 50 years (as an example) or other meritorious sites.

- 10) Clarify whether Council Action is required to remove properties from the Atlas. - We point out that the Atlas was compiled by MNCPPC. As a consequence we suggest that the ordinance be clarified to reflect that MNCPPC can add to and remove properties from the Atlas or from any successor list.
- 11) Where appropriate, include standards for future regulatory action in amendments to the Master Plan, and require that the HPC must follow such standards. - The Department concurs with this recommendation and strongly suggests that MNCPPC continue the precedent it is setting in the proposed Takoma Park Historic District, which includes delineation of resources as primary, secondary and non-contributing resources and proposed guidelines for review of each type of resource. We urge that master plan amendments be clearer not only with regards to how the HPC should regulate change but also with regards to environmental setting.

Master Plan amendments should not deal solely with the historic aspects of a site or resource, but should take into consideration what other existing master plans propose for the area or property. As an example the Hyattstown Historic District Amendment is in conflict with transportation plans which propose the widening of Rte. 355 through Hyattstown. There is a need for MNCPPC to, in amendments to the Master Plan for Historic Preservation, make sure that the amendments are not in conflict with other master plan documents, or where there is conflict to recommend which plan should take precedence, or to suggest mitigating factors to take these plans into account. The law needs to be made clear to state clearly that the HPC is bound by the language of the master plan.

- 12) Authorize the HPC to delegate approval of routine HAWPS to staff, as well as minor modification. - Though we agree in principal, this recommendation truly requires major rewriting of the law. The law authorizes the Commission to review HAWPs and place conditions on a permit issued by the DEP. Staff cannot make these decisions without major changes to the law. The law should most probably be rewritten to allow for various types of HAWPS, based on whether the proposed construction, alteration or demolition etc. substantially impacts upon the historic site or resource within a historic district. Changes having substantial impact should be subject to the full HAWP process; changes which do not have substantial impact should be reviewed and approved at the staff level. The law should define the term substantial impact. Also a mechanism needs to be developed to allow for minor changes to an HAWP which are required due to field conditions. This mechanism should be in line with the present field modifications which are allowed for building permits. This would take care of the approval of field changes without the requirement that applicants apply for a retroactive HAWP.
- 13) Simplify the process for HPC action on simple and uncontested HAWPS. - The HPC chair recently implemented such a process. The recommendation made in 12 above should remove this concern; however, the HPC needs to have in the law the right to do an expedited review of uncontested HAWPs.
- 14) Authorize Director of DEP to delegate to DHCD the intake of HAWPs and the inspection of HAWPs. - The Department has some difficulty with this recommendation. The main reason for having DEP accept the application is that the HAWP is necessary for an applicant to receive a building permit. The HAWP is part of the building permit process. There is also a need to indicate clearly the date on which an application is accepted, since decisions must be made within certain time frames. DEP is ideally suited for this purpose.

There needs to be clarification of what constitutes an acceptable submittal for a HAWP (the law states that the HPC sets the application requirements). Also DEP and DHCD should work together to train intake staff at DEP on a regular basis on the criteria by which to judge the completeness of a HAWP application.

Regarding inspection of work undertaken under an approved HAWP, such inspection should be undertaken as part of the building permit process. Recently in transmitting its conditions on an HAWP to the Director of DEP, the HPC has stated that the HAWP is

to be made a condition of the building permit. This allows DEP to enforce the HAWP through the building permit and construction process.

DHCD presently inspects for housing code violations and, under a delegation from the director of DEP, for demolition by neglect. Both types of violations have to do with neglect of structures. HAWPs have to do with changes, new construction etc. DEP, with its knowledge of the building process, is much better suited to inspect construction for compliance with the HAWP. It also is important to note that the HAWP and the building permit must be in agreement with each other. Having DEP do intake and inspection ensures that DEP will have an active role with regards to any structure subject to a HAWP.

We also suggest that the law be changed to require a HAWP only for work which requires a building permit. Effectively, the HPC cannot enforce the HAWP requirement for work that does not require a building permit.

- 15) Forward copies of selected HAWPs to MNCPPC staff. - The Department notes that, though HAWP applications are not necessarily forwarded within 3 days to Planning Board, the Historic Preservation Planner for the Planning Board does receive a complete packet prior to each meeting of the HPC. This packet contains all the information that the members of the Commission receive prior to an HPC meeting. Planning Board staff is free to comment on any application.
- 16) Amend the law to require an approved HAWP prior to receiving a building permit. - Our recommendation with regards to intake and inspection (no. 14) responds to this. Not only should Article 24A be amended, but the section of the County Code dealing with building permits should also be amended to reflect this requirement.
- 17) Amend the law to clarify the time period for HPC action and consider extension of the deadline for HPC action. - Our response to Recommendation 3 partially deals with this. In addition, we make the following comments. If the HPC remains in essentially its existing format, it is imperative that the deadline for action by the HPC be extended to 60 days from filing. This will allow the HPC to have one meeting a month for HAWPs and one for their advisory role. We point out that HAWPs have to be advertised two weeks prior to the public appearance, and in order to place the advertisement, all HAWPs to be considered have to be received three days prior to the publishing of the ad. If we add in the three days that DEP has to transmit, 21 days of the 45 day period have already elapsed. If all HAWPs were scheduled for one meeting a month, the Commission could more effectively handle their advisory role.

Also the time necessary for them to render a decision should be adequate to allow the HPC to render its decision on a case at its next regularly scheduled meeting. The Commission presently meets on the 2nd and 4th Wednesdays of the month. Occasionally three weeks occur between meetings, so that and a minimum of three weeks should be the time allotted for decision rendering. However, in cases where a hearing examiner has taken the record, a longer period such as 30 to 45 days should be allowed, so that the HPC would have the necessary time to review the record.

- 18) Amend the law to require all decisions on HAWPs to be in writing. - Currently the law only requires denials to be put in writing. The suggestion that all decisions be in writing could prove to be an excessive paperwork burden with each decision requiring a background section, a findings of fact section and the decision. For cases of significance where the proposed work is such that the impact will have a major impact upon a site or historic district, (example - Murray Case - new construction in Kensington, approved with conditions) the argument can be made that the approval should be in writing, but for the majority of cases it is not necessary. A possible solution to assist the public could be a compilation of staff reports and the developing of a form which would excerpt the minutes for each approval. These could be arranged chronologically or by another classification method and made available to the public and would require minimal additional work.
- 19) Authorize the Board of Appeals to stay issuance of a HAWP pending the outcome of an appeal. - The Department supports this recommendation without comment.
- 20) Amend Chapter 24A to include restoration or repair of damages to a historic site. - We point out that this change should include the requirement for historic resources in historic districts. The Department supports this recommendation with the proviso that DEP have the authority to issue such citations and restoration orders as part of the building permit process.
- 21) Develop better techniques for informing the public about the status of properties on the Master Plan. - We note that one technique is already being used (thanks to Commissioner Wagner), who revised the mailing list of the Preservationist. It is now being sent to all Master Plan addresses. This indicates to Master Plan Owners, we hope, the special status of their property. The idea of working with the Board of Realtors has been suggested previously, and the Department will explore this option. We also note that plaques have been used previously. We are currently seeking a supplier. Plaques were and would be made available at cost to owners, in order not to have a budgetary impact. If plaques were to be provided free of charge, a cost of about \$15 to \$20 a plaque is the correct price range.

- 22) Develop materials and programs to better educate the public about the County's Historic Preservation Program. - The Department supports this recommendation and points to three steps being taken this fiscal year to improve the education aspect of the HPC's role - The chair of the HPC has planned a thorough review of the uses of the Historic Preservation Grant Fund to determine how best this could serve the mandated charges of the HPC; one of these could be the redirection of the grant program to promote the education aspect of the Commission. Another educational tool is the "Preservationist" newsletter. This newsletter, as previously mentioned, goes to all Master Plan addresses. It is also used to explain procedures and to educate the public. The third step being taken is the development of a brochure in FY 91 which will be used as an education tool. We note, however, that increasing the HPC's role with regards to programs and materials will have a budgetary impact. Programs such as slide/tape shows or brochures have associated costs, and in making these recommendations, the OLO should identify a budgetary impact.
- 23) Improving the administration of existing historic preservation programs. - The Department points out that the easement program is a donation program (i.e., individuals may donate easements to protect historic properties). The program was set up to assist one entity (the Bethesda Farm Women's Market) and that entity determined not to proceed with the donation of an easement. Executive Regulations are to be drafted in the near future. However, we also point out that without some tangible benefit to property owners (i.e., compensation, right to develop etc.), the easement program will most probably remain inactive.

Regarding the Historic Loan Fund, this fund was originally funded with CDBG and County monies. Due to limitations imposed by the federal government, including prohibition of funding religious institutions for improvements to their properties and major reductions in funding levels, as well as under utilization, this program has not been funded in the past five years. If the County were to determine that loaning funds to restore historic properties is an important public purpose, then county funds (general revenue or bonds) could be made available for this purpose. This, of course, would have a budgetary impact. If the program were to become active, the Executive Regulations should be re-promulgated. Strong consideration should be given to making the program available to non profits only.

- 24) Retain the DHCD as lead agency with a separate office within the Department and authorization of additional staff. - This recommendation is broken into 3 parts by OLO and we will respond accordingly.

1. Establish an Historic Preservation Office within DHCD. - The Department concurs with this recommendation, and at the present time is implementing the physical separation of Historic Preservation from the Division of Community Planning and Development. As of mid-winter 90-91, the staff assigned to the HPC will be housed within the Director's Office. CPD is being moved to accommodate the new function of regulating Homeowners Associations, and the HPC staff will report in the near future directly to the Deputy Director of DHCD.

We note that most of the functions identified as part of the Historic Preservation Office responsibilities are presently the functions done by the staff within CPD. The items identified as public outreach are already carried out by the staff with some assistance from other Division staff. Although these items may not be carried out to the extent the HPC prefers, it is imperative that priorities within the overall HPC staff workload be observed. We point out that the following activities are currently undertaken by the staff.

- °drafting of correspondence for the chair.
- °assisting the chair to set the agenda and workload.
- °attending HPC meetings and maintaining HPC minutes and records.
- °managing HAWPs from receipt from DEP to transmittal of conditions of HAWPs to DEP.
- °formulating staff recommendations for HAWPs and for subdivisions.
- °drafting, with the assistance of the County Attorney's Office, HPC decision (denials and complicated cases).
- °ensuring due process.
- °presently arranging for research through contracts on historic resources.
- °orienting new members.
- °administering the grant program and the tax credit program.
- °providing information on a regular basis to the public.
- °Other activities undertaken at present include: the educational exhibit at the County Fair and the Ethnic Festival; managing of the CLG grant, including research on sites; managing the newsletter "The Preservationist"; maintaining and updating the list of master plan sites for DEP, and making recommendations to DEP with regards to determinations of substantial alteration.

2. Create a new senior staff position to manage the office. - The Department concurs with this recommendation, and presently is exploring the possibility of upgrading the historic preservation specialist position to a senior staff position. The Department plans to request one additional staff for historic preservation; however, budgetary constraints may make this difficult. We agree with the title of Historic Preservation Officer for the senior position. We do need to point out that the Historic Preservation Specialist (Program Manager 1) may be the wrong classification for the junior staff

position. Personnel and Classification should review this position in light of what recommendations are actually implemented with regards to staffing.

3. Provide physical identification for Historic Preservation. - The Department concurs with the need for a sign stating "Historic Preservation Office" and notes that the telephone lines dedicated to Historic Preservation are consistently answered "Historic Preservation."

- 25) Continue enhanced level of legal assistance. - The Department concurs and notes that the County Attorney has assigned an attorney to DHCD who is also charged with giving legal advice on historic matters. This attorney is physically located in the Director's Office. Within the last 2 years the level of support from the County Attorney has increased consistently.
- 26) Develop an annual seminar for all Commissioners. - This training would be of great benefit to HPC and to the OLTA Board. It would also greatly assist staff. We strongly support this recommendation.
- 27) Schedule separate annual meetings between HPC, a Council Committee, the County Executive and Planning Board. - DHCD takes no position on this recommendation.
- 28) Provide for a formal follow up. - The Department concurs with the need for a follow-up evaluation.

AvH/rap:2510B

M E M O R A N D U M

October 1, 1990 1390 OCT -1 PM 1:13

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

FROM: A. Katherine Hart *A. K. Hart*
Senior Assistant County Attorney

RE: Draft OLO Report No. 90-2, A Description and Evaluation
of the Montgomery County Historic Preservation
Commission

I have reviewed a draft copy of OLO Report No. 90-2 concerning the description and evaluation of the Montgomery County Historic Preservation Commission for legal sufficiency. As usual, Karen Orlansky, Program Evaluator in the Office of Legislative Oversight, has done an admirable and commendable job in putting together OLO Report No. 90-2 on a subject matter which has a long history to it.

I have read the entire report and believe the legal issues discussed by the report are correct, and I have no further comments concerning them. Of course, some of the recommendations presented in the report do have further legal considerations which must be addressed at a later date but do not need further comment at this time. This office will be assisting other departments and the Historic Preservation Commission in order to implement some of the recommendations set forth in the report.

Thank you for the opportunity to comment on the draft OLO Report No. 90-2. If you have any questions concerning this matter, please contact me.

AKH:pae
0135.AKH:90.07627



Montgomery County Government

MEMORANDUM

October 1, 1990

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

FROM: Robert K. Kendal, Director
Office of Management and Budget

SUBJECT: OLO Report No. 90-2, A Description and Evaluation of the Montgomery County Historic Preservation Commission

Thank you for the opportunity to respond to this DRAFT report. As usual, your staff has provided a very thorough analysis of the issues.

First, I would like to address my comments to those recommendations that carry "notable fiscal impact" as described on page 73. These include:

- Recommendation 5: Amend the law to enable HPC members to be compensated.
- Recommendation 24: Establish a separate Historic Preservation Office...authorize an additional senior staff position.
- Recommendation 25: Continue to provide HPC with an enhanced level of legal assistance.
- Recommendation 26: Develop an annual training seminar for all commissioners...and develop ongoing training for County staff who have primary responsibility for providing support to a County-appointed board, committee, or commission.

Regarding Recommendation 5, I believe the Council should decide this question as a matter of equity based on the duties of the HPC members compared to comparable commissions. The fiscal impact would need to be calculated and acknowledged, of course.

In the other three cases I am concerned about the fiscal implications. In the event of tight fiscal circumstances, the Council, the HPC, and the DHCD may have to consider alternatives in addressing the stated needs while not being a significant burden to the County's budget. In particular, I believe that use of existing resources should be fully explored for Recommendation 24, including possible Council reconsideration of mandated HPC activities to accomplish with existing resources those activities that Council feels are the highest priorities. Full discussion of the scope of this Commission's functions should precede allocation of additional resources, using OLO Report No. 90-2 as the basis for such discussions.

Office of Management and Budget
Director's Office/Interagency Analysis & Review Division/Budgets Division

101 Monroe Street, 14th Floor, Rockville, Maryland 20850, 301/217-2789, 2820, 2800

Andrew Mansinne, Jr.
October 1, 1990
Page 2

As regards Recommendation 25, I am not clear from the description on page 89 as to what additional funding would be required, since you are apparently not recommending new resources for County Attorney support of the HPC. The extent of what is being suggested should be fully explored with the Office of the County Attorney to ensure that HPC expectations are realistic.

Recommendation 26 appears to be an excellent idea, and while some cost may be involved, I would think it would be achievable within existing budgets of those departments related to current boards and commissions.

As regards Recommendation 22 (develop materials and programs to better educate the public), you do not indicate that this recommendation carries a notable fiscal impact, when in fact it might. In particular, the development and dissemination of County-produced education materials may have serious cost implications. Alternative ways to support enhanced public education should be fully explored with advocates of historic preservation before any additional funds are expended for this purpose. The Historic Preservation Grant Fund has funded many education projects, as is documented in the report, and should continue to be considered for this purpose. Perhaps more emphasis should be placed on grants with an educational focus.

Finally, I remain concerned about the combination in one commission of both program advocacy and adjudication responsibilities. I believe the County Attorney shares these concerns. The Council should, in my view, consider separating these duties to ensure both the fact and appearance of fairness in adjudication and to free program advocacy efforts from the workload of cases to be judged.



Montgomery County Government

MEMORANDUM

September 26, 1990

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

FROM: Meg Riesett, Director *MR*
Office of Planning Policies

SUBJECT: Draft OLO Evaluation of the Historic Preservation Commission

Thank you for the opportunity to comment on Draft OLO Report 90-2, A Description and Evaluation of the Montgomery County Historic Preservation Commission. I congratulate you on the thorough information gathering, the high quality analysis and the clear writing. I concur with most of the findings and recommendations included in the draft. I have listed a few comments below.

1. Many of the problems associated with the Historic Preservation Commission derive from shortcomings of the Historic Preservation Ordinance. As your report notes, the Ordinance was adopted almost ten years ago. With the experience of one decade, several areas of the Ordinance merit reexamination and clarification, including:
 - whether the Executive and Council must approve removal of sites from the Atlas;
 - the difference in protection afforded an individual resource as opposed to a district;
 - whether economic and fiscal circumstances should play a role in master plan designation; and
 - whether public access and visibility are relevant considerations in master plan designation.

I suggest that the final report recommend that an inter-agency working group conduct a complete review of the Ordinance and prepare revisions for Council consideration.

Office of Planning Policies

Executive Office Building, 101 Monroe Street, Fourth Floor, Rockville, Maryland 20850-2589, 301/217-2430

2. At present, the Ordinance provides that every resource which meets the criteria be given the same level of protection. Recommendation 11 suggests that the Master Plan give guidance as to the characteristics of a resource that are more or less worthy of protection. This recommendation would allow the master plan to tailor the level of protection to the quality or importance of the site -- a sort of gradation that will allow tighter restrictions for more important sites and lesser restrictions for marginal sites. We support this recommendation. This technique was used in the case of the Montgomery Mutual building in the Sandy Spring Historic District and proved useful in winning Council approval for the designation.

This recommendation could have another beneficial effect. At present, the HPC evaluates a potential master plan site at the beginning of the process, but has limited participation as the amendment travels through the Planning Board and Executive on its way to the Council. If master plans offer additional guidance about the level of protection afforded special cases, HPC and the other parties involved in historic preservation decision-making will have more opportunity for dialogue.

3. The OLO draft recommends compensation for HPC members. We support this recommendation, especially given past tension over the question of whether Commissioners or staff should represent HPC at Council hearings. By beginning to compensate HPC members for their services, a good opportunity arises to clarify that attendance at Council worksessions is an explicit responsibility of HPC membership.
4. Recommendation nine suggests that research of the remaining Atlas sites should be performed by a new part-time permanent staffer at the Planning Department. I recommend instead that this task be performed by consultant contract. As there are a finite number of sites remaining on the Atlas, there is no need to establish a permanent position. Consultants also could research newly considered sites not previously identified on the Atlas as the need arises.

A consultant contract would also keep a clearer distinction between the research function and the historic preservation planning function. This will lessen the opportunity for those who disagree with designation to charge that the research was compromised either by staff's personal predisposition toward a site or by the influence of others in the Planning Department. (Although completely unwarranted, similar accusations have been raised in the recent past.)

Thank you for the opportunity to comment on the draft. Again, I congratulate you on the preparation of an excellent report.

cc: Karen Orlansky

MR:AT/ab
P413



Montgomery County Government

MEMORANDUM

October 2, 1990

TO: Lewis T. Roberts
Chief Administrative Officer

FROM: Edward U. Graham, Director *EUG*
Department of Environmental Protection

SUBJECT: Draft OLO Report No. 90-2, A Description and Evaluation of the
Montgomery County Historic Preservation Commission

I have reviewed the subject report and I am generally in agreement with the recommendations of the Office of Legislative Oversight (OLO).

However, I do not agree with recommendation 14, page 82 of the report. This recommendation concerns the transfer authority for the intake of applications, issuance and inspection of "historic area work permits" (HAWP) from the Department of Environmental Protection (DEP) to the Department of Housing and Community Development (DHCD) by a "Memorandum of Understanding". While I believe, for the reasons stated in the report, that such authority should be transferred to DHCD; I do not believe the "Memorandum of Understanding" is the proper method to transfer such authority. I recommend that Chapter 24A be amended to designate DHCD as the authority for permits and inspection. It is my experience that an internal document between departments to solve a legislative shortcoming will confound citizens, foster resistance to code compliance, and cause unnecessary conflicts when problems arise.

Another concern of mine is that responsibility for the maintenance of the "historic premise address data base" which resides in the building permit PER computer system, should be transferred to either DHCD or the Maryland-National Capital Park and Planning Commission (M-NCPPC). Currently this data base is being maintained by DEP, but only through a coordinated effort with DHCD and M-NCPPC. Since DEP neither designates nor eliminates properties from the atlas or master plan it does not seem appropriate that the task of data base maintenance should reside in DEP. Other data base maintenance responsibilities have been separated from the Department with good success, such as "building contractor" file which is maintained by the Office of Consumer Affairs.

Again, with the exception of my comments above I concur with OLO's recommendations. The report accurately and fairly represents DEP's role in the enforcement of Chapter 24-A.

EUG:RH:2935p Office of the Director, Department of Environmental Protection

101 Monroe Street, Room 627, Rockville, Maryland 20850-2589, 301/217-2355

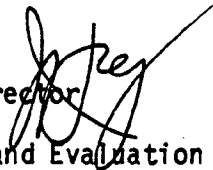


Montgomery County Government

MEMORANDUM

September 24, 1990

TO: Andrew Mansinne, Director
Office of Legislative Oversight

FROM: William P. Garrett, Personnel Director 

SUBJECT: OLO Report #90-2, A Description and Evaluation of the Montgomery County Historic Preservation Commission (HPC)

Thank you for the opportunity to comment on this very well written and detailed report. My comments are directed toward the HPC support staffing discussed in the report, particularly the classification of the Department of Housing and Community Development (DHCD) employees assigned to provide HPC staff support.

As Karen Orlansky indicated in her draft report, the Personnel Office conducted individual position classification studies of the two present DHCD employees assigned to provide HPC staff support. Both positions were reclassified as a result of this study; these reclassifications were effective July 1, 1990. The professional staff support position now classified as a Program Manager I, Grade 23, was reclassified from Program Specialist II, Grade 21, based, in part, on managerial/administrative responsibilities for the HPC office. This position was recently vacated, and the Personnel Office is advertising for this position (see the attached bulletin). As you will note, the advertisement was prepared based upon the current classification of this position as Program Manager I, Grade 23, and the advertisement includes administrative/managerial duties.

In order that the recommendations contained in this report not have a negative impact on the classification of this position, this currently vacant position should be considered the "senior administrative/managerial" position (referred to in the OLO report with the working title "Historic Preservation Officer") and recruited on this basis. If, in the future, the Office of Management and Budget agrees to increase staffing as recommended in the subject report, a new position could be created as the "technical" staff support position. This position, if created, would not contain managerial or administrative duties or responsibilities. As always, the Personnel Office would need to examine a detailed position description for such a proposed position in order to determine proper classification.

If you have any questions concerning this matter, please call me at 217-2284.

WPG:db
3183x

Personnel Office

Executive Office Building, 101 Monroe Street, 7th Floor, Rockville, Maryland 20850

Announcement No.: 08340080
HISTORIC PRESERVATION SPECIALIST*
(PROGRAM MANAGER I)

\$32,326 - \$53,544

Department of Housing and Community Development, 51 Monroe Street, Rockville, Maryland

Employee will provide administrative and staff support to the Montgomery County Historic Preservation Commission (HPC). Duties include administering programs; implementing policies, actions, and decisions of the HPC on a daily basis; arranging for and staffing twice a month evening meetings of the HPC; historic research and site visits; reviewing and processing architectural plans for Historic Area Work Permits; recommending sites for historic designation (Master Plan), including administration of consultant contracts; implementing the HPC's actions and maintaining the HPC's records; administering historic preservation grant programs; and

providing information to the public and serving as a liaison for the HPC with other public agencies involved in the planning and permitting process.

MINIMUM QUALIFICATIONS: Graduation from an accredited college or university with a Bachelor's Degree in history, architectural history, art history, historic preservation, preservation planning, or related field, and three (3) years experience in historic preservation. (An equivalent combination of education and experience may be substituted.)

SELECTION PROCESS: Applications of those individuals who meet the minimum qualifications for this position will be reviewed to determine extent and relevancy of training and experience in the following areas:

- o Demonstrated knowledge of federal, state, and local preservation;
- o Demonstrated knowledge of land use laws and regulations;
- o Prior experience with a Historic Preservation Commission or similar organization;
- o Writing skills;
- o Public speaking skills;
- o Experience working with both public and private sector organizations.

Applicants who wish to receive consideration for experience or education in the above areas must provide detailed information on their application/attachments which clearly indicates the relevance of their experience and professional involvement in these areas. As a result of this process, applicants may be rated "Outstanding", "Well Qualified", or "Qualified", as appropriate. Selected candidate will be required to complete a Financial Disclosure Statement.

CLOSING DATE: October 17, 1990



Montgomery County Government

MEMORANDUM

October 4, 1990

TO: Karen Orlansky, Program Evaluator
Office of Legislative Oversight

VIA: William P. Garrett, Director *WPG*
Personnel Office

FROM: Dennis Misler, Manager *DM*
Organization Development and Training

SUBJECT: Comments on Draft of OLO Report No. 90-2, A Description and Evaluation of the Montgomery County Historic Preservation Commission

Recommendation 26 of Report No. 90-2 calls for an annual training seminar organized by the Organization Development and Training Section of the Personnel Office for commissioners that serve on the County's adjudicatory boards and commissions and their staff.

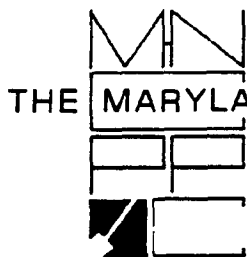
Training for this population would present us with several unique problems, such as the breadth of issues that would need to be covered, determining whether training needs are consistent from commission to commission, timing the training in such a way as to encourage attendance, etc. However, since this is an area for which no specific training is available, we concur that an assessment of training needs and a determination of the feasibility of such training should be made.

DM:cm

cc: Andrew Mansinne, Jr.

Personnel Office

Executive Office Building, 101 Monroe Street, 7th Floor, Rockville, Maryland 20850



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

(301) 495-4605

Montgomery County Planning Board
Office of the Chairman

October 5, 1990

Andrew Mansinne, Jr.
Director
Office of Legislative Oversight
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850


Dear Mr. Mansinne,

Thank you for the opportunity to comment on the draft copy of OLO Report No. 90-2 on the Montgomery County Historic Preservation Commission (HPC). I have consulted with a number of our staff members who are actively involved in historic preservation efforts - including Melissa Banach, Doug Alexander, and Gwen Marcus - on this report and the following comments reflect the staff's positions as well as my own.

First, I would like to emphasize that we have found the overall report to be very complete, thorough, and well thought out. It clearly represents a formidable analytic effort and is particularly valuable in its detailed documentation of the inception of the County's historic preservation program, its evaluation of current practices, and its comparison of the County's program to other jurisdictions in Maryland and elsewhere around the United States.

Many of the recommendations contained in the draft report deal with the structure of the HPC and procedures for dealing with Historic Area Work Permits. We feel that the majority of these recommendations are quite positive and will substantially improve the ability of the HPC to deal with an increasingly large and complex workload.

In addition, several of the major recommendations in the draft report have a direct bearing on the Board's historic preservation planning work. Our remaining comments will focus in on these specific recommendations.

First, the recommendations that deal with the evaluation of Locational Atlas resources are of special interest in that they will affect the Board's workload and staffing. We strongly support Recommendation #8 to establish a sunset date for the Atlas and feel that the five year schedule for evaluating the

remaining resources is realistic. In addition, we are pleased that the recommendation recognizes the need to establish, by law, a clear process for nominating resources in the future to be considered for designation on the Master Plan for Historic Preservation.

We also support Recommendation #9 to delegate responsibility for researching remaining Atlas resources to our historic preservation planning staff - adding one part-time researcher to our current staffing level of two positions devoted to historic preservation activities. Currently this function is distributed among a variety of consultants hired by the HPC. We feel that having the research on Atlas resources done by one staff person who is familiar with and involved in the overall designation process will make the evaluations more consistent and efficient.

It is important to note that it is our understanding that this recommendation would not require additional funding, but would rather mean that HPC funds currently utilized to hire consultants for research projects would be transferred to the Planning Board's budget to fund the recommended part-time position. There are a variety of ways that this transfer of funds could occur and a variety of ways in which the part-time research position could be structured. We support the concept of folding the researching function in with the rest of our designation activities and are open to a discussion on the details for accomplishing this.

Recommendation #10 calls for additional clarification of the procedures for removing resources from the Locational Atlas. We agree that this portion of the current ordinance needs to be considered and improved.

In the discussion of Historic Area Work Permits, Recommendation #11 suggests that standards for future regulatory action be included in the amendments to the Master Plan for Historic Preservation which designate particular sites. It also recommends that the ordinance be changed to specifically link the direction provided in Master Plan amendments with the HPC's regulatory function. We strongly support these recommendations.

The designation process currently does involve decisions and guidance in the Master Plan which ultimately affects the HPC's review of Historic Area Work Permits. Language is often included in Master Plan amendments which provides direction on the nature of environmental settings, the intent of historic designation for a particular property, and even the building elements which are of highest historical or architectural significance. The HPC has always been very diligent in referring to the appropriate Master Plan guidance when reviewing Historic Area Work Permits and we see the report's recommendation in this regard as the continuation and expansion of a positive existing relationship.

One of the few recommendations that we are concerned about is Recommendation #15, which suggests that the HPC forward copies of selected Historic Area Work Permit applications to our historic preservation planning staff for review and comment. We are very willing to work with the HPC on cases that go beyond usual historic preservation issues and begin to raise broader planning concerns. However, we feel that it is important for the division of responsibility between the HPC and our historic preservation planning staff to remain clearly differentiated.

This division of responsibility that has evolved over the last three years has come to mean that our historic preservation planning staff deals with designation of historic sites and the HPC deals with design review after a site has been designated. Clearly, there is overlap - the HPC participates in the designation process and our staff looks at various proposals (especially subdivisions) for Master Plan sites. However, the basic distinction of duties - if it is to be continued - is important to keep straight and to communicate to the public.

We are concerned that directing additional responsibilities to our historic preservation planning staff for design review of Historic Area Work Permits, while also recommending the creation of an official "Historic Preservation Office" at DHCD (Recommendation #24), will continue and even exacerbate existing public confusion about who does what in terms of historic preservation in Montgomery County.

We would suggest that our staff generally continue to focus on historic preservation duties associated with designations, subdivisions, and large-scale public projects, while leaving design review of Master Plan sites up to the HPC and their staff.

However, if it seems important for our staff to be involved in the design review process, we would suggest that this may demonstrate a need to reopen the issue of consolidating historic preservation activities in the County under "one roof". OLO staff did an excellent job of looking at the various options of where the HPC staffing function should be located and there are clearly problems and opportunities associated with each alternative. Ultimately, it is essential for historic preservation activities in this County to be conducted in the most efficient and effective way possible, with maximum clarity and accessibility for the public.

Perhaps additional consideration of the location issue is warranted at this time. In addition, it would certainly be important to assess the issue of the location of HPC staff when the OLO does a formal follow-up to the current evaluation - in FY 94 or sooner.

Finally, we are very pleased to support Recommendation #27 which calls for annual meetings between the HPC and the County

Council, Executive and Planning Board. The Board has had annual dinner meetings with the HPC for the past several years (in fact, we have one scheduled for October 25th) and we have found them to be productive and useful opportunities to share ideas and points of view.

In conclusion, the draft OLO report on the HPC will be very important and helpful in improving the effectiveness of this Commission. It should go a long way towards solving problems that have been identified in the historic preservation process over the years. The impact on the Board's historic preservation planning program will, we feel, be generally positive. It is, however, essential to clearly define duties, responsibilities and roles.

Sincerely,



Gus Bauman
Chairman

cc: Melissa Banach, Acting Planning Director
Doug Alexander, Chief, Urban Design
Gwen Marcus, Historic Preservation Planner



Montgomery County Government

MEMORANDUM

September 27, 1990

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

FROM: Philip J. Tierney, Director
Office of Zoning and Administrative Hearings

SUBJECT: Draft OLO Report No. 90-2, A Description and Evaluation of the
Montgomery County Historic Preservation Commission (HPC)

Thank you for the opportunity to review your draft report. The scope and depth of the report reflect a superb job by Karen Orlansky.

Our area of interest deals with Recommendation No. 3 authorizing HPC to refer cases to our office. The recommendation has our full support and we will be delighted to become part of HPC's administrative process.

PJT:gp

Office of Zoning and Administrative Hearings

100 Maryland Avenue, Rockville, Maryland 20850, 301/217-6660

Excerpt From County Code Chapter 24A,
Historic Resources Preservation

Sec. 24A-3. Master plan for historic preservation; criteria for designation of historic sites or districts.

(a) As part of the general plan for the physical development of that portion of the county within the Maryland-Washington Regional District, there shall be prepared, adopted and approved a master plan for historic preservation which shall constitute an amendment to the general plan for the Maryland-Washington Regional District. Such plan shall designate historic sites and historic districts and describe their boundaries; it shall propose means for the integration of historic preservation into the planning process; and it shall suggest other measures to advance the goals of historic preservation.

(b) In considering historic resources for designation as historic sites or historic districts, the planning board shall apply the following criteria:

(1) *Historical and cultural significance.* The historic resource:

- a. Has character, interest or value as part of the development, heritage or cultural characteristics of the county, state or nation;
- b. Is the site of a significant historic event;
- c. Is identified with a person or a group of persons who influenced society; or
- d. Exemplifies the cultural economic, social, political or historic heritage of the county and its communities.

(2) *Architectural and design significance.* The historic resource:

- a. Embodies the distinctive characteristics of a type, period or method of construction;
- b. Represents the work of a master;
- c. Possesses high artistic values;
- d. Represents a significant and distinguishable entity whose components may lack individual distinction; or
- e. Represents an established and familiar visual feature of the neighborhood, community or county due to its singular physical characteristic or landscape. (Ord. No. 9-4, § 1.)

Listing of Montgomery County Preservation Fund Grants
FY 1987 - FY 1990

<u>Grant Recipient</u>	<u>FY 1990</u> <u>Project</u>	<u>Award</u>
Woodside Historical Committee	Book on the history of Woodside	\$ 6,150
Chevy Chase Historical Society	Oral history project	\$ 2,175
Montgomery Preservation, Inc.	Awards ceremony	\$ 950
Montgomery Preservation, Inc.	Montgomery prize	\$ 500
Historic Medley, Inc.	Preservation of a display	\$ 450
Historic Medley, Inc.	Intern to staff museum	\$ 407
Town of Brookeville	Comprehensive Plan	\$ 5,000
Glen Echo Park Foundation	Model of Spanish ballroom	\$ 1,000
Peerless Rockville	"A Day at the Old Baptist Ceremony"	\$ 2,000
Friends of the Red Brick Courtroom	Publication and program	\$ 2,500
Gaithersburg Heritage Alliance	Cataloguing and Reorganization of Museum	\$ 600
Gaithersburg Heritage Alliance	Printing of brochures	\$ 600
Ad Hoc Committee to Save Hawkins Lane	Design guidelines	\$ 2,668
Montgomery County Historical Society	Feasibility study of Beall-Dawson House	\$ 2,500
	TOTAL:	\$27,500

FY 1989

<u>Grant Recipient</u>	<u>Project</u>	<u>Award</u>
Town of Washington	Feasibility study of renovation of McCathran Hall	\$ 1,500
Sugarloaf Regional Trails, Inc.	Preparation of National Register nomination for Sugarloaf Historic District	\$ 4,000
Montgomery Preservation, Inc.	Montgomery Prize	\$ 500
Gaithersburg Heritage Alliance	Printing costs for Gaithersburg driving tour	\$ 500
Chevy Chase Historical Society	Sponsorship of a Chevy Chase historical map and survey	\$ 2,500
Capital View Park Historical Society	"Phase I" of Capital View Avenue streetscape plan	\$ 2,625
Volunteers in Archeology	Continuation of the Valley Mill Dig	\$ 1,800
Woodside Historical Committee	1989 Centennial celebration illustrated history	\$ 1,600
Chevy Chase Historical Society	Recording and transcription of oral histories	\$ 4,000
Glen Echo Park Foundation	Slide/tape program on the history of Glen Echo Park	\$ 500
Gaithersburg Heritage Alliance	"Phase I" of historic photograph collection	\$ 355
United Black Cultural Center	Preparation of project on the history of Black enterprise and entertainment	\$ 1,500
Historic Medley District	Photography of "Friends' Advice" (Master Plan 18/15) for National Register nomination	\$ 300
Maryland Mine Historical Project	Restoration of the Gold Mine Water Tower	\$ 2,300
Ad Hoc Committee to Save Hawkins' Lane	Preparation of National Register nomination	\$ 1,180
	TOTAL:	\$25,160

FY 1988

<u>Grant Recipient</u>	<u>Project</u>	<u>Award</u>
Historic Takoma, Inc.	Markers interpreting historic structures	\$ 1,000
Gaithersburg Business and Professional Womens' Club	Living histories of women in the work force	\$ 500
Town of Washington Grove	Video: "Town Within a Forest"	\$ 2,500
Capital View Park Historical Society	Landscape design for Capitol View Park	\$ 400
Germantown Citizens' Association	Markers in historic district denoting historic significance of the area	\$ 800
Chevy Chase Historical Society	Conduct oral histories of workers and business-owners	\$ 2,500
Rockville/Magruder Archeology Club	Valley Mill Site project	\$ 2,500
Montgomery Community College	Summer courses for high school students	\$ 1,450
Montgomery County Committee of the Maryland Historical Trust	Montgomery Prize	\$ 500
Sandy Spring Museum	Photographic exhibit on historic structures in the area	\$ 1,668
Sandy Spring Museum	Hands-on activity packet	\$ 2,050
Woodside Historic Commission	Photographic studies on the historic structures of Woodside	\$ 1,200
Chevy Chase Historical Society	Purchase two videos on Maryland history	\$ 367
Gaithersburg Heritage Alliance	Recreate turn-of-the-century funeral operation	\$ 2,325
Historic Medley District	One-hour videotape on County flora	\$ 1,500
Gaithersbueg Heritage Alliance	Tour to accompany Gaithersburg walking tour	\$ 500
Historic Medley District	Seneca Schoolhouse program	\$ 1,000
Maryland Gold Mining	Stabilization of the Maryland Mine Blacksmith Shop	\$ 1,100
Chevy Chase Historical Society	Archival photograph collection	\$ 500
Forest Glen Park Citizens' Association	History of Forest Glen Park	\$ 640

FY 1987

<u>Grant Recipient</u>	<u>Project</u>	<u>Award</u>
Kensington Local Advisory Committee	Street landscape plan	\$ 2,000
Third Maryland Infantry Regiment	Recreation of Civil War-era infantry companies	\$ 1,220
Rockville/Magruder High School Archeology Club	Field school for archeology students	\$ 2,833
Rosemary Zibart/Hands On Science	Eight-week architecture curriculum for elementary school students	\$ 850
Rosemary Zibart/MCPS	Video on oral histories for 9-13 year olds	\$ 1,400
Montgomery College Continuing Education	Archeology field trips	\$ 1,000
Walter Goetz/MCHS	Historic mine project	\$ 2,750
Historic Medley District	Brochure on the John Pool House arboretum	\$ 1,347
Historic Medley District	Endowment fund to pay teachers at the Seneca Schoolhouse	\$ 1,250
Chevy Chase Historical Society	Oral history project	\$ 2,500
Maryland Historical Society	Educational services for Montgomery County	\$ 2,050
	TOTAL:	\$19,200

Source: DHCD files.

Historic Preservation Commissions:
A Comparison of Montgomery County and Prince George's County Statutes

	<u>MONTGOMERY COUNTY</u>	<u>PRINCE GEORGE'S COUNTY</u>
LEGAL FRAMEWORK	<ul style="list-style-type: none"> ● Article 25A and Article 28, <u>Annotated Code of MD</u> ● Chapter 24A, <u>Montgomery County Code</u> 	<ul style="list-style-type: none"> ● Article 25A and Article 28, <u>Annotated Code of MD</u> ● Subtitle 29, <u>Prince George's County Code</u>
COMPOSITION	<p>Nine members:</p> <ul style="list-style-type: none"> ● Appointed by County Executive and confirmed by Council. ● Must be County residents. ● The four fields of history, architecture, preservation, and urban design shall be represented by a minimum of one qualified citizen. ● The remaining members shall be selected "to represent the geographical, social, economic, and cultural concerns of the residents of the County". 	<p>Nine members:</p> <ul style="list-style-type: none"> ● Appointed by County Executive and confirmed by Council. ● Must be County residents. ● One citizen with an expertise in history. One citizen with an expertise in preservation. One architect with an expertise in urban design. ● One representative from each of the following groups: Prince George's County Farm Bureau, Municipal Association, Chamber of Commerce, County Board of Realtors, Suburban Maryland Home Builders' Association, and a non-architect from Prince George's County Historical and Cultural Trust.* ● To the extent possible, the members shall be selected "to represent the geographical, social, economic, and cultural concerns of the residents of the County".

* If no names are submitted by the groups, the County Executive may select any other nominee.

MONTGOMERY COUNTY

PRINCE GEORGE'S COUNTY

Regulatory

Regulatory

RESPONSIBILITIES

- o Authorizes the Director, Department of Environmental Protection (DEP) to issue or deny historic area work permits for work on property containing an historic resource.
 - o Serves as appellate body on demolition by neglect decisions.
- o Authorizes the Director, Department of Environmental Resources (DER) to issue or deny historic area work permits for work on property containing an historic resource.
 - o Decides on demolition by neglect cases.
 - o Designates property on the Master Plan for Historic Preservation. Appeal is to the Council.*

Advisory

Advisory

Makes recommendations regarding:

Makes recommendations regarding:

- o Designation of sites on the Master Plan for Historic Preservation.
 - o Subdivision proposals.
 - o Programs and legislation concerning historic preservation.
 - o Updates to the Locational Atlas and Index of Historic Sites in Montgomery County.
- o Subdivisions, site plans, special exceptions and zoning map amendments affecting historic preservation.
 - o Programs and legislation concerning historic preservation.
 - o The upkeep and use of publicly-owned historic properties.

* If a municipality objects to a historic district boundary, a 2/3rds vote by the Council is necessary to override.

MONTGOMERY COUNTY

PRINCE GEORGE'S COUNTY

RESPONSIBILITIES
(cont'd)

Educational

Educational

- Serves as information clearinghouse on historic preservation in the County for County government, individuals, citizens' associations, historical societies, and LACs.
- Provides information and educational material to the public.
- Undertakes activities to advance the goals of historic preservation in the County.

Administrative

Administrative

- Appoints members to local advisory panels to assist and advise the commission on the performance of its functions.
- Employs consultants or other temporary personnel as needed.
- Promulgates executive regulations (method (2)) necessary for the proper transaction of HPC business, subject to County Council approval.

- Serves as information clearinghouse on historic preservation in the County for County government, individuals, citizens' associations, historical societies, and LACs.
- Provides information and educational material to the public.
- Undertakes activities to advance the goals of historic preservation in the County.
- Appoints members to local advisory panels to assist and advise the commission on the performance of its functions.
- Employs consultants or temporary personnel as needed.
- Promulgates rules and regulations necessary for the proper transaction of business, subject to Council approval.
- Maintains and updates an inventory of historic resources.
- Adopts architectural and design guidelines.

Program Administration

Program Administration

- Administers the historic preservation easement program and any revolving funds or grant programs to assist in historic preservation.

- Administers any grant, incentive, easement programs, or other preservation funds to assist in historic preservation.

MONTGOMERY COUNTY

PRINCE GEORGE'S COUNTY

**GENERAL
STAFFING**

- | | | |
|--|---|---|
| 1) Technical/
Administrative
Support | ● DHCD, Community Planning
and Development Division. | ● M-NCPPC, Area Planning
Division, Historic
Preservation Section. |
| 2) Legal
Assistance | ● County Attorney. | ● County Attorney. |

**HISTORIC AREA
WORK PERMITS**

- | | | |
|----------------|---|---|
| 1) Intake | ● Department of
Environmental Protection
(DEP). | ● Department of Licenses and
Permits (DLP).* |
| 2) Enforcement | ● Department of
Environmental Protection. | ● Department of
Environmental Resources. |
| 3) Appeal | ● Board of Appeals. | ● Circuit Court. |

* In practice: M-NCPPC, Area Planning Division, Historic Preservation
Section.

Draft Schedule for HPC Evaluation of Atlas Resources

Year of Review	Amendment	Number of Resources/Districts	M-NCPPC Locational Atlas Update Survey Categorization*						Estimated Cost of Additional Research**
			I	II	III	IV	V	VI	
CY 90	Woodside	1 district			1				\$ 500
CY 90	N. Bethesda	6 resources	1		3	1	1		\$2,000
CY 90	Aspen Hill	7 resources		2		3	2		\$1,000
CY 91	Purge	58 resources (estimated)					58		None
CY 91	Potomac	25 resources	7	4	7	6		1	\$ 9,000
CY 91	Chevy Chase Historic District	1 district	1						\$ 5,000
CY 92	Travilah/Darnestown	26 resources	2	6	12	6			\$10,000
CY 92	Eastern County	37 resources	2	2	5	27		1	\$ 4,500
CY 93	Olney	31 resources	6	9	7	8		1	\$11,000
CY 93	Western Co. (A)***	34 resources	2	6	12	11		3	\$10,000
CY 94	Western Co. (B)***	45 resources	9	8	13	11		4	\$15,000
CY 94	North County (B)***	37 resources		6	13	15		3	\$ 9,500
CY 95	North County (A)***	53 resources		1	18	30		4	\$ 9,500

* For an explanation of the categorization system, see excerpt from M-NCPPC's Atlas Update Survey on the following page.

** The additional cost of research is estimated by allowing \$500 per resource for all resources in categories I, II, and III. The exception to this is the cost of research for the Chevy Chase Historic District, which is estimated at \$5,000.

*** Western County (A) = Planning Areas 12 + 16.
 Western County (B) = Planning Areas 17 + 18.
 North County (A) = Planning Areas 10 + 11.
 North County (B) = Planning Areas 14 + miscellaneous resources.

CATEGORIZATION SYSTEM

The following system was used to categorize the resources:

- Category I: Outstanding resource architecturally and/or historically. Most resources in Category I either maintain the highest level of integrity or are invaluable as ruinous evidence of former significant structures. Should be evaluated immediately for Master Plan designation.
- Category II: Very good resource architecturally and/or historically. Most resources in Category II maintain their basic integrity. Should be evaluated promptly for Master Plan designation.
- Category III: Good resource architecturally and/or historically. Some resources in Category III have a diminished level of integrity. Should be evaluated promptly for Master Plan designation, but with lower priority.
- Category IV: Marginal resource. Falls into one or more of the following categories: 1) severely deteriorated, 2) heavily altered, 3) architectural character not strong, 4) historical significance not apparent, 5) only typical of a large number of comparable resources. Lowest priority for evaluation for Master Plan designation.
- Category V: Resource which is either demolished or which could not be located based on information given on survey form. Remove demolished structures from Locational Atlas and, if after further study the resources not located to date cannot be located, remove from Locational Atlas.
- Category VI: Resource was inaccessible at time of survey.

Source: M-NCPPC Locational Atlas Update Survey, October 1989.

Suggested Minimum Qualifications
for Historic Preservation Officer Position

- Professional level knowledge of the principles and practices of management;
- Professional level knowledge of the methods and technology associated with planning, formulating, analyzing, and implementing administrative and management policies;
- Progressively responsible experience in program development, implementation, management, and evaluation;
- Knowledge of historic preservation to include: architectural history, styles and terminology; construction and/or restoration methods and practices; and applicable federal, state, and local laws, regulations, and programs;
- Proven ability to supervise staff;
- Ability to communicate effectively both orally and in writing;
- Ability to work tactfully, equitably and effectively with others to establish and maintain effective working relationships with government officials, community groups, and the general public;
- Familiarity with automation technology, as it relates to office procedures and data collection and analysis.

Education: A Master's degree and four years experience in program development, planning, public administration, or related fields, with an academic background and/or experience in historic preservation.



Montgomery County Government

A DESCRIPTION AND EVALUATION OF THE MONTGOMERY COUNTY HISTORIC PRESERVATION COMMISSION

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EXECUTIVE SUMMARY

This report, by the Office of Legislative Oversight, describes and evaluates the structure, workload, staffing, and overall operations of the Montgomery County Historic Preservation Commission (HPC).

Established in 1979, the HPC has nine citizen members, appointed by the Executive and confirmed by the Council for three-year staggered terms. County law assigns the HPC an unusually broad range of advisory, adjudicatory, and administrative responsibilities, which include acting upon applications for Historic Area Work Permits (HAWPs), rendering advice on historic site designations, administering historic preservation grant and loan programs, and educating the public about historic preservation.

This report finds that the operation of the HPC has been affected greatly during the past decade by an increase in the volume and complexity of HAWP applications and by the large number of Atlas resources not yet formally evaluated for designation on the Master Plan for Historic Preservation. This study finds that, although County resources dedicated to supporting the HPC have increased, the current staffing structure does not enable the HPC to meet effectively all of its statutory responsibilities. In addition, public perceptions of how well the HPC performs its adjudicatory role vary considerably; while many regard the HPC as hard-working, dedicated, and knowledgeable, there are others who have concerns about the HAWP process and the manner in which HAWP decisions are made.

This report recommends a package of recommendations for legislative, administrative, and staffing changes to address problem areas identified in the evaluation. Major recommendations include:

- Authorize the HPC to establish decision-making panels, to refer cases to the Hearing Examiner, and to delegate certain routine matters to staff;
- Revise HPC membership requirements to include representation from business-related fields; and compensate HPC members at a level comparable to members of other adjudicatory commissions;
- Establish a sunset date for the Atlas, and adopt a schedule for evaluating the remaining Atlas sites for Master Plan designation;
- Delegate the intake of HAWP applications and the inspection of HAWPs to staff trained in historic preservation; and develop written design standards governing HAWP decision-making; and
- Develop materials and programs to better educate the public about historic preservation, and improve the administration of existing preservation programs.

This report recommends that staff support to the HPC continue to be provided by the Department of Housing and Community Development, but recommends establishing a separate Historic Preservation Office, and authorizing an additional staff position to manage the office. In addition, this report recommends offering an annual training seminar to commissioners that serve on all of the County's adjudicatory commissions, and developing training opportunities for staff who provide support to such commissions.

Finally, this report recommends that the Council charge the Office of Legislative Oversight with monitoring the HPC over the next three years, and with conducting a follow-up evaluation in FY94.

I. AUTHORITY, SCOPE, AND METHODOLOGY

A. Authority. Council Resolution No. 11-1907, CY 90 Work Program of the Office of Legislative Oversight (OLO), adopted March 13, 1990.

B. Scope. This report describes and evaluates the structure, staffing, workload, and overall operations of the Montgomery County Historic Preservation Commission (HPC). The scope of this report did not include evaluating the substance of specific cases decided by the HPC except insofar as the study design included reviewing the appeal record of HPC's decisions, compiling examples of HPC's decisions, and interviewing applicants that appeared before the HPC.

C. Methodology. This project was conducted during February-June 1990, by Karen Orlansky, OLO Program Evaluator, with assistance initially from Ari J. Sky and later from Kenneth Wilcox, both Public Administration Interns. The research design included document and file reviews, interviews, a phone survey of Historic Area Work Permit applicants, site visits, observations of HPC meetings, and a survey of historic preservation commissions in other jurisdictions. The HPC allocated time for discussion with OLO at seven full Commission meetings and at two special worksessions that were scheduled exclusively for discussion of evaluation issues.

Within the County Government, interviews were conducted with staff from the following departments and offices: the Department of Housing and Community Development, the Department of Environmental Protection, the Office of Planning Policies, the Office of the County Attorney, the Office of the Board of Appeals, the Office of Zoning and Administrative Hearings, the Office of Management and Budget, the Office of Personnel, and the Office of the County Council. In addition, interviews were conducted with the Montgomery County Planning Board Chair, the Chair of the Board of Appeals, and M-NCPPC staff from the Montgomery County Department of Planning, the Montgomery County Department of Parks, and the Prince George's Department of Planning.

Others interviewed included: current members of the Historic Preservation Commission; representatives of the Local Advisory Panels appointed by the HPC; a selection of individuals who had formerly served on the HPC or the Planning Board; and former County staff who had previously been assigned to support the HPC. Information was also obtained from the National Park Service, the National Alliance of Preservation Commissions, and the Maryland Historical Trust.

Additional feedback from the citizens of the County was obtained through interviews with attorneys, architects, planners, and other individual citizens who have appeared before the HPC. The research design included interviews with those who have appeared numerous times before the HPC, as well as with individuals who have appeared once before the HPC during the past three years.

D. Acknowledgements. Throughout this study, OLO received cooperation from all parties. In particular, OLO wants to acknowledge the many hours that Executive branch and Planning Commission staff spent providing information and working with OLO. A special thanks is owed to Jared Cooper, DHCD Historic Preservation Specialist,* Alison Vawter, DHCD Office Services Manager, Edward Lattner, Assistant County Attorney, and Gwen Marcus, M-NCPPC Historic Preservation Planner. The time spent by HPC members, the Director of the Department of Housing and Community Development (DHCD), the Deputy Director of DHCD, the Chief of the Division of Community Planning and Development, and M-NCPPC's Planning Department Director discussing issues and helping to generate constructive recommendations was also greatly appreciated.

II. ORGANIZATION AND TERMINOLOGY OF REPORT

A. Organization of Report

Chapter III, BACKGROUND, reviews events leading to the 1979 adoption of the County's Master Plan for Historic Preservation, and the ordinance that created the Historic Preservation Commission; this chapter also explains the application of the County's preservation laws in municipalities, and offers brief descriptions of the Maryland Historical Trust, the Certified Local Government program, and the National Register of Historic Places.

Chapter IV, EVALUATION, describes and evaluates the structure of the HPC; staff support for the HPC; and the way in which the major responsibilities assigned by law to the HPC have been and are performed.

Chapter V, COMPARATIVE INFORMATION, compares the structure, staffing, and responsibilities of the County's HPC to historic preservation commissions in other jurisdictions.

Chapter VI, summarizes OLO's CONCLUSIONS, and Chapter VII, outlines OLO's RECOMMENDATIONS, for changes to the laws and regulations governing the HPC, the staff resources supporting the HPC, and other aspects of HPC's operations.

Chapter VIII, DEPARTMENT/AGENCY/COMMISSION COMMENTS, contains the written comments received on a draft of this report.

* Mr. Cooper has since resigned from his position with the County Government, effective July 27, 1990.

B. Report Terminology

Atlas	<u>Locational Atlas and Index of Historic Sites in Montgomery County</u>
CLG	Certified Local Government
CPD	Division of Community Planning and Development in the County's Department of Housing and Community Development
DEP	Department of Environmental Protection
DHCD	Department of Housing and Community Development
HAWP	Historic Area Work Permit
HPC	Montgomery County Historic Preservation Commission
HPLF	Historic Preservation Loan Fund
LAP	Local Advisory Panel*
Master Plan	Master Plan for Historic Preservation
MHT	Maryland Historic Trust
M-NCPPC	Maryland-National Capital Park and Planning Commission

• When the County Council is exercising its authority circumscribed by the Regional District Act, it is technically called the District Council. For simplicity, this report consistently uses the term County Council to refer to the elected legislative body of Montgomery County.

• Unless otherwise indicated, all State law citations in this report reference the Annotated Code of Maryland (1989); and all County law citations reference the Montgomery County Code (1984), as amended.

* Pre-1989, the LAPs were called "Local Advisory Committees" or LACs.

III. BACKGROUND

A. Legislative History

1. The County's Authority to Adopt Local Laws Concerning Historic Preservation. The County's authority to adopt local laws and regulations concerning the preservation of historic resources derives from the State's delegation of land use power to the County in the Regional District Act, and the State's general delegation of powers to all charter counties in the Express Powers Act. The County may exercise its powers related to historic preservation under either authority.

Montgomery County's planning and zoning powers are circumscribed by the Regional District Act, Article 28 of the Annotated Code of Maryland. The Regional District Act grants certain local planning and zoning authority to the County Councils of Montgomery and Prince George's Counties; the County Executives of Montgomery and Prince George's Counties; and the Maryland-National Capital Park and Planning Commission (M-NCPPC), a ten-member commission composed of the five members of the Montgomery County Planning Board and the five members of the Prince George's County Planning Board.

On May 24, 1973, the Regional District Act was amended to authorize the M-NCPPC to make and adopt and, from time to time, amend a Master Plan for Historic Preservation to:

- identify and designate sites, structures with their appurtenances and environmental settings, or districts having historical, archaeological, architectural, or cultural value. (1973 Maryland Laws, Chapter 848)

This plan designating historic sites is considered a "functional master plan" that amends the General Plan for the Maryland-Washington Regional District. As a functional master plan, the Master Plan for Historic Preservation must be prepared and adopted in accordance with procedures outlined in State and County law; these procedures are described in more detail later in this report.

In addition to authorizing the adoption of a Master Plan for Historic Preservation, the Regional District Act authorizes the County Councils of Montgomery and Prince George's counties to provide by ordinance:

* First adopted in 1964, the General Plan is a comprehensive plan required by State law for the physical development of Montgomery County. In broad terms, the General Plan establishes policy guidelines for land use, transportation, conservation, open space, sewer and water systems, employment, and housing; and indicates areas suitable for residential purposes, business or industry, agriculture, open space, recreation, and community facilities.

. . . regulations for the protection, preservation, and enhancement of sites, structures with their appurtenances and environmental settings, or districts of historical, archaeological, architectural, or cultural values designated on the adopted and approved General Plan. (1973 Maryland Laws, Chapter 848)

The Regional District Act provides that the Master Plan for Historic Preservation may include sites, structures with their appurtenances and environmental settings located in municipalities not subject to the jurisdiction of M-NCPPC, with the consent of the governing body of that municipality. In Montgomery County, this language pertains to municipal corporations that, under State law, have zoning authority and authority to establish their own Historic District Commissions.

Two years after explicit authority related to historic preservation was added to the Regional District Act, the General Assembly amended the Express Powers Act to add Section 5(BB), titled "Historic and Landmark Zoning and Preservation". This section, enacted during the 1975 session of the General Assembly, specifies that, in addition to any existing charter provision of local law providing for planning and zoning, all charter counties in Maryland are authorized to: "enact laws generally for historic and landmark zoning and preservation," and to "enact such laws to be administered generally by an Historic District Commission, and to provide for appeals."

2. Events Leading to the Adoption of the Master Plan for Historic Preservation and Historic Preservation Ordinance. This section summarizes the major events during the 1970's that preceded the adoption of the County's Master Plan for Historic Preservation and historic preservation ordinance in July 1979.

• The Council appointed the Montgomery County Historical Review Committee. In June 1973, the County Council adopted Resolution 7-1259 to establish the County Historical Review Committee, composed of five members: the Director of the County's Department of Libraries, a representative of the Montgomery County Historical Society, and three non-governmental members with expertise in historical research. This Committee was directed to oversee the development of a written history of the County, to determine the number of historical resources in the County, and to study approaches for preserving them. The Historical Review Committee's end product was a book, A Grateful Remembrance, the Story of Montgomery County, Maryland, published jointly in 1976 by the County Government and the Montgomery County Historical Society.

* See Section F of this chapter (page 11) for further information about the application of historic preservation laws in municipalities.

• The Planning Board directed staff to prepare an inventory of historic resources. In September 1973, the Montgomery County Planning Board directed M-NCPFC staff to prepare an inventory of all historic resources in the County. The Montgomery County Parks Department staff assembled this index between 1973 and 1976. The end product, titled The Locational Atlas and Index of Historic Sites in Montgomery County, published in October 1976, listed approximately 1000 historic resources and districts located throughout the County.

• The Planning Board appointed the Montgomery County Advisory Committee on Historic Sites. In September 1977, the Planning Board publicly expressed its concern about "the rapid loss of historic resources through development", and the lack of a method in the County for incorporating the protection of historic resources into the planning process. To address these concerns, the Planning Board appointed an Advisory Committee on Historic Sites, composed of 14 citizens and one Planning Board member, who served in an ex-officio capacity. This Advisory Committee was charged with the tasks of: developing a Master Plan of Historic Sites and Districts for the County; and drafting an ordinance for the regulation and preservation of historic sites placed on the Master Plan.

M-NCPFC provided staff support for the Advisory Committee, with additional professional assistance provided by Sugarloaf Regional Trails, Inc. The Committee's work was financed in part by federal grants made available through the Maryland Historical Trust for survey and planning activities, under the provisions of the National Historic Preservation Act of 1966.

• The Council placed a moratorium on the demolition or substantial alteration of Atlas resources. In January 1978, the County Council adopted Bill 41-77, Preservation of Historic Sites, to place a moratorium on the demolition or substantial exterior alteration of all resources identified on the Atlas. The intent of the moratorium was to safeguard the County's identified historic resources until the Advisory Committee on Historic Sites completed its work, and a comprehensive approach to historic preservation in the County was in place. Bill 41-77 was enacted with a sunset date of July 1, 1980.

• The Advisory Committee on Historic Sites completed its work. The result of the Advisory Committee's work was a draft of the County's Master Plan for Historic Preservation and a draft historic preservation ordinance. On April 11, 1979, the Planning Board transmitted to the Council and County Executive a formal Preliminary Draft of the Master Plan; and on April 17, 1979, the Council approved introduction of Ordinance 9-4, which proposed to create County Code Chapter 24A, Historic Resources Preservation.

O.K. *Final?* The Planning Board and Council conducted a joint public hearing on May 21, 1979, and joint worksessions on June 1 and June 29, 1979. Based upon the public hearing and worksessions, a number of revisions were made to both the proposed ordinance and the Preliminary Draft; and on July 16, 1979, the Planning Board transmitted to the Council and the County Executive the Final Draft Master Plan for Historic Preservation.

• The Council takes final action. On July 24, 1979, the Council enacted Ordinance 9-4 to create County Code Chapter 24A, Historic Resources Preservation, and adopted the County's first Master Plan for Historic Preservation. On September 12, 1979, the Master Plan was formally adopted by the M-NCPPC as an amendment to the General Plan.

B. Summary of the Master Plan for Historic Preservation and Historic Preservation Ordinance Adopted in July 1979

1. The Stated Purpose. The Master Plan for Historic Preservation and Chapter 24A, Historic Resources Preservation, were adopted in July 1979 as complementary measures; together, they constituted a comprehensive approach to preserving County sites identified as having historical, archaeological, architectural, and/or cultural value. Chapter 24A requires the preparation and adoption of a Master Plan for Historic Preservation, and the Master Plan in turn calls for the enactment of a County preservation ordinance.

The purpose of the Master Plan, as stated in its introduction, is to:

. . . provide a rational system for evaluating, protecting, and enhancing Montgomery County's heritage for the benefit of present and future County residents. By integrating the protection of important historic resources into the planning process, and by developing a range of incentives and educational programs, the Plan provides a means to augment the County's attractiveness as a place to live and work, and as a place with a visible heritage.

Similarly, the intent of Chapter 24A, Historic Resources Preservation, as stated in the opening section of the ordinance is to:

. . . provide for the identification, designation, and regulation, for purposes of protection, preservation and continued use and enhancement, of those sites, structures with their appurtenances and environmental settings, and districts of historical, archaeological, architectural, or cultural value. . . (and) to preserve and enhance the quality of life in the County, safeguard the historical and cultural value of the County, strengthen the local economy, stabilize and improve property values in and around such historic areas, foster civic beauty, and to preserve such sites, structures, and districts for the education, welfare, and continued utilization and pleasure of the citizens of the County, the State of Maryland, and the United States of America. (Section 24A-1. Purpose)

2. Summary of the Master Plan. The Master Plan for Historic Preservation, as adopted by the Council in July 1979, consisted of five chapters plus appendices.

The Master Plan summarized the County's history of development and architecture, reviewed the status of the County's historic resources, and identified how current (i.e., 1979) plans and policies at the County and municipal levels affected historic resources. The Master Plan proposed that the County implement a "system to protect and enhance the County's heritage", to include:

- Creating an Historic Preservation Commission charged with the responsibility to see that, "the historic resources in the County are evaluated and means for safeguarding them are undertaken;"
- Using existing and proposed government planning, regulatory, and administrative devices to promote historic preservation; and
- Developing a broad public education program.

In addition the Master Plan listed historic sites in the County to be designated for protection by the County's preservation ordinance; and contained a proposed Design Guidelines Handbook, intended for use as a guide for new design, preservation, and restoration of historic sites in the County.

3. Summary of Ordinance 9-4, Chapter 24A, Historic Resources Preservation, as enacted by Ordinance 9-4:

- Directed that a Master Plan for Historic Preservation be prepared, and outlined criteria to be used in considering historic resources for designation on the Master Plan;
- Established an Historic Preservation Commission (HPC), assigned the HPC specific powers and duties, and outlined the standards and procedures for the issuance of Historic Area Work Permits;
- Established a process for handling cases of demolition by neglect, defined as historic sites or resources that are deteriorating due to the failure of the owner to provide necessary maintenance;
- Established a process for handling applications to demolish or substantially alter historic resources identified on the Atlas, but not yet evaluated to determine whether they should be placed on the Master Plan; and
- Established penalties for violations of Chapter 24A.

The structure and responsibilities of the HPC, and details of Chapter 24A are discussed more fully in Chapter IV of this report.

D. Relevant Amendments to County Law Since 1979

Amendments to the County Code enacted since 1979 that affect the work of the Historic Preservation Commission and the provisions of Chapter 24A, Historic Resources Preservation, are summarized below in chronological order.

● October 1982: Bill 42-82 establishes a uniform system of fines, procedures for enforcement, and civil penalties for violations of the County Code. As part of this omnibus bill, violations of Chapter 24A are classified as "Class A" violations, resulting in a civil penalty of \$250 per day for initial offenses, and \$500 per day for repeat offenses.

● June 1984: Bill 1-84 adds a new article, "Tax Credit for Historic Preservation," to Chapter 52, Taxation. This law establishes a tax credit for work performed with an Historic Area Work Permit approved by the HPC, or for ordinary maintenance on historic sites that costs more than \$1,000 and is determined by the HPC to have "historic, architectural, or cultural value." The tax credit is equal to ten percent of the amount expended on restoration and/or preservation of the historic property, and is credited towards the taxpayer's real property tax bill.*

● June 1984: Bill 68-83 amends Chapter 56, Section 1, "Rehabilitation Loan Fund" to make owners of historic structures or properties eligible for loans from the Rehabilitation Loan Fund to rehabilitate their property. The law provides that such loans must be approved by the HPC.**

● July 1988: Bill 15-88 amends Chapter 24A, to establish an historic preservation easement program. Under this program, the owner of an historic site may offer the County a preservation easement, subject to HPC's recommendation and the County Executive's approval. In addition, Bill 15-88 authorizes the County to share preservation easements with the Maryland Historical Trust.***

* Executive Regulation 122-85, "Administrative Guidelines for Real Property Historic Preservation Tax Credit," went into effect with Council approval on December 17, 1985; this regulation was reviewed and re-issued as Executive Regulation 35-86, effective June 1, 1987. See page 42 for more about use of the tax credit.

** Executive Regulation 115-85, "Administrative Guidelines for the Historic Preservation Loan Fund", were approved by the Council on March 19, 1985. (The use of this fund.) See page 43 for more about the use of this fund.

*** See page 43 for more about the easement program.

Something missing

• September 1989: Ordinance 11-59 amends Chapter 24A to: change the appeals body for HPC decisions on Historic Area Work Permits from the Circuit Court to the County Board of Appeals; require the HPC to adopt method (2) executive regulations, for administration of its responsibilities; and modify certain hearing requirements and deadlines for handling applications to demolish or substantially alter resources listed on the Atlas.

October 1989: Bill 13-89 extends the availability of the County's historic preservation tax credit (see description of Bill 1-84, enacted in June 1984) to property owners in municipalities that have the authority to establish their own Historic District Commissions, pursuant to authority granted in State law.

E. Provisions in the County's Zoning Ordinance

In addition to the sections of County law summarized above, Chapter 59, Zoning, contains the following provisions regarding the preservation of historic sites:

• Section 59-A-6.2, Historic Site Preservation, establishes a procedure whereby developers who desire to preserve an historic site may apply to the Planning Board for a density transfer from that site to an adjoining property, provided that the transfer is from a tract of lower density to a tract of higher density, subject to certain conditions. This law further permits the Planning Board to enter into a contract with a developer requesting such a density transfer that specifies the future uses that would be permitted for the specific site.*

• Section 59-D-2, Project Plan for Optional Method of Development, CBD Zones, Section 59, establishes a procedure whereby the existing 20 percent public use space requirement for an Optional Method Project may be transferred to include more than one lot, provided that the project will, "preserve an historic site, building, structure, or area". This ordinance was enacted to provide a method for large retail or residential projects to preserve historic sites as a way to meet public use space requirements.**

recommend that we beef this up

* This provision was enacted by ZTA F-807 in August 1972, and amended by ZTA 75020 in February 1976; according to M-NCPPC staff, it was used one time soon after its original passage.

** This provision was enacted by ZTA 87028 on March 15, 1988, and according to M-NCPPC staff, has not been used to date.

F. The Application of County Preservation Laws in Municipalities

While the authority granted to the County under the Regional District Act applies to much of the County, the following seven municipalities have their own zoning authority: Barnesville, Brookeville, Gaithersburg, Laytonsville, Poolesville, Rockville, and Washington Grove. State law, (Article 66B), empowers these municipal corporations to establish their own Historic District Commissions, and to pass local laws to protect historic resources within their jurisdiction.

Table 1 (page 11a) shows which of the seven municipal corporations not covered by the Regional District Act have opted to be covered by the County's preservation law, and which have established their own Historic District Commissions. The record indicates that only Brookeville has opted to be covered by Chapter 24A; and only Gaithersburg and Rockville have established their own Historic District Commissions.

Chapter 24A applies to the remaining portion of the County covered by the Regional District Act: this includes the jurisdictions of Chevy Chase Village, Chevy Chase Section 3, Chevy Chase Section 5, the Town of Chevy Chase, Garrett Park, Glen Echo, Kensington, Martin's Addition, Somerset, and Takoma Park. These municipalities, which are under the Regional District Act, can control certain aspects of historic preservation through their housing and building codes. In addition, these municipalities have the authority to review and comment on nominations of sites to the County's Master Plan for Historic Preservation as well as to the National Register of Historic Places.

G. The Maryland Historical Trust, the Certified Local Government Program and the National Register of Historic Places

1. The Maryland Historical Trust (MHT). The MHT is an agency established by State law charged with conducting the State's historic preservation activities, including those assigned to the State by federal law. The Director of MHT is appointed by the Governor as the State's Historic Preservation Officer. MHT is administratively located within the Maryland Department of Housing and Community Development.

The MHT is responsible for surveying historic sites and districts for listing on the National Register of Historic Places and the Maryland Inventory of Historic Sites.* MHT can acquire and hold real property and easements for preservation purposes. MHT also distributes federal and state funds made available for preservation projects.

* Resources listed on the County's Atlas are included on the Maryland Inventory of Historic Sites.

Table 1

Applicability of Chapter 24A in Municipalities
Not Covered by the Regional District Act

<u>Municipality</u>	<u>Municipality Has Opted to be Covered by Chapter 24A, Historic Resource Preservation</u>	<u>Municipality Has Own Historic District Commission</u>
Barnesville	No	No
Brookeville	Yes	No
Gaithersburg	No	Yes
Laytonsville	No	No
Poolesville	No	No
Rockville	No	Yes
Washington Grove	No	No

Source Montgomery County Municipal League chart indicating application of
County laws in municipalities, November 1989.

2. The Certified Local Government Program. Local governments that meet federal standards established by the Department of Interior, as well as standards established by the MHT, are eligible to receive matching funds for preservation activities through the "Certified Local Government (CLG)" program. In 1985, Montgomery County became the first jurisdiction in Maryland eligible for CLG funding.

Under standards established by the Department of Interior in 1984, to receive CLG funds, a local government must:

- Enforce state or local legislation for the designation and protection of historic resources;
- Have a qualified historic preservation review commission established by state or local legislation;
- Maintain a system for the survey and inventory of historic properties; and
- Provide for adequate public participation in local historic preservation programs, including the process of recommending properties for nomination to the National Register.

To become a CLG in Maryland, local governments must also meet additional standards established by MHT. State CLG standards include a number of requirements related to the structure and responsibilities of the local historic preservation commission. Specifically:

- The local historic preservation commission must have at least five members, of which a minimum of two must be qualified (according to State criteria) in architecture, history, architectural history, or archaeology;
- Each member of the local historic preservation commission must attend at least one MHT-approved informational or educational meeting annually;
- The local historic preservation commission must review and render decisions upon any proposed alterations, relocations, proposed demolitions, or new construction on historic sites designated for protection under local law; and
- The decisions by the local historic preservation commission on alterations to historic sites must be binding upon applicants, although the local statute must also provide for an appeal of the Commission's decision.

As a local government that meets CLG standards, the County is eligible to apply for "pass through" federal funds allocated to CLGs in Maryland by MHT. The MHT awards matching grants to CLG applicants on a competitive basis.*

3. The National Register of Historic Places. The National Register of Historic Places, established in 1966, is a list of public and private historic resources of federal, state, and/or local significance. Properties may be nominated to the National Register by the HPC, the County Government, or individual citizens. In Maryland, the process of designating properties on the National Register is managed by the Maryland Historical Trust, and concurrence of the National Park Service and the U.S. Department of Transportation is required.

Listing on the National Register does not regulate the use of property or otherwise prevent demolition or alteration. However, when a property listed on, or eligible for inclusion in, the National Register might be destroyed or damaged by an undertaking involving federal funds, licensing, or federal approval, the project must be reviewed by the MHT and the federal Advisory Council on Historic Preservation. The comments of these bodies are not binding on the federal agency or the applicant for federal assistance.

Sites listed on the National Register, similar to sites designated on the County's Master Plan, are eligible to apply for financial assistance from a number of sources to include: matching grants from the MHT; federal income tax credit for the certified rehabilitation of income-producing buildings; and State income tax deductions for the cost of restoration or rehabilitation.

IV. EVALUATION

This chapter is organized as follows:

Section A, Overview of Statutory Responsibilities, outlines the range of regulatory, advisory, and administrative duties assigned by law to the HPC.

Section B, Commission Structure, examines the composition of the HPC, the record of HPC appointments, HPC's use of committees, compensation of HPC members, and the Local Advisory Panels.

Section C, Procedures and Recordkeeping, reviews HPC's efforts to develop written procedures and guidelines, and assesses the maintenance of HPC's records.

Section D, Workload, provides an overview of HPC's workload since 1980.

* See page 49 for more about CLG funds received by the County.

Sections E through J describe and evaluate how the major statutory functions of the HPC have been performed during the past ten years:

- Evaluating historic resources for Master Plan designation (Section E);
- Acting upon applications for Historic Area Work Permits (Section F);
- Reviewing building permit applications for work on Atlas sites (Section G); *resources*
- Investigating and enforcing demolition by neglect cases (Section H);
- Providing information and public education materials on historic preservation (Section I); and
- Administering historic preservation tax credit, grant, easement, and loan programs (Section J).

Section K, Staff Support, reviews the history and current levels of staff support provided to the HPC and related historic preservation activities, and analyzes a number of staffing issues.

A. Overview of Statutory Responsibilities

By law, the responsibilities of the HPC are the same today as they were when the HPC was established in 1979. County law (Section 24A-5) assigns the HPC a broad range of powers and duties, which encompass specific adjudicatory, advisory, and administrative responsibilities.

HPC's adjudicatory responsibilities are:

- To act upon applications for Historic Area Work Permits; and
- To serve as the appellate body for citations issued by the County under the demolition by neglect provisions of Chapter 24A.

HPC's advisory responsibilities are to recommend to the Planning Board, County Executive and/or County Council concerning:

- The designation of historic sites on the Master Plan for Historic Preservation;
- Subdivision proposals that affect an historic site or resource;
- Programs and legislation concerning historic preservation; and
- Updates to the Locational Atlas and Index of Historic Sites.*

HPC's administrative responsibilities extend to both program administration and internal Commission business. In the program administration area, the HPC responsibilities are:

- To administer the historic preservation easement program and any revolving funds or grant programs to assist in historic preservation; and
- To serve as a clearinghouse for information on historic preservation, specifically to provide information and educational materials to the public and to undertake activities to advance the goals of preservation in the County.

In terms of internal administration, the HPC's responsibilities are:

- To appoint members to Local Advisory Panels to assist and advise the Commission on the performance of its functions;
- To employ consultants or other temporary personnel as needed; and
- To promulgate method (2) executive regulations for the proper transaction of its business.

A recurrent question posed by many of those interviewed during the course of this evaluation was whether it is unique to find an adjudicatory board also assigned other types of duties. A comparison of HPC to other adjudicatory boards and commissions in the County indicates that a number of others are assigned, similar to HPC, both adjudicatory and advisory responsibilities, e.g., Animal Matters Hearing Board, Landlord-Tenant Commission, Sign Review Board.

It is more unusual for an adjudicatory board to also be assigned, by law, a significant program administration and public education responsibility. Similar assignments are, however, found with the Ethics Commission, which in addition to performing a quasi-judicial role is also responsible for educating the public and providing information about the County's ethics laws; and with the Planning Board, which in addition to performing advisory and regulating functions, also administers programs and devotes resources to public education activities.

* Section 24A-5(k) also authorizes the HPC to: "Delineate the extent of appurtenances and environmental setting associated with an historic site or resource." Although the law does not specify what decision process this power pertains to, in practice, this authority has been interpreted to be part of HPC's advisory role with respect to designating properties on the Master Plan and approving subdivision applications that affect historic sites.

B. Commission Structure

1. General Description. The basic structure of the Historic Preservation Commission has not been changed since the original ordinance to establish the HPC was enacted in 1979:

- **Membership:** The HPC has nine members, appointed by the County Executive and confirmed by the Council.
- **Qualifications:** Each member must be a County resident. The four fields of history, architecture, preservation, and urban design must be represented "by a minimum of one member qualified by special interest, knowledge, or training." The remaining members shall, "to the extent possible, be selected to represent the geographical, social, economic, and cultural concerns of the residents of the County."
- **Officers:** The Chair and Vice-Chair of the HPC are appointed by the County Executive, with consideration given to the recommendation of the Commission.
- **Terms:** Commissioners serve three-year staggered terms, and members continue to serve until their successors have been appointed.
- **Removal:** A commissioner may be removed "for cause" from the HPC by the County Executive.
- **Compensation:** Commissioners receive no compensation, but may be reimbursed for actual expenses incurred in performance of their duties.

2. The Record of Appointments. Individuals appointed to the HPC since 1983 represent a broad cross-section of County talent and expertise. Tables 2 (page 16a) and Table 3 (page 16b) show the expertise represented on the HPC, and the geographic distribution of HPC members by year since 1983.*

The law, as currently written, requires that, "the four fields of history, architecture, preservation, and urban design shall be represented by a minimum of one member qualified by special interest, knowledge, or training." In practice, this language has been interpreted as requiring four separate individuals to be appointed, i.e., one expert in each of the four fields listed. (As currently written, the law could also be interpreted as allowing one person to fulfill more than one requirement, e.g., allowing an architectural historian to fulfill both the requirements for expertise in architecture and expertise in history.)

* Resumes of HPC appointees prior to 1983 were not available.

Table 2

Expertise of HPC Members Appointed
1983 - 1990

Year	Number of Commissioners Representing Each of the Four Fields of Expertise Required by Law				Expertise of Other Commissioners*
	History	Architecture	Preservation	Urban Design	Other
1983	1	1	2	0	4 Attorneys, 1 Police Officer
1984	1	1	2	0	4 Attorneys, 1 Police Officer
1985	1	1	3	1	3 Attorneys
1986	3	2	2	0	1 Attorney, 1 Horticulturist
1987	2	2	3	0	1 Horticulturist, 1 Journalist
1988	2	2	2	0	1 Horticulturist, 1 Builder, 1 Journalist
1989	2	2	3	0	1 Horticulturist, 1 Builder, 1 Journalist
1990	1	1	2	0	1 Horticulturist, 1 Builder, 1 Real Estate Agent/ retired Police Officer, 2 Attorneys

* The law requires the other HPC members appointed to represent the geographical, social, economic, and cultural concerns of the residents of the County.

Source: Resumes of HPC appointees, 1983 - 1990.

Table 3

Geographic Distribution of HPC Commissioners
1983 - 1990

RESIDENCE	1983	1984	1985	1986	1987	1988	1989	1990
Bethesda						1	1	1
Gaithersburg			1	1	1	1		1
Garrett Park			1	1	1	1	1	
Hyattstown*	1	1	1					
Kensington*			1	2	1	1	2	1
Rockville	3	3	3	3	2	1	1	1
Takoma Park	1	1		1	1			
Washington Grove	1	1						

* Designated as an Historic District in the County's Master Plan for Historic Preservation.

Source: Resumes of HPC Appointees, 1983 - 1990.

The data compiled in Table 2 indicate that the requirements for expertise on the HPC in the fields of history, architecture, and preservation have been met each year by at least one HPC member qualified by special interest, knowledge, or training. The requirement for expertise in the field of urban design, however, has been met only once during the past eight years, and this individual resigned after serving for only one year.

County law requires that HPC members not specifically appointed because of their expertise in history, architecture, preservation, or urban design should, to the extent possible, represent the geographical, social, economic, and cultural concerns of County residents. The record shows that:

- Other members appointed to the HPC during the past eight years have represented a variety of professions including law, horticulture, journalism, and real estate;
- HPC members have resided in different parts of the County; each year, the HPC has included at least one member living within an Historic District designated on the County's Master Plan; and
- Since 1983, there have been 10 men and nine women appointed to the HPC; only two of the HPC appointees since 1983 have been racial minorities.

To date, no HPC member has been removed for cause. However, ten of the 25 citizens appointed to HPC between 1983 and 1990 resigned before their full three-year terms was completed. Interviews with a number of former HPC members indicate that the most common reason for resigning was that serving on the HPC was "too time consuming." One HPC member resigned because of a family illness, and another resigned because he was elected to a municipal council seat. One individual stated that his resignation was submitted in part because of frustrations with what was perceived as inadequate staff support for the Commission, and another resigned because the Council passed a resolution that prohibited County employees from serving on County boards and commissions.*

3. Compensation: A Comparative Perspective. Current law specifies that HPC members shall serve without compensation, but may to be reimbursed for actual expenses incurred in performance of their duties. Beginning this year, in accordance with standard procedures implemented for all boards, committees, and commissions staffed by Executive branch staff, HPC members have been provided with forms on which to submit for reimbursement for mileage, parking, and baby sitting expenses.

* This Council resolution (No. 10-560), adopted January 31, 1984, was later rescinded by another Council resolution (No. 11-108), adopted February 24, 1987.

The provision in Chapter 24A that specifies HPC members shall serve without compensation is inconsistent with provisions currently contained in Chapter 2 of the County Code. Section 2-143 defines four categories of County-appointed committees, (adjudicatory, licensing, program direction, and advisory), and Section 2-145 states that "members who serve in the adjudicatory category shall be compensated." As a commission that "adjudicates factual and legal matters," HPC fits the definition of an adjudicatory committee.

The requirement that all adjudicatory committees be compensated, however, is proposed for deletion in a bill pending Council action. Bill 46-90, introduced June 5, 1990, proposes to change Section 2-145 to provide the Council with greater discretion; and if amended as proposed in Bill 46-90, Section 2-145 will provide that:

Unless a law expressly precludes compensation, the Council may establish compensation for members of a particular committee by an appropriation that funds a line item in the budget. An appropriation may establish levels of compensation by categories or subcategories of committees.

If Section 2-145 is amended as proposed in Bill 46-90, then it will be consistent with the County's practice of compensating members of certain adjudicatory boards and not others. At present, members of some adjudicatory boards and commissions receive an established payment per meeting (e.g., Landlord-Tenant Commission, Human Relations Commission Panels), while others receive an established amount per year (e.g., Board of Appeals, Merit System Protection Board). In addition to HPC, other adjudicatory commissions that currently receive no compensation are: the Animal Matters Hearing Board, the Ethics Commission, and the recently created Commission on Common Ownership Communities. Bill 46-90 proposes to phase out the current compensation for members of the Sign Review Board.

Interviews with HPC members indicate that they each spend, on average, between 25-30 hours per month on Commission business; the HPC Chair spends an additional 20-25 hours per month preparing for meetings, drafting correspondence, and consulting with staff. A typical month for an HPC member involves two evening meetings of the full Commission, plus meeting preparation time, which includes reviewing written material and conducting site visits. HPC members also take turns representing the Commission at Planning Board and Council public hearings and worksessions, some of which take place during the day.

In addition to the routine workload, HPC members frequently put in extra time to, for example: meet in executive sessions to discuss and draft HPC decisions on complex cases; meet with staff to discuss procedures for processing HPC's work; and serve on HPC subcommittees appointed for special projects.

4. HPC Committees. Current law does not empower the HPC to make decisions by committee, and therefore, all of HPC's decision-making is done by the Commission sitting as a whole.

At various times during the past decade, however, HPC committees have been formed for the purpose of working on discrete tasks, and making recommendations back to the full Commission. HPC committees, composed of one to four HPC members have been appointed for tasks such as:

- Reviewing grant applications;
- Drafting rules and procedures;
- Interviewing applicants for the DHCB staff position assigned to support the work of the HPC; and
- Interviewing candidates who have applied for appointment to the HPC.*

5. The Local Advisory Panels. Current law (Section 24A-5(d)) authorizes the HPC "to appoint members to local advisory panels to assist and advise the Commission on the performance of its duties."

In 1983, the HPC wrote procedures governing the role of "Local Advisory Committees" (LACs), and appointed LACs for the historic districts of Kensington, Capital View Park, Brookeville, Hyattstown, and the City of Takoma Park.* The number of members on each LAC ranged from five to nine, with at least one member qualified in history or architecture. Members were appointed for staggered three-year terms.

During most of the 1980s, the LACs performed a range of functions related mostly to Historic Area Work Permits (HAWPs).*** The Chair of the LAC was authorized to receive HAWP applications within the historic district, and to determine if the application was complete. LACs were authorized to hold review sessions on HAWPs and to encourage applicants to appear before them. The LACs made recommendations to the HPC on whether HAWP applications in their respective districts should be approved. Other duties of the LAC included: assisting with the research on historic properties; and helping to draft design review guidelines.

* The County Executive has traditionally requested that HPC provide recommendations on appointments.

** An amendment to designate an historic district in Takoma Park on the Master Plan is pending before the Planning Board.

*** For more information about the HAWP process, see pages 27-35.

During the Fall of 1989, acting upon advice of the Office of the County Attorney, the HPC revised the role of the LACs; in addition, the LAC in Takoma Park was disbanded. A draft executive regulation outlining a revised role of the LACs was written in November 1989. The regulation, which renames the advisory groups Local Advisory Panels (LAPs), proposes changes in procedures to clarify that LAPs are appointed to perform an advisory function only that HAWP applications no longer are submitted to LAPs, and that applicants are not required to attend LAP meetings.

Some LAP members have reacted negatively to the proposed regulation. In particular, LAP members voice objection to no longer being able to accept HAWP applications at the local level, and feel that LAPs no longer have sufficient time to review HAWPs. LAP members had become accustomed to being the entry point for HAWPs, and feel they had served an important function by working closely with their neighbors early on in the process.

Comments from LAP members were obtained at a special retreat held between HPC and LAP members in February 1990. As of this writing the executive regulation regarding the role of the LAPs is in the process of being finalized, and is expected to be transmitted to the Council for final action before the end of the year.

C. Procedures and Recordkeeping

1. Written Procedures, Guidelines, and Regulations. Soon after the HPC convened its first meeting in January 1980, attention was given to establishing written procedures to outline how the Commission would accomplish its duties. In February 1980, the HPC formally adopted its first written Rules of Procedure. These Rules included application procedures for Historic Area Work Permits (HAWPs) and general meeting guidelines.

HPC's initial Rules of Procedure were formally amended only once by the HPC, and additional statements of Commission policy were set forth by separate resolutions adopted by the HPC at various times during the 1980's. The issues addressed in these resolutions are summarized in Table 4 (page 20a).

While the record evidences that the HPC has, since its inception, paid attention to establishing written procedures, one impression shared by many of those interviewed throughout this OLO study is that the HPC has few, if any, written procedures. Perhaps this perception is because the various resolutions constituting HPC's adopted procedures and guidelines have never been compiled into one document that is readily available to both Commissioners and members of the public. Another factor that has likely contributed to a perception that the HPC does not have written procedures is that the HPC has never adopted County-wide standards and guidelines for making decisions on HAWPs.

Table 4

**Rules of Procedure, Commission Policy Statements,
and Guidelines Adopted by the Historic Preservation Commission
1980 - 1989**

Subject	Date Adopted	Date(s) Amended	Highlights
Rules of Procedure	2/21/80	11/5/81	<ul style="list-style-type: none"> • Established HPC procedures for officers' meetings, HAWP consideration and notification. • 1981 amendment established procedures for advertisement of public appearances regarding HAWPs.
Ordinary Maintenance	3/27/80	5/31/81 9/31/81 3/7/85 7/21/88	<ul style="list-style-type: none"> • Defined the types of projects which, as "ordinary maintenance", would not require a HAWP. • 1985 amendment delegated authority to determine what constituted "ordinary maintenance" to DHCD staff and the LACs, "in an attempt to relieve the workload of the Commission."
Substantial Alteration	7/17/80	5/21/81 6/4/87	<ul style="list-style-type: none"> • Established definition of "substantial alteration" of historic resources. This definition was used to review building permit applications for work on Atlas sites. <i>resources</i> • This practice was discontinued in 1989 at the advice of the County Attorney's Office.
Historic Districts*	10/16/80	4/1/82	<ul style="list-style-type: none"> • Specified that historic districts need not be contiguous by definition, and that age should be an important consideration. • 1982 amendment redefined HPC's position on district boundaries.

(continued)

Subject	Date Adopted	Date(s) Amended	Highlights
HPC Participation	4/7/83	n/a	<ul style="list-style-type: none"> • Provided guidelines to HPC members on effective participation in the Master Plan Amendment process.
Local Advisory Committees/Panels (LACs/LAPs)	5/83	4/84 4/88	<ul style="list-style-type: none"> • Prior to 1989, the LACs served as the body for consideration of HAWP applications within historic districts; HAWPs were forwarded to the HPC with a recommendation by the LAC.**
Trees Located Along Rights-of-Way	6/21/84		<ul style="list-style-type: none"> • Instituted policy regarding trees that have been moved along rights-of-way.
Historic Preservation Fund*	6/21/84	9/6/84	<ul style="list-style-type: none"> • Established policy for HPC selection and staff administration of the Historic Preservation ("Mini-Grant") Fund.
Conflicts of Interest*	1/23/86	n/a	<ul style="list-style-type: none"> • Policy concerning potential conflicts of interest.
Secretary of the Interior's Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*	1/5/87		<ul style="list-style-type: none"> • Adopted Department of the Interior's standards for use in considering proposals affecting historic sites.

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* Actual documents not located in DHCD or County Attorney's files; record of action was noted in HPC minutes.

** In November 1989, draft Executive Regulations proposed changing the role of the LACs (now known as "LAPs") in response to concerns raised by the County Attorney's Office over the legality of the pre-1989 arrangement.

Source: DHCD and County Attorney's historic preservation files, HPC minutes 1980-1989.

In September 1989, Chapter 24A was amended to require that the HPC adopt rules, regulations, and guidelines for the administration of its responsibilities in the form of method (2) executive regulations.* In November 1989, the HPC forwarded drafts of two executive regulations to the Office of the County Attorney and members of the Local Advisory Panels for review: one regulation deals generally with Commission procedures, and the other deals specifically with the role of Local Advisory Panels. These executive regulations, should be forwarded to the Council for action before the end of the year.

In contrast to the Rules of Procedure adopted in 1980, HPC's recently drafted executive regulations evidence greater similarity to regulations of other County adjudicatory boards. For example, the regulations address such issues as: allowable evidence, ex parte communications, cross-examination, and right to counsel. When adopted by the Council, these executive regulations will supersede any procedures previously adopted internally by the HPC.

2. Assessment of HPC's recordkeeping. Minutes of HPC's meetings have, with the exception of a brief period in late 1988 and early 1989, been well kept and serve as the best record of HPC's decisions during the past ten years. The minutes, which are maintained chronologically in binders, include records of HPC's decisions on HAWPs, and summaries of HPC's discussions of advisory matters, e.g. master plan designations, subdivision proposals. HPC's records of research conducted on individual historic resources are also well organized.

Substantial progress has been made during the past year to improve other records of HPC business, which were not consistently organized prior to 1989. Current DHCD staff characterize the pre-1989 records as having few "standard operating procedures." For example, file drawers were mislabeled, there was no cross-referencing between HAWP applications and the related photos and slides, and except for searching through every file, there was no tracking of whether an individual property had applied for and/or received more than one HAWP.

An effort is currently underway to organize all files by site and historic district. In addition, all HAWP applications since mid-1989 have been entered into a computerized database to allow for better tracking of workload and case histories.

* With method (2) executive regulations, the Council has 60 days to approve or disapprove by resolution the proposed regulations; if the Council has not acted within 60 days, then the proposed executive regulations are deemed approved.

D. Workload

This section provides an overview of HPC's workload since 1980. Sections E through J will then review in more detail how HPC performs its major adjudicatory, advisory, and administrative responsibilities.

1. Workload Data. Table 5 (page 22a) lists, by year, the number of Historic Area Work Permit (HAWP) applications, substantial alteration cases, and subdivision applications reviewed by the HPC since 1980. In addition, the table lists the number of proposed Master Plan sites researched each year.

The number of HAWP applications considered by the HPC steadily increased from 1980 through 1989. The increase in HAWP applications has paralleled the increase in the number of sites designated on the Master Plan during the past decade. The number of HAWP applications is likely to increase in future years, especially if proposed historic districts currently under review (e.g., Takoma Park, Garrett Park, Chevy Chase) are designated on the Master Plan.

Interviews with DHCD staff and HPC members indicate that, during the past ten years, the amount of Commission time needed to review HAWP applications has steadily increased. During the past year, it is estimated that consideration of HAWPs consumed 75 to 80 percent of the HPC's time.

Until August 1989, the HPC spent time discussing applications for building permits that affected historic resources listed on the Atlas. These applications were listed on the HPC's agenda as "substantial alteration cases." The number of substantial alteration cases considered by the HPC between 1984 and 1989 was a significant component of HPC's workload, ranging from 25-41 cases each year. As will be discussed later in this report, upon advice of the County Attorney, the HPC stopped discussing these substantial alteration cases in August 1989.

The number of subdivision applications reviewed by the HPC has ranged between three and 36 each year; and the number of proposed Master Plan sites evaluated each year by the HPC has ranged from 15 to 92. Between January 1980 and June 30, 1990, a total of 510 historic resources were reviewed by the HPC, which averages out to almost 50 a year.

A review of HPC's agendas and minutes indicate that in addition to the items listed on Table 5 (page 22a), the Commission has spent time on other matters, to include:

- o Holding preliminary consultations with HAWP applicants; the number of preliminary consultations each year has ranged from one to six;
- o Evaluating properties nominated for inclusion on the National Register of Historic Places;

Table 5

Selected Historic Preservation Commission Workload Indicators
1980 - 1990

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990*
HAWPs	4	9	4	10	28	22	21	43	55	76	66
Substantial Alterations	0	5	6	11	29	33	41	25	35	38	0
Subdivision Applications	8	10	3	5	7	10	16	14	36	14	20
Proposed Master Plan Sites	56	92	83	66	85	49	37	38	15	32	26

* Data for 1990 is projected based upon doubling workload data collected for the time period January 1 to June 30, 1990.

Source: HPC minutes and agendas, 1980-1987, 1988 (Jan-Sep), 1989, and 1990, and transcripts of HPC meetings 1988 (Oct-Dec).

- Administering the Preservation Grant Program, reviewing historic preservation tax credit applications, discussing the allocation of grant funds, and discussing a proposed public education program.

Commission time has also been consumed by internal administrative matters, e.g., developing procedures and policies, appointing members to Local Advisory Panels, and discussing the role of staff assigned to support the work of the HPC.

2. Number and length of HPC's meetings. The data outlined in Table 6 (page 23a) shows increases in both the number and length of HPC meetings during the past decade. The HPC met formally in public session at least 15 times each year 1980-1985, and met at least 15 times each year 1986-1989. If the number of meetings during the second half of 1990 continues at the rate for the first six months, the HPC will meet 24 times this year. The length of HPC meetings has also increased during the past ten years, currently averaging more than four hours.

It is important to note that the number of public HPC meetings does not include HPC worksessions held to discuss a particular issue or case, or HPC committee meetings. Interviews with DHCD staff and HPC members indicate that, during the past two years, Commissioners have each attended six to eight additional meetings to discuss HPC business. As discussed earlier in this report, HPC members report spending an average of 25-30 hours per month on HPC matters; the Chair devotes an additional 20-25 hours per month.

A review of HPC minutes indicates that Commissioner attendance at HPC meetings has, overall, been good. On average, seven of nine Commissioners are in attendance at HPC meetings. During 1989, a majority of Commissioners attended all 22 meetings held, and the highest number of meetings missed by any one Commissioner was six.

E. Evaluating Historic Resources for Master Plan Designation

1. Statutory Requirements. Section 24A-3 provides that the County shall prepare, adopt, and approve a Master Plan for Historic Preservation. Chapter 24A also outlines the criteria that shall be applied in considering historic resources for designation.

Section 24A-5 assigns the HPC with the responsibility to research historic resources, and to recommend to the Planning Board which ones should be designated as historic sites or historic districts on the Master Plan. In addition, the HPC is charged with recommending to the Planning Board updates to the County's inventory of historic resources, the Locational Atlas and Index of Historic Sites.*

* For background on the Atlas, see page 6.

Table 6

Number and Length of
Historic Preservation Commission Meetings
1980 - 1990

	1980	1981	1982	1983	1984	1985	1986	1987	1988	1989	1990*
Number of Meetings	17	18	15	19	18	18	19	20	21	22	24
Total Hours	49	51	42	52	53	54	58	62	85	95	104
Average Length (Hr:Min)	2:45	3	2:45	3	3	3	3	3	4	4:15	4:20

* Data for 1990 is projected based upon doubling reported data collected for the time period January 1 to June 30, 1990.

Note: Data represents only formal public HPC meetings; it does not include HPC worksessions or committee meetings.

Source: HPC minutes and agendas, 1980-1987, 1988 (Jan-Sep), 1989, and 1990, and transcripts of HPC meetings 1988 (Oct-Dec).

As an amendment to the General Plan, the process of designating sites on the Master Plan for Historic Preservation must adhere to the procedures outlined in State and County law for all General Plan amendments. The steps in the designation process are summarized in Table 7 (page 24a).

2. Evaluating Historic Resources for Designation in Practice:

General. Table 8 (page 24b) lists, by year, the number of historic resources listed on the Atlas that were reviewed by the HPC since 1980. The data show that the number of Atlas sites evaluated each year by the HPC ranged between 15 and 92, for a total of 510 Atlas sites during the past decade.

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As shown on Table 9 (page 24c) of the 995 resources listed on the Atlas, 240 have been placed on the Master Plan, and 268 have been removed from the Atlas; 107 resources are "in process", and there remain 380 resources yet to be evaluated by the HPC.

During the early 1980's, research on historic resources was provided by the Office of the Park Historian. Since 1983 almost all research has been conducted by consultants on contract to HPC; some research has been funded with CLG funds.

The process of evaluating Atlas sites has taken a good deal longer than originally anticipated. At the time the County's first Master Plan for Historic Preservation was adopted, it was expected to take no longer than five years to evaluate the almost 1000 resources listed on the Atlas.

The number of Atlas sites evaluated each year by the HPC has depended upon the availability of staff and funds for research, and the number of competing demands on the HPC's time. During the past three years, because a special staff effort has been made to integrate historic designations into area and sector master plans, the number of sites reviewed has also depended upon the Planning Board's approved master plan work schedule.

3. Length of Processing Time. Data collected on a sample of 80 Atlas sites confirm a commonly held perception that designating historic sites on the Master Plan is a lengthy process. Specifically, as shown on Table 10 (page 24d), the length of time between HPC's recommendation on an Atlas site and the County Council's final decision has averaged between 848 days (2 years, 4 months) for sites designated on the Master Plan, and 1,348 days (3 years, 8 months) for sites removed from the Atlas.

The length of the Master Plan designation process is not out of line with the length of time that it has taken to complete some other General Plan amendments during the past decade. Amendments to the Master Plan for Historic Preservation appear to follow the pattern of other master plan amendments, that is, once a staff draft of the amendment has been introduced, the process tends to keep moving.*

* For additional information on how master plan amendments are approved, and data on the length of time to prepare master plan amendments, see OLO Report No. 88-4, The Preparation of Master Plans in Montgomery County.

Table 7

The Process of Amending
the Master Plan for Historic Preservation

- 1) The HPC researches historic resources and recommends to the Planning Board whether resources should be designated as historic sites or historic districts on the Master Plan for Historic Preservation.
- 2) M-NCPPC staff prepares a Preliminary Draft Master Plan Amendment that outlines the historic resources being recommended for designation on the Master Plan for Historic Preservation, and identifies the resources recommended for removal from the Atlas. The Planning Board holds a public hearing on the proposed Amendment, for which notice must be given within 30 to 60 days prior to the date of the hearing.
- 3) Following closure of the record, the Planning Board holds a worksession on the proposed Amendment. Upon completion of the worksession process, the Planning Board approves a Final Draft Amendment and transmits it to the County Executive, with a copy to the County Council.
- 4) Within 60 after receiving the Final Draft Amendment, the County Executive submits to the Council the Final Draft Amendment, indicating any changes and a statement of the reasons for each change.
- 5) After receiving the Final Draft Amendment, the Council has 180 days within which to approve, modify, or disapprove the amendment. Within 45 days, the Council sets a public hearing, for which public notice must be given 30 to 60 days before the date of the hearing. Following closure of the public record, the Council is required to hold a worksession on the Final Draft Amendment.
- 6) If the Council modifies the Final Draft Amendment, it must be returned to the County Executive, who then has 10 days in which to approve or disapprove the modified Amendment. If the County Executive disapproves the Amendment, it must be returned to the Council with written reasons; the Council then has ten days within which to override the Executive's veto by a vote of five members. (Footnote: The County Council will expand to nine members in 1991; an override of the Executive's veto will take six votes.)
- 7) Within 60 days following the approval of the Final Draft Amendment, the Planning Board formally adopts it as an amendment to the Master Plan for Historic Preservation, which also constitutes an amendment for General Plan.

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Table 8

Number of Atlas Sites Evaluated
by the Historic Preservation Commission
1980 - 1990*

1980	56
1981	92
1982	33
1983	55
1984	89
1985	49
1986	37
1987	38
1988	15
1989	32
1990	<u>13**</u>

Total Number of Atlas Sites
Evaluated by HPC 1980-1990: 510

* In addition, 61 Atlas sites were recommended for inclusion in the Master Plan for Historic Preservation as part of the original 1979 Master Plan.

** Includes data on master plan evaluations completed through June 27, 1990.

Source: HPC minutes and CLG reports to the Maryland Historical Trust.

Table 9

Status of Historic Resource Designations
As of June 30, 1990

Number of resources on Locational Atlas	996
Number of resources either placed on the Master Plan for Historic Preservation or removed from the Atlas*	508
Number of resources in process**	107
Number of resources yet to be evaluated by the HPC	380

* As of June 30, 1990, 240 resources (including ¹³ districts) have been placed on the Master Plan for Historic Preservation, and 268 resources have been removed from the Atlas.

** This includes resources that have already been reviewed by the HPC, and are either awaiting Planning Commission, County Executive, and/or Council action.

Source: M-NCPFC files.

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Table 10

Revisions

**Processing Time for Sample of Atlas Sites
Considered for Designation in the Master Plan for Historic Preservation
1980 - 1989**

- *Revisions*
Atlas Sites Designated for Inclusion in the Master Plan
(sample size = 40 sites)

Average Processing Time (in days)

	From HPC Recommendation to Planning Board Recommendation	From Planning Board Recommendation to County Council Decision	Total Processing Time
Days	563	285	848

- *Revisions*
Atlas Sites Not Designated for Inclusion in the Master Plan
(sample size = 40 sites)

Average Processing Time (in days)

	From HPC Recommendation to Planning Board Recommendation	From Planning Board Recommendation to County Council Decision	Total Processing Time
Days	848	482	1,348

Source: M-NCPPC Records of HPC and MCPB Recommendations, County Council Decisions, 1980-89.

The most time consuming part of the designation process has been between the time the HPC has completed its recommendation, and the time the Planning Board forwards its recommendation as a formal Final Draft Amendment. Once a Final Draft Amendment is forwarded from the Planning Board, there are statutory time limits established for the County's Executive and County Council's review; i.e., the County Executive has 60 days, and the Council has 180 days.

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The sample data also show that ^{resources} sites removed from the Atlas have taken significantly longer to process than sites designated on the Master Plan. The practical explanation for this is that, in order to use the Council's time most efficiently, M-NCPPC staff have tended to ^{resources} compile sites recommended for removal from the Atlas and send them forward as a package. It should also be noted that although State and County law make it clear that ^{resources} County Executive and Council action is required to designate an Atlas site on the Master Plan, the law is unclear as to whether Executive and Council action is similarly required to remove properties from the Atlas.

4. Correlation of HPC's Recommendation on Designation with Final Action. Although examples can be found of disagreement among the parties, the record shows that final Council action on the designation of historic sites and districts on the Master Plan has, in the great majority of cases, concurred with recommendations by the HPC, the Planning Board, and the County Executive.*

Table 11 (page 25a) summarizes the recommendations and action taken on the 13 historic districts designated since 1980 on the Master Plan. The data indicate that all of the historic districts recommended by the HPC for designation were placed on the Master Plan; and in a majority of cases, the HPC, the Planning Board, the County Executive, and the Council all concurred about the boundaries of the district. There is only one example (the Germantown Historic District), where final Council action on the boundaries of the historic district can be characterized as significantly modifying the original recommendation of the HPC.**

Data collected on the sample of 80 individual Atlas ^{resources} sites, either removed from the Atlas or designated on the Master Plan between 1980 and 1989 indicate that:

* The formal review by the County Executive of all master plan amendments has only been required by law since 1986 changes to the Regional District Act provided the County Executive with the authority to participate fully in the preparation and review of master plans, which includes the authority to veto Council decisions on master plans.

** To date, there is only one example, the pending amendment to designate the Cedar Grove Historic District, where the County Executive's recommendation has differed from the recommendation of the Planning Board.

Table 11

Summary of Action on
Designation of Historic Districts

<u>District Recommended by HPC (year)</u>	<u>Planning Board Recommendation</u>	<u>County Executive's Recommendation</u>	<u>County Council Action</u>
N/A	National Seminary (1979) Proposed by Planning Board.	N/A	Adopted as recommended by HPC and Planning Board
Brookeville (1980)	Adopt as recommended by HPC	N/A	Adopted as recommended by HPC and Planning Board
Capitol View (1980)	Adopt as recommended by HPC	N/A	Adopted as recommended by HPC and Planning Board
Polychrome Houses (1985)	Adopt as recommended by HPC	N/A	Adopted as recommended by HPC and Planning Board
Boyds (1985)	Adopt as recommended by HPC	N/A	Adopted as recommended by HPC and Planning Board
Kensington (1986)	Adopt as recommended by HPC	N/A	Boundaries same but Excluded subarea of contemporary houses from regulation
Hyattstown (1987)	Adopt as recommended by HPC	N/A	Adopted as recommended by HPC and Planning Board
Sandy Spring (1987)	Two lots excluded; one incorporated as an individual site	Adopt as recommended by HPC and Planning Board	Adopted as recommended by Planning Board and County Executive
Germantown (1988)	One lot excluded; one lot incorporated as an individual site <i>revised</i>	Adopt as recommended by Planning Board	Reduced to 14 sites; three lots incorporated as individual sites. <i>revised</i>
Beallsville (1989)	Expanded boundaries to include six additional lots and part of another	Adopt as recommended by Planning Board	Adopted as recommended by Planning Board and County Executive
Somerset (1990)	Six lots excluded	Adopt as recommended by Planning Board	Adopted as recommended by Planning Board and County Executive
Glen Echo (1990)	Adopt as recommended by HPC	Adopt as recommended by HPC and Planning Board	Adopted as recommended by HPC, Planning Board and County Executive
Clarksburg (1990)	Adopt as recommended by HPC	Adopt as recommended by HPC and Planning Board	Adopted as recommended by HPC, Planning Board, and County Executive except for one structure.

Source: M-NCPPC files

- 95 percent of Atlas sites^{resources} designated by the Council were positively recommended for designation by the HPC, the County Executive, and the Planning Board; and
- 88 percent of sites^{resources} removed from the Atlas were also recommended for removal by the HPC, Planning Board, and County Executive.

^{resources} Out of the 80 sites^{resources} examined, there were only three examples of sites^{resources} recommended by HPC for inclusion on the Master Plan that were not also recommended by the Planning Board for inclusion; and only one example of a site that was not recommended by the HPC for inclusion on the Master Plan, but was recommended for designation by the Council. In every case reviewed, the County Executive's recommendation concurred with that of the Planning Board.

4. Public Perceptions. The two most common problem areas noted by those interviewed about the process of designating historic sites on the Master Plan were: the continued existence of a large number of properties on the Atlas; and the criteria in the law for determining whether historic resources should be designated.

a. Properties remaining on the Atlas. As noted above, the process of evaluating Atlas sites^{resources} has taken a good deal longer than originally anticipated. The continued existence of a relatively large number of historic resources on the Atlas poses a number of problems.

Properties listed on the Atlas are, in essence, placed in "limbo" to the extent that after being reviewed by the HPC, Planning Board, County Executive, and Council, the properties may or may not be eventually designated on the Master Plan. It can be argued that listing a property for an indefinite period of time on the Atlas places an unreasonable restriction on the use of that property, and may impair the ability of an owner to sell his/her property;

Although concerted efforts have been made at various times during the past decade to inform all owners of properties listed on the Atlas about the status of their properties, there are examples of individuals who have purchased an Atlas site^{resources} without knowing that the property was listed on the Atlas and subject to certain provisions of Chapter 24A. The land records do not contain any notice about the Atlas status of a property.

From the perspective of historic preservation advocates, indefinite listings on the Atlas pose a different^{resources} problem. Specifically, because the protections that apply to Atlas sites^{resources} are significantly less than those that apply to Master Plan sites, there is a greater chance that a valuable historic resource listed on the Atlas will be altered and/or deteriorate before the County has reached a final decision about its ultimate status as an historic site.

b. The criteria in the law. Section 24A-3(1)* lists nine criteria for determining whether an historic resource has historical, cultural, architectural, and/or design significance, and should therefore be designated as an historic site on the Master Plan.* While the majority of those interviewed voiced support for the current criteria, a number of individuals voiced a perception that the County's criteria are overly broad and subjective.

The criteria outlined in the County's historic preservation ordinance were modelled after the standards established by the Department of Interior for National Register designations. In addition, a comparative review of preservation statutes in other jurisdictions indicates that the County's designation criteria are very similar to those found in other places. Some jurisdictions have, however, added additional standards, such as age of the site, visibility of the site, and the economic impact of designation.

Supporters of the County's current criteria maintain that the benefits of broad designation criteria are that they provide the elected officials with the latitude to decide for themselves whether a resource deserves the protections of Chapter 24A. In particular, it is seen as important to have broad criteria because the County's inventory of historic sites, buildings, and other resources is extremely diverse in character, i.e., designations on the Master Plan range from a gold mine in Brookeville to a 20th century gas station in Glen Echo to an 1820's federal manor house located in the County's rural area.

F Acting Upon Historic Area Work Permit Applications

1. Statutory Requirements. Code Section 24A-5(c) authorizes the HPC to act upon applications for Historic Area Work Permits (HAWPs). Code Sections 24A-6 through 24A-8 describe, in general terms, what type of work on an historic site requires an HAWP, the application and appeal procedures, and the criteria that the HPC is to follow in reaching its decision to either approve or deny an HAWP application. By law, HAWPs are actually issued by the Director of DEP, who is bound by the decision reached by the HPC.

In addition to the requirements outlined in statute, the Rules of Procedure adopted by the HPC in 1980 outlined general application and review procedures for HAWPs. As reviewed earlier in this report, draft executive regulations developed by the HPC, with assistance from the Office of the County Attorney, further detail the HAWP application process, and address such issues as ex parte communications, rules of evidence, right to counsel, and cross-examination.

* See Appendix A for list of designation criteria.

2. Historic Area Work Permits in Practice: General. Table 12 (page 28a) describes the steps in the HAWP application and review process.

As noted earlier, the number of HAWP applications has increased significantly during the past decade as the number of historic sites and districts designated on the Master Plan increased, Table 5, (page 22a). HPC members estimate that 75 to 80 percent of the Commission's time is currently spent on HAWPs. It can reasonably be predicted that if the proposed historic districts of Takoma Park, Garrett Park, and Chevy Chase are designated on the Master Plan, then the HAWP workload will almost certainly increase in future years.

In addition to noting the increase in the volume of HAWP applications, HPC members and citizens interviewed observed that the complexity of HAWP applications has also increased. In particular, the past several years have seen a number of controversial HAWP applications for new construction in the Kensington historic district that have raised complex preservation and land use issues. One of these cases, in which the HPC denied the HAWP application, is currently pending appeal before the Board of Appeals.

Data compiled on HAWP decisions since 1986 indicate that the HPC has reached its decision on the majority of HAWP applications in one meeting. As Table 13 (page 28b) shows, 196 (86%) of the 228 HAWPs considered by the HPC since 1986 were decided upon in one meeting, 23 (10%) in two meetings, and only 9 (4%) in more than two meetings. The data do evidence, however, that an increasing number of HAWPs are taking more than a single meeting to resolve.

Table 14 (page 28c) lists the outcome of the HAWP applications considered by the HPC since 1986. The data show that the HPC has denied only a handful of HAWP applications. Specifically, the record since 1986 shows that the HPC has approved almost half of all HAWPs as submitted, and denied only 11 (5%) of the 228 HAWP applications considered since 1986. The remaining HAWPs were either approved with conditions, or approved in part. Examples of the types of conditions placed on the issuance of HAWPs during the past four years are contained in Table 15 (page 28d).

The law requires that HPC's decisions be in writing only in the event of a denial (Section 24A-7(f)(3)). The record indicates that HAWP decisions have been recorded as part of HPC's minutes, and any conditions attached by the HPC onto the issuance of a permit have usually been directly onto the permit itself. All of HPC's denials have been accompanied by a written decision of the HPC, and in a number of recent contested cases, the HPC's approval of a permit was also in writing.

3. The record of HAWP appeals. Appeals of HPC's decisions on HAWPs originally went directly to Circuit Court. In 1989, Chapter 24A was amended so that the first level of appeal is now to the Board of Appeals; by law, the Board of Appeals hears the HAWP application on a de novo basis.

Table 12

Historic Area Work Permit Application Process

Code Section 24A-6 requires that an Historic Area Work Permit (HAWP) be obtained for certain types of work to be performed on public or private property containing an historic site designated on the Master Plan for Historic Preservation. The HAWP must be approved by the Historic Preservation Commission before it can be issued. In practice, the HAWP application procedure is as follows:

- 1) An owner applies for a building permit from DEP. If the property is designated as an historic site on the Master Plan (either as an individual site or as part of an historic district), DEP provides the applicant with an HAWP application.
- 2) The owner completes the HAWP application and submits it to DEP. Within three days, DEP forwards the completed application to DHCD staff assigned to support the HPC.*
- 3) Upon receipt of an HAWP application, DHCD staff schedule a public appearance before the HPC; the public appearance is scheduled within 45 days from the day the application was filed with DEP. Notice of the scheduled public appearance is published in a local newspaper, and sent by mail to the applicant, owners of adjacent properties, and the appropriate Local Advisory Panel if the site is located in an historic district.
- 4) The HPC holds a public appearance on the HAWP application. The applicant and any other interested party is offered the opportunity to testify before the HPC. If there is opposition to the application, an opportunity for cross examination is made available.
- 5) Following the close of the record, the HPC has 15 days within which to make its decision public; this deadline may be extended with the consent of the applicant. (In practice, the HPC most often votes on the application in public session directly following the public appearance.) HPC's options are to instruct DEP to: issue the permit as submitted; issue the permit subject to certain conditions; or deny the permit. If the HPC votes to deny the permit, the HPC is required to provide the applicant with written notice of the reasons for the denial.
- 6) HPC's decision is transmitted to DEP staff, who then officially issue or deny the HAWP in accordance with HPC's direction.
- 7) An applicant may appeal the HPC's decision to the Board of Appeals within 30 days from the date the Commission's decision is made public. The appellate body for the Board of Appeals' decision is the Circuit Court.

* Chapter 24A also requires DEP to forward a copy of all HAWP applications to the Planning Board for its review and comment; this provision of the law is not currently followed.

Table 13

HAWP Applications Considered by the
Historic Preservation Commission
1986 - 1990

Number of HAWP Applications Decided Upon in:	1986	1987	1988	1989	1990	Total
One Meeting	18	40	50	64	24	196
Two Meetings	2	3	5	8	7	23
More Than Two Meetings	0	0	0	6	2	9

* Includes data for HPC decisions through June 30, 1990.

Source: HPC minutes and agendas, 1986, 1987, 1988 (Jan-Sep), 1989, 1990, and transcripts of HPC meetings, Oct-Dec 1988.

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Table 14

The Historic Preservation Commission's Decisions on HAWPs
1986 - 1990

	1986	1987	1988	1989	1990	Total
Approved as Submitted	15	16	15	41	24	111
Approved with Conditions	5	24	34	31	5	100
Approved in Part/Denied in Part	1	2	1	2	0	6
Denied	0	1	5	2	3	11
Total:	21	43	55	76	33	228

* Includes data for HPC decisions through June 30, 1990.

Source: HPC minutes and agendas, 1986, 1987, 1988 (Jan-Sep), 1989, 1990, and transcript of HPC meetings, Oct-Dec 1988.

Table 15

Examples of Conditions Placed on HAWP Approvals*
1986 - 1990

1986

- a. 2/6/86: 15902 Dursler Road: Demolition permit granted "on the condition that the applicant (M-NCPPC) photographically document the structure and that anything identified by HPC staff as salvageable be salvaged for the County salvage depot."
- b. 9/18/86: 10019 Menlo Avenue: HAWP granted "provided that the new window would be the same size as the existing top sash and the wooden mutton match that is in the existing window...amended to include the provision for LAC approval before the issuance of a permit."
- c. 12/18/86: 4501 Olney-Laytonsville Road: HAWP granted "with the condition that the entire vine on the front door of the house be removed, that the repainting of brick be done with a mortar mixture approved by HPC staff, and that brick and wood trim be replaced only with identical materials."

1987

- a. 2/19/87: Rockland: HAWP granted with the following conditions:
- 1) As much siding on the front (east) and right (north) side as possible should be retained.
 - 2) Remove and replace windows as necessary with windows of like material and like design. As many existing windows as possible should be saved and reused.
 - 3) Reconstruct the front porch as per Circa 1900 photo using appropriate materials.
 - 4) Remove additions on rear of house.
 - 5) Rebuild chimneys on both sides of the main house.
 - 6) Reconstruct dormers on the main facade.
 - 7) Install gravel driveway to the right side of the house.
 - 8) Install painted louvered shutter on front of the house.
 - 9) Reconstruct left wing of the house symmetrical with right wing; materials to be used will be similar in kind and color.
 - 10) Re-side the existing milk house.
 - 11) Relocate log building on the property."

* Quotation marks indicate decision as recorded in HPC's minutes.

- b. 7/16/87: 15200 Barnesville Road: HAWP granted "with the condition that the configuration of the front fence, currently proposed to be of wrought iron, be approved by the Local Advisory Committee and HPC staff."
- c. 10/15/87: St. Rose of Lima Church: HAWP approved on condition that landscaping will be undertaken "with specific planting materials to be approved by Mr. Miskin and Mrs. Hahn."

1988

- a. 1/17/88: 10549 St. Paul Street: HAWP granted "on the condition that the offset of the chimney, if necessary, be done inside the house and the exterior portion of the chimney continue straight up parallel to the wall a sufficient distance from the wall so as not to break the eaveline. The pipe could be either painted to match the house or painted matte black."
- b. 6/16/88: 3918 Prospect Street: HAWP granted "on the condition that more specific information be provided on the light fixture and that additional elevations of the deck be submitted which are agreeable to the LAC, HPC staff and either Mr. Karr or Mr. Taylor."
- c. 7/21/88: 10005 Pratt Place: HAWP approved "on the condition that gates be installed to contribute to the public traffic flow through the public common area."

1989

- a. 3/16/89: 10300 Fawcett Street: HAWP approved "with the stipulation that an alternative solution for front gable skylights be researched and presented to staff for further review and that the location of all exterior HVAC elements be presented to staff for further review; and that the information on height and materials of the proposed chimneys be presented to staff for final review and approval. Commissioner Miskin added that the proposed front door be in style No. M7990DD or another manufacturer's equivalent; that the proposed kitchen expansion be clad in wooden lap siding; and that no changes be permitted to the front gable window."
- b. 6/1/89: 3308 Olney - Sandy Spring Road: Removal of tree approved "with the condition that an acceptable landscape plan be submitted and approved by Commission and/or staff prior to the removal of the tree."
- c. 10/19/89: 10309 Armory Avenue: HAWP approved, "subject to the applicant contacting the manufacturer of tin shingles to ascertain whether there is an authorized installer in the area willing to work on his roof, and letting staff know the result of that action."

The record indicates that since the HPC was established, only four HAWP decisions have been appealed. All four appeals have been cases where the HPC voted to deny an HAWP application. In the two appeals filed prior to the 1989 change in the law, the HPC's decision to deny the HAWP application was upheld by the Circuit Court. The other two appeals are pending before the Board of Appeals.

4. Intake of HAWP Applications. HAWP applications are not submitted to the Department of Environmental Protection (DEP), as required by Chapter 24A. In practice, however, until January of 1990, intake of HAWP was done either by DHCD staff assigned to support the HPC, or by members of the local advisory groups in historic districts appointed by the HPC, (called Local Advisory Committees or LACs until 1989, when they were renamed Local Advisory Panels or LAPs).

Interviews with those involved with the HPC throughout the 1980's suggest that the intake of HAWP applications by DHCD staff began because it appeared practical for staff knowledgeable in preservation and familiar with the concerns of the HPC to be working with HAWP applicants. The LACs were brought into the process to help with a growing HAWP workload, and also because it was felt that applicants could be assisted by their neighbors who were serving as LAC members.

In January of 1990, upon advice of the County Attorney, the responsibility of handling the intake of HAWP applications was assumed completely by DEP staff. While this change brought practice into conformity with current law, it also created a number of problems. Specifically, with more than 30 permit processors responsible for processing almost 30,000 permits each year, the DEP intake staff has neither the time nor the training in historic preservation to effectively provide technical assistance to HAWP applicants. In addition, as mentioned earlier in this report, members of the LAPs are dissatisfied with a process that no longer allows them to accept HAWP applications.

A related issue that arose during the past several months has been the question of what information is to be required as part of an HAWP application. The law does not explicitly state whether DEP or the HPC has the authority to decide what information is "necessary", and/or who is responsible for designing the application forms. Since January 1990, DEP and a member of the HPC have been trying to reach agreement as to what the HAWP application should look like, and what information must be provided before the application is deemed "complete." (As of this writing, a final agreement has not been reached.)

5. Legal processing deadlines. Current law contains the following language regarding the processing time for HAWPs:

Within 45 days after the filing of an application, or in the event the record is left open by the commission, within 15 days after the close of the record, the commission shall make its decision public. (Section 24A-7(f))

The law provides that failure of the HPC to act on an application within the time periods provided by law means that the application is deemed granted. The time period for HPC action may be extended by written consent of the applicant.

At various times during the past ten years, questions have been raised about the timing of HAWP processing. It has been argued that the statutory language is unclear as to exactly what events the time requirements apply to, i.e., does the law require the HPC to reach a decision within 45 days after filing, or does the law simply require the HPC to open the record within 45 days. In addition, there have been differing interpretations over what constitutes the "filing" of an application.

Based upon the Office of the County Attorney's interpretation of the current statute, it is the County's practice to open the record for an HAWP application as soon as it is filed with DEP, and to hold a public appearance on the HAWP within 45 days from the time a completed application is accepted by DEP. Unless consent is obtained from the applicant, HPC renders a decision within 15 days from the time the record is closed.

Interviews with DHOD staff and HPC members indicate frustration with the current timing requirements. In particular, HPC members have found it difficult to reach decisions on complex HAWPs within 15 days from the close of the record; this is especially true in cases where the HPC has needed to produce a written decision that includes formal findings of fact. In addition, the current timing requirements prevent the HPC from scheduling HAWPs for one meeting each month, and reserving the other meeting for other HPC business, e.g., designations, subdivisions, grant applications.

Table 16 (page 30a) compares statutory deadlines for HAWPs to those established for a number of other land-use related decisions made either by DEP, the Planning Board, or the Board of Appeals; and to requirement included in the Administrative Procedures Act (APA). The data show that:

- The 14-day hearing notice requirement for HAWPs is longer than the 7-10 days notice required for variances, special exceptions, site plans, and subdivisions, and less than the 30 days notice required by the APA;

Table 16

Comparison of Time Limits Defined by
County Code, Executive Regulations, or Rules of Procedure

<u>Application for:</u>	<u>Decision-Making Body</u>	<u>Minimum Time for Notification</u>	<u>Time Limit Between Filing and Hearing</u>	<u>Deadline for Decision</u>
HAWPs	HPC	Notice to be published and notification given to applicant 14 days before hearing ¹	Code does not explicitly establish time limit between filing and public appearance	45 days after filing or 15 days from close of record ²
Building Permits	DEP	---	No hearing necessary	Within reasonable time after filing
Site Plans	Planning Board	10 days before hearing	Before 45 days after filing	45 days after filing
Special Exceptions	Board of Appeals	Notice to be published not less than 7 days before hearing	No sooner than 60 days after filing ³	30 days from close of record ⁴
Subdivisions	Planning Board	10 days before hearing	Preliminary plan must be submitted at first regular meeting after 60 days of filing	30 days from filing of final plats ²
Variances	Board of Appeals	Notice to be published not less than 7 days before hearing	No sooner than 30 days after notice of filing ³	30 days from close of record ²
--	Committees under APA ⁵	30 days before hearing	---	45 days from close of record ⁴

¹ As in practice and draft regulations.

² Deadline can be extended by written consent of applicant.

³ Notice of filing is given in no more than 7 days after filing.

⁴ Deadline can be extended by resolution of decision-making body.

⁵ Administrative Procedures Act, MCC Chapter 2A.

Source: County Code, HPC Draft Executive Regulations, and M-NCPPC Rules of Procedure.

- In comparison to HPC's deadline of 45 days after filing or 15 days from the close of the record, the Board of Appeals has 30 days from the close of the record to render its decisions on special exceptions and variances, as does the Planning Board in rendering its decisions on subdivisions; the APA allows for an even longer period, 45 days from the close of the record, for a decisions to be rendered;
- The only other statutory deadline that, similar to that for HAWPs, links the timing of a decision to the date of filing is the deadline for site plans, which is set at 45 days after an application is filed; and
- The decision deadline for variances and subdivisions, similar to that for HAWPs, can be extended by written consent of the applicant; in contrast, the APA allows the decision deadline to be extended unilaterally by resolution of the decision-body.

6. Enforcement. Section 24A-11, Violations and penalties, states that any person who violates a provision of Chapter 24A shall be subject to punishment for a Class A violation as set forth in Section 1-19 of the County Code. A Class A violation is punishable as a civil violation by a fine of \$250 for an initial offense and \$500 for each repeat offense; and as a criminal violation by a \$1000 fine and/or a maximum six months jail term.

Ideally, enforcement of the HAWP provisions of Chapter 24A should occur both before alteration work commences on an historic site, and after an HAWP is approved for issuance. Specifically, action is required:

- To ensure that an HAWP is obtained when required for work on public or private property designated on the Master Plan; and
- To ensure that any conditions placed on the issuance of an HAWP are adhered to.

The remainder of this section will discuss what steps have, in practice, been taken to enforce the HAWP provisions of Chapter 24A.

a. At time of building permit application. When a property owner applies for a building permit, DEP is responsible for informing the applicant when he/she must also obtain an HAWP. In practice, DEP should be able to accomplish this because DEP's data base of premise addresses include a code to identify historic properties.

DEP and DHCD staff have recently worked together to update and correct DEP's data base so that it will contain all addresses of properties listed on the Master Plan. The data base has posed difficulties because, over time, addresses of certain historic properties have changed; and because some historic properties, in the rural sections of the County were never given a premise address.

In May 1990, OLO tested 50 Master Plan addresses and found that DEP's data base, while probably much improved over what it had been, is still not entirely accurate. Specifically, OLO found that:

- 47 (94%) out of the 50 Master Plan historic sites tested were listed as historic in DEP's computer;
- Two (4%) were listed in DEP's computer, but not as historic sites; and
- One (2%) were not listed in DEP's system at all.

DEP and DHCD staff are continuing their efforts to improve DEP's data base of historic resources.*

Once DEP's data base correctly lists all addresses of historic sites designated on the Master Plan, then there will be a reasonable system in place for ensuring that DEP can inform citizens who apply for a building permit when they must also apply for an HAWP. However, this will not address the challenge of enforcing the provision of Chapter 24A that requires that an HAWP be obtained for certain work that does not require a building permit, e.g., demolition of a porch, window modifications, or removal of a live tree. At present, this latter provision is enforced strictly on a complaint basis.

b. Adherence to HAWP conditions. At present, there is no routine enforcement of HAWPs decisions rendered by the HPC. Once an application is deemed approved by the HPC, a notice of the HPC's decision is sent to DEP; this notice includes any conditions placed by the HPC on the issuance of the HAWP. The HAWP is then formally issued by DEP.

According to DEP staff, once an HAWP is issued, the only enforcement of the permit as approved for issuance by the HPC is on a complaint basis. As a routine matter, building permit inspections conducted by DEP inspectors do not include inspection of the HAWP; and records on compliance with HAWP conditions have not been maintained.

* See page 38 for information about the accuracy of DEP's Atlas site listings.

7. Miscellaneous HAWP Issues

a. Consistency between building permit and HAWP. Under current procedures, a property owner may apply simultaneously for an HAWP and a regular building permit. Because an HAWP is not a prerequisite for obtaining a building permit for work on a Master Plan site, it is currently possible for a property owner to receive one set of building plans approved by DEP, and a different, perhaps even conflicting set of plans approved by the HPC. In recent months, the Chief of DEP's Permit Processing Section, recognizing the problems this could cause, has implemented internal procedures to try and ensure that an applicant for work on a Master Plan site receives one set of consistent approved plans.

b. Requirement for Planning Board review and comments. Section 24A-7(d) requires that:

Upon being advised by the commission of the scheduling of a public appearance, the DEP Director shall forward the application and all attachments to the Planning Board for its review and comments which, if any, are to be made to the Commission prior to the public appearance.

In practice, this section of law is not currently followed. The Planning Board is not formally notified and invited to comment on HAWP applications; and the record shows that the Planning Board does not submit written comments to the HPC on HAWPs.

c. Potential problems if the issuance of an HAWP is appealed. The law provides that either the denial or approval of an HAWP may be appealed to the Board of Appeals. However, in the event that the approval of an HAWP is appealed, the law does not provide for withholding of either the HAWP, or the accompanying building permit, pending the outcome of the appeal. In practice, this means that, even if an appeal is filed, the applicant could still receive both his/her HAWP and building permit, and proceed at his/her own risk. Although to date this has not happened, the problem with proceeding with alteration work on an historic site is that action could be taken that irreparably harms the resource intended to be protected, e.g., a old tree is cut down, vegetation is destroyed, a structure is demolished.

8. Public perceptions. Public perceptions of how HPC acts upon HAWPs vary considerably. Many community members regard the HPC as a hardworking, dedicated, and knowledgeable Commission, and regard DHCD staff assigned to support the HPC as helpful and considerate. On the other hand, there are other community members who have concerns about the HAWP application process and the manner in which the HPC considers those applications.

OLO conducted a phone survey of 20 citizens who submitted applications for an HAWP between 1987 and 1989. The survey included questions about the HAWP application process, staff assistance, and the applicant's public appearance before the HPC; applicants were also asked to rate their overall experience of applying for an HAWP on a five point scale. A profile of the applicants surveyed and the results of the survey are summarized below.

- Sample profile. The survey consisted of 20 HAWP applicants: six owners of individual Master Plan sites, and 14 owners of historic sites located within an historic district. The sample included properties located in the historic districts of Kensington, Capital View Park, Brookville, and Hyattstown. Fourteen of the 20 applications reviewed in the survey were approved by the HPC as submitted, three were approved with conditions, two were denied, and one was approved after a revised proposal was submitted.

- Learning that an HAWP was required. Applicants learned of the need to apply for an HAWP in a number of different ways. Three of the applicants surveyed were familiar with the process because they had, or were currently, serving on a Local Advisory Panel (LAP) appointed by the HPC; four other applicants learned about the process from LAP members in their neighborhood; and three applicants were aware of the process from previous work done on their properties.

Three applicants were informed about the need for an HAWP when they applied for a building permit. Two others were informed by a mailing from the HPC, which they had received following the placement of their homes on the Master Plan. The remaining five applicants did not recall how they had learned about the need to apply for an HAWP.

- Processing time. For purposes of the survey, processing time was defined from the date the application was received by DHCD to the date the applicant was informed of the HPC's decision. The average processing time was 32 days in 1987, 53 days in 1988, and 29 days in 1989; the average processing time for the entire sample of 20 HAWP applications was 37 days. According to DHCD staff, the increased processing time in 1988 was at least partially attributable to staff transitions that took place that year.

Of the 20 applications reviewed in the sample, 15 (75%) were decided upon by the HPC in one meeting, four (20%) in two meetings, and one (5%) in three meetings.

- The public appearance before the HPC. Of the 20 applicants surveyed, 13 (65%) appeared before the HPC either alone or with a family member. Two (10%) applicants were accompanied by an architect to testify on the proposed work, and one applicant, representing an incorporated municipality, was accompanied by the mayor and several citizens. Four (20%) applicants did not appear before the HPC at all; in one of those cases, a member of a Local Advisory Panel appeared on the applicant's behalf.

Of the 16 applicants who appeared before the HPC, nine (56%) reported waiting one hour or less for the HPC to begin consideration of their application; four applicants (25%) reported waiting between one and two hours, while three (19%) applicants reported waiting more than two hours.

A majority of the applicants interviewed felt that the public appearance was conducted in a professional manner, and that HPC members appeared knowledgeable and well-prepared. However, approximately one fourth of those interviewed reported feeling that certain members of the HPC were ill-prepared, inattentive, or rude to applicants.

• Overall ratings. Applicants were asked to rate their overall experience of applying for an HAWP on a five point scale, with "one" being the highest rating and "five" being the lowest. A majority (11 out of 20, or 65%) of applicants surveyed rated the HAWP process either a "one" or "two", and in general, these applicants voiced few complaints. The average rating for the entire sample was 2.6. The ratings did not vary significantly among the three years surveyed.

In general, owners of individual Master Plan sites rated the HAWP process somewhat higher than owners of properties located within historic districts. The harshest criticism of the HAWP process came from owners of properties located in the historic district of Kensington; three of the six applicants surveyed from Kensington rated the HAWP process a rating of "five", the lowest rating available. The primary concern voiced by Kensington applicants had to do with confusion about the role of the Kensington Local Advisory Committee (LAC), and a perceived discrepancy between criteria employed by the LAC and the HPC.

Other concerns voiced by applicants who rated the HAWP process with either a "four" or "five" included :

- A perception that the HAWP process is "bureaucratic" and interferes with homeowners' property rights;
- A perception that the HPC takes "too long" to render a decision;
- A perception that the HPC bases its decisions on personal taste, and not on a known set of standards and guidelines; and
- Substantive differences of opinion with HPC's decisions.

G. Reviewing Building Permit Applications for Work on Atlas Sites

1. Statutory requirements. At the time Chapter 24A was enacted in 1979, the Atlas listed almost 1,000 historic resources. Until final decisions were made about which Atlas sites should be designated on the Master Plan, it was argued that a procedure was needed to prevent Atlas sites from either being demolished or substantially altered. In 1979, as stated earlier in this report, it was anticipated that the evaluation of all Atlas sites would be completed within five years.

Section 24A-10, Moratorium on alteration or demolition, was included in the original historic preservation ordinance to provide a procedure for dealing with situations where a property owner submits an application for either a demolition permit, or a building permit that, if approved, would result in "substantial alteration" to the exterior features of an historic resource listed on the Atlas. Section 24A-10 outlines an accelerated schedule for deciding whether to place such Atlas sites on the Master Plan. As amended in 1989 by Ordinance 11-59, the procedure currently in law is summarized below:

- If DEP receives an application for a demolition permit or an application for a building permit that constitutes a proposal to "substantially alter" the exterior features of any historic resource listed on the Atlas, then DEP refers the application to the Planning Board, and temporarily withholds issuing the permit requested.

- The Planning Board holds a public hearing on whether the historic resource listed on the Atlas should be recommended for designation as an historic site on the Master Plan; (Since 1989, this public hearing has been allowed to serve as the public hearing on the application to demolish or substantially alter the resource, as well as the public hearing on a preliminary draft amendment to the Master Plan for Historic Preservation.)

- If the Planning Board determines, after the public hearing and after "due consideration" of the HPC's recommendation on the significance of the historic resource, that the Atlas site should not be recommended for inclusion on the Master Plan, then DEP can issue the permit requested.

- If, however, the Planning Board determines that the Atlas site should be recommended for inclusion on the Master Plan, then DEP is instructed to withhold the permit for a maximum period of 195 days (counted from the day the application was filed). The Planning Board then proceeds with processing the Atlas site as an amendment to the Master Plan for Historic Preservation.

2. In practice from 1981 through August 1989. From 1981 until August 1989, applications for building permits on Atlas sites were forwarded to the HPC for review.* The record shows that applications for building permits on Atlas sites that were determined by the HPC to "substantially alter" the historic resource were handled by the HPC much like applications for HAWPs on Master Plan sites, i.e., the HPC scheduled a public appearance and advised DEP whether to grant, grant with conditions, or deny the permit.

Interviews with staff and HPC members indicate that processing substantial alteration cases much like HAWP applications evolved during the 1980's as a way to enable owners of Atlas sites to make improvements to their properties without waiting for the lengthy Master Plan process to be completed. Especially in cases where the probability was high that an Atlas site would eventually be designated on the Master Plan, it was seen as appropriate to review proposed alterations as if the property was already designated.

The record shows that questions about the HPC's authority to make determinations about building permits for Atlas sites were raised as early as 1983. The practice, however, continued until August 1989, when the County Attorney explicitly advised the HPC that applications for building permits on Atlas sites should no longer be handled as if they were HAWPs; and that it was DEP, not the HPC, that by law had been given the authority to make determinations of substantial alterations.

3. In practice since August 1989. Since August of 1989, the procedure outlined in law has been followed. In practice, the only additional step is that before reaching a decision as to whether a building permit application constitutes a proposal to "substantially alter" an historic resource, DEP staff routinely consult with DHCD staff assigned to support the HPC. To date, the advice of DHCD staff as to whether a proposal should be considered "substantial alteration" has always been followed.

Since the deadlines for action were changed in 1989,** only two applications for demolition permits and one application for a building permit that DEP determined would "substantially alter" the historic resource have been filed. In one case, the Planning Board acted to remove the resource from

* See Table 5 (page 22a) for the number of substantial alteration cases reviewed each year by the HPC.

** Ordinance 11-59 changed the deadline from 180 days from the date the application was sent to the Planning Board to 195 days from the date the application was filed.

the Atlas, and the demolition permit was issued. In the other two cases, the historic resources were designated on the Master Plan within the deadlines established in law, so that any requests to alter the site will be reviewed by the HPC as part of an HAWP.

In May 1990, OLO ran a test of 50 Atlas addresses in DEP's data base of premise addresses and found that all Atlas sites are not correctly listed; specifically: only 32 (64%) of the Atlas sites were correctly listed as historic resources in DEP's data base; nine (18%) were listed in the data base, but not as historic resources; and nine (18%) were not listed in the data base at all. As noted earlier in this report, DEP and DHCD staff are working together to improve the accuracy of DEP's premise address data base.

H. Investigating and Enforcing Demolition by Neglect Cases

1. Statutory requirements. Section 24A-9 permits the Director of DEP to issue a notice of "demolition by neglect" to any owner of an historic site or resource. As defined in Chapter 24A, "demolition by neglect" is:

The failure to provide ordinary and necessary maintenance and repair to an historic site or an historic resource within an historic district, whether by negligence or willful neglect, purpose or design, by the owner or any party in possession of such a site which results in the following conditions:

(a) The deterioration of exterior features so as to create or permit a hazardous or unsafe condition to exist.

(b) The deterioration of exterior walls, roofs, chimneys, windows, the lack of adequate waterproofing or deterioration of interior features or foundations which will or could result in permanent damage, injury, or loss of or to the exterior feature

A demolition by neglect notice must specify minimum measures needed to prevent further deterioration, and order that corrective action begin within 30 days. Failure to perform the work is a Class (A) violation, with each day the violation continues considered a separate violation.

The law provides that if the work is not done by the owner, it may be performed at County expense. The expense of such work becomes a lien against the property with the owner obligated to reimburse the County; any default in payment subjects the property to foreclosure and public sale.

Within 10 days after receiving a notice, an owner may request a public hearing before the HPC on the need for repairs. After holding the hearing on the necessity of improvements to prevent demolition by neglect, the HPC can either: order the repairs to be made, or make a finding that requiring improvements would impose a "substantial hardship" on the owner. If the HPC makes a finding of "substantial hardship" and is unable to seek an

alternative method to preserve the historic site, then no further action is to be taken by the County pursuant to Chapter 24A.*

The demolition by neglect provisions apply somewhat differently to Atlas sites. If an Atlas site is cited for demolition by neglect, then the Director of DEP advises the Planning Board which, after receiving HPC's recommendation, conducts a public hearing to determine whether the site should be recommended for designation on the Master Plan. If the Planning Board determines that the resource should not be recommended for designation, then no further action is taken pursuant to Chapter 24A. If, however, the Planning Board recommends that the resource should be designated and such an amendment is formally adopted, then the demolition by neglect procedures for Master Plan sites is to proceed.

2. In practice. On December 18, 1985, DHCD and DEP entered into a written memorandum of understanding that authorizes DHCD to enforce the demolition by neglect provisions of Chapter 24A. Within DHCD, the responsibility is delegated to the Division of Code Enforcement.

Prior to the 1985 memorandum of understanding, little was done to enforce the demolition by neglect provisions of Chapter 24A. Table 17 (page 39a) lists the number of demolition by neglect investigations initiated each year by the Division of Code Enforcement since FY86. According to Code Enforcement staff, almost all of the demolition by neglect investigations originated as referrals from the HPC, although the code inspectors are instructed to remain alert for other potential demolition by neglect situations.

The largest number of demolition by neglect investigations were initiated in FY86; these eight cases included a number of deteriorating properties that had gone without enforcement action during the years before the Division of Code Enforcement assumed responsibility for the function. In recent years, the incoming workload has declined. Since the first quarter of FY89, the Division of Code Enforcement has initiated only one demolition by neglect investigation.

According to a recent report prepared by the Division of Code Enforcement, approximately half of the 15 demolition by neglect cases for which enforcement action was begun since FY86 have been closed; the remaining cases are still in the process of being resolved.

No demolition by neglect citation issued by the Division of Code Enforcement has ever been appealed to the HPC, so there is no record of how the HPC has approached making a determination of "substantial hardship." In addition, because the County Government has never proceeded with its authority to perform improvements itself, there is no record of how this provision works in practice.

* Depending upon the situation, the County can continue to pursue enforcement action aimed at correcting unsafe conditions, using its authority to enforce the Housing and Building Maintenance Standards, as contained in Chapter 26.

Table 17

Record of Demolition by Neglect Investigations
Conducted by Division of Code Enforcement, DHCD
FY86 - FY90

<u>Year</u>	<u>Number of Demolition by Neglect</u> <u>Investigations Started</u>	<u>Number of Cases</u> <u>Resolved as of 7/1/90</u>
FY86	6	5
FY87	2	1
FY88	4	2
FY89	1	0
<u>FY90</u>	<u>0</u>	<u>0</u>
Total:	15	8

Source: DHCD files.

I. Providing Information and Public Education Materials on Historic Preservation

1. Statutory requirements. One of the HPC's statutory responsibilities is:

To serve as a clearinghouse for information on historic preservation for County Government, individuals, citizens' associations, historical societies and local advisory committees; to provide information and educational materials for the public; and to undertake activities to advance the goals of historic preservation in the County. (Section 24A-5(g))

Undertaking a public education program to inform the public about historic preservation was a major recommendation included in the original Master Plan for Historic Preservation, which specifically recommends that a public education program include:

- Displays, films, and literature on history and architecture for the schools, libraries, recreation centers, commercial areas, shopping centers, churches, hospitals and service organizations
- Touring information in a County guidebook or cassette to be widely distributed through County libraries and the Chambers of Commerce;
- Road markers, plaques, signs, and certificates to identify sites designated on the Master Plan for Historic Preservation;
- A historic preservation center representing the County's history, architecture, arts and crafts, and industries and natural resources, and serving as a visitors center supplying leaflets and maps;
- A series of articles/or programs on historic preservation that can be used in serial form in newspapers, radio and television;
- Museums of working industries, such as working farms and mills;
- A volunteer historical research program; and
- A County-wide competition with awards for the district, community, or neighborhood for the best interpretive or most imaginative preservation program or the best maintained environment. The County could give awards for the most livable community, the best local preservation program, or community living history and architecture award.

2. In practice. The HPC has undertaken or sponsored a number of public education activities during the past ten years. However, DHCD staff and HPC members agree that much more could and should be done in the area of public education. The primary reasons cited for the relative lack of attention to the public education function are competing workload demands, combined with lack of staff time and resources dedicated to promoting public education. The major public education efforts undertaken in recent years by the HPC are summarized below.

The Preservationist, a newsletter that reports on County preservation issues, is distributed free of charge to all owners of historic resources designated on the Master Plan, Atlas sites owners, and any other interested County citizen. As of July 1, 1990, The Preservationist has a mailing list of 2,500.

The HPC sponsors booths at the Montgomery County Fair and the County's Ethnic Festival, which publicize information about the HPC and historic preservation in general. Several years ago, the HPC developed a slide-tape presentation that details the work of the Commission, and the County's preservation laws.

As discussed in the following section of this chapter, many of the activities supported through the HPC's grants are aimed at developing public education materials. Examples include: exhibits, oral and written history presentations, publications and videos, historical tours, and historical collections.

During 1987, the HPC awarded a contract to a consultant to develop an "Education and Special Project Plan", which was accepted in October 1987 by the HPC as a statement of the goals and objectives of the HPC's public education function. The report identifies target groups for education and public outreach programs, and proposes specific projects that, "depending upon additional funding, could be undertaken to further educate the public about historic preservation and the work of the HPC.

In February 1988, copies of the HPC's Education Plan were sent to members of the County Council. Although, to date, little action has been taken to implement the specific recommendations contained in this report, the HPC recently indicated its intent to give increased attention to public information efforts during the coming year.

J. Administering Historic Preservation Tax Credit, Easement, Loan and Grant Programs

1. Statutory requirement. Since 1979, HPC has been charged with the responsibility: "To administer any revolving funds or grant programs to assist in historic preservation." HPC's powers and duties included this program administration component as part of what the original Master Plan called a "system to protect and enhance the County's heritage." Specifically, the Master Plan advocated using existing and proposed government programs to promote historic preservation; and envisioned the HPC assuming an integral role in administering whatever programs eventually got created and funded.

Three additional and specific program administration responsibilities were assigned by law to the HPC during the 1980's. In 1984, HPC was made responsible for reviewing all historic preservation tax credit applications, and for approving all loans awarded from the Historic Preservation Loan Fund. In 1988, Bill 15-88 assigned HPC responsibility for administering an historic preservation easement program.

2. In Practice: The Historic Preservation Tax Credit, Easement, and Historic Preservation Loan Fund Programs. During the past ten years, the County established a number of programs to provide financial assistance to historic preservation efforts in the County: a tax credit program; an easement program; and a revolving loan program. In addition, for the past decade, the County has allocated funds to a non-departmental account that is used to fund a number of historic preservation related activities, including (since FY85) a grant program administered by the HPC. The remainder of this chapter briefly describes each of these programs and outlines the HPC's role in administering them.

a. Historic preservation tax credit program. In June 1984, the Council amended Chapter 52, Taxation, to add a new article, "Tax Credit for Historic Preservation." This law established a real property County tax credit for the "restoration and preservation" of historic sites designated on the Master Plan. The tax credit is equal to ten percent of the total amount expended on the restoration and/or preservation of an individual sites or property located within an historic district, and is credited towards the taxpayer's real property tax bill. In October 1989, legislation (Bill 13-89) extended the availability of the County's historic preservation tax credit to property owners in municipalities that have the authority to establish their own historic district commissions.*

Table 18 (page 42a) summarizes the procedures for filing and evaluation of applications for an historic preservation tax credit. Table 19 (page 42b) lists data on the historic preservation tax credits granted from FY88 through FY90.** During the past three fiscal years, the County has granted 28 historic preservation tax credits worth a total of \$54,808. The amount of tax credit granted to individual property owners has ranged from \$140 to \$13,942; this past year, the average historic preservation tax credit was \$3,025.

* For more about the application of County preservation laws in municipalities, see page 11.

** DHCD's tax credit program records did not include the amounts of historic preservation tax credits granted prior to FY88; however, HPC minutes show that the Commission recommended four tax credits for approval in FY85, five in FY86, and seven in FY87.

Table 18

Historic Preservation Tax Credit Process

- (1) The property owner obtains an application form from DHCD staff assigned to support the HPC. The application includes requirements for photographs of the completed work (if available), and copies of original receipts.
- (2) The property owner submits the completed application form to DHCD staff, who review the material to ensure that all necessary documentation has been included. The law states that a properly documented application for a tax credit must be submitted by the first day of April immediately preceding the taxable year for which a tax credit is sought to be applied.
- (3) The HPC evaluates each application to determine whether the work meets the eligibility requirements established by law. Specifically, the HPC must certify that the property is designated on the Master Plan and is either work for which an Historic Area Work Permit was approved, or for ordinary maintenance work that costs at least \$1,000 and is determined to have historic, architectural, or cultural value. HPC then forwards the application, all accompanying material, and its recommendation on eligibility to the Department of Finance.
- (4) The final decision on the tax credit application is made by the Director, Department of Finance. The Department of Finance may request additional documentation from the applicant, which must be provided by the applicant within 30 days from the date of the request; the Director has the authority to reject all or part of the claimed expenditures for lack of proper documentation.
- (5) An approved tax credit is calculated to equal ten percent of eligible expenses, as recommended by the HPC and approved or modified by the Department of Finance. The amount of the approved tax credit is provided to the property owner on an Historic Preservation Tax Credit Certificate; this certificate must be included at the time of payment of the owner's real property tax bill to be calculated against the total amount due.
- (6) Applicants who wish to appeal the Department of Finance's decision may file an appeal with the Property Tax Assessment Appeal Board. The appeal must be filed within 30 days after the date of the notice of decision by the Department of Finance.

Source: Chapter 24A, Executive Regulation 35-86, and interviews with DHCD staff.

Table 19

Historic Preservation Tax Credits Granted
FY88 - FY90

<u>Year</u>	<u>Number of Credits Granted</u>	<u>Total Amount Credited</u>	<u>Average Tax Credit</u>	<u>Range of Tax Credits</u>
FY88	7	\$10,986	\$1,569	\$220 - \$ 7,485
FY89	9	\$ 7,523	\$ 836	\$220 - \$ 2,634
FY90	12	\$35,299	\$3,025	\$140 - \$13,942

Source: DHCD files.

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b. Historic Preservation Easement Program. In July 1988, legislation was enacted to establish a County historic preservation easement program. The law also allows the County to hold a preservation easement jointly with the Maryland Historical Trust.

As stated in Section 24A-13, an owner of an historic resource or site may offer the County a preservation easement to "protect or conserve interior or exterior features of the historic resource and its environmental setting or appurtenances." An easement benefits the owner of an historic resource by providing a tax benefit in the form of a lowered property assessment or possible charitable tax deduction.

The legislation that established the easement program (Bill 18-88) also amended the list of HPC's responsibilities to include the administration of the easement program, and specifically authorized the County Executive, with the advice of the HPC, to adopt method (2) executive regulations to administer the easement program. Draft regulations for the easement program were prepared by a consultant on contract to DHCD; however, the regulations have not yet been promulgated.

The legislative record indicates that the historic preservation easement program received strong support from the Maryland Historical Trust (MHT) as well as the HPC. The MHT has had an easement program since the 1960's and finds it is a cost-effective tool for preservation. During the public hearing held on the bill proposing to establish the easement program, the Montgomery Farm Women's Cooperative Market also testified in favor of the easement program on the grounds that the tax benefits that could be received from the easement would allow them to continue to operate in downtown Bethesda, and to promote the historic value of their building. Despite the show of support for the program at the time of enactment, to date, the County's historic preservation easement program has never been used.

c. Historic Preservation Loan Fund. In June 1984, the Council enacted Bill 67-83, "Restoration of Historic Properties", to make the rehabilitation of historic structures or properties an eligible activity for loans from the already existing Rehabilitation Loan Fund.* Specifically, this legislation authorizes the making of loans to organizations that own or operate historic structures and properties within the County for the rehabilitation or refurbishment of those historic properties. The law provides that such loans must be approved by the HPC.

* The other purpose of the Rehabilitation Loan Fund, as stated in Section 56-1(a)(1), is to make loans available to low income homeowners to finance the rehabilitation of their homes in order to meet County Code requirements, if no other financing is available.

Executive Regulation 10-1211, "Administrative Guidelines for Historic Preservation Loan Fund for Organizations," was promulgated by DHCD and adopted by the Council in March 1985. The regulations provide that the Historic Preservation Loan Fund (HPLF) will be administered by DHCD, with the Department of Finance delegated responsibility for the disbursement and collection of funds, and the keeping of permanent records for each HPLF recipient. The regulations specify that the HPC will solicit and review loan proposals and recommend to the Director of DHCD acceptance or rejection of all HPLF applications.

The regulations state that funds allocated to the HPLF may be used for two major types of activities:

- Seed Loans (not to exceed \$5,000) defined as money to be expended for the purpose of developing a detailed application for an historic preservation loan or other source of funds; eligible activities include: land percolation tests, property surveys, legal fees, architects design fees, and property appraisals; or
- Historic Preservation Loans (not to exceed \$20,000) defined as loans to owners or operators of historic structures for rehabilitation or refurbishment of the historic structures.

Funds were explicitly allocated to the HPLF in FY85 and FY86, for a total of \$50,000 each year. DHCD records indicate that one HPLF loan for \$15,347 was granted in FY86, and another HPLF loan for \$20,000 was granted in FY87; in both cases, the recipients of the loans were churches. There has been no activity in the HPLF since FY87.

3. In Practice: The Historical Activities Support/Non-Departmental Account(s). Table 20 (page 44a) reports the levels of funding allocated each year since FY81 to non-departmental accounts for historic preservation activities. Non-departmental funds have consistently been provided in the form of grants to: the Maryland Historical Society, the Montgomery Historical Society, and the Salvage Depot. In addition, during FY90, the Glen Echo Foundation received a one-time grant to install a fire-sprinkler system on the carousel located in Glen Echo Park.

Since FY85, funds from the Historical Activities Support/non-departmental account have also been allocated annually to the Historic Preservation Grant Fund, which the HPC has the primary responsibility for administering. (See following section for description.) Other recipients of grants from the Historical Activities Support/non-departmental account are to be approved each year by the Council as non-competitive grantees, pursuant to the County's procurement law (Section 11B-42, Cooperative purchasing, public entity contracting and grants).

Table 20

Historical Activities Support/Non-Departmental Account
FY81 - FY91

	<u>Total</u>	<u>Allocation of Funds</u>	
FY81	\$50,000	Historic Preservation Commission	\$25,000*
		Montgomery County Historical Society	\$20,000
		Maryland Historical Society	\$ 5,000
FY82	\$51,000	Historic Preservation Commission	\$25,000*
		Montgomery County Historical Society	\$21,000
		Maryland Historical Society	\$ 5,000
FY83	\$29,000	Historic Preservation Commission	\$ -0- *
		Montgomery County Historical Society	\$22,000
		Maryland Historical Society	\$ 7,000
FY84	\$29,910	Montgomery County Historical Society	\$22,600
		Maryland Historical Society	\$ 7,210
FY85	\$27,500	Historic Preservation Grant Fund	\$20,000
		Montgomery County Historical Society	\$10,000
		Maryland Historical Society	\$ 7,500
FY86	\$89,200	Historic Preservation Grant Fund	\$39,200
		Montgomery County Historical Society	\$10,000
		Local Government Archives Project	\$50,000
FY87	\$36,200	Historic Preservation Grant Fund	\$19,200
		Montgomery County Historical Society	\$10,000
		Salvage Depot	\$ 7,000
FY88	\$75,400	Historic Preservation Grant Fund	\$25,400
		Montgomery County Historical Society	\$35,000
		Maryland Historical Society	\$20,000
		Salvage Depot	\$ 5,000

* In FY81 and FY82, funds were allocated in a non-departmental account for HPC site surveys, HPC meeting support, and public hearing support. In FY83, money for HPC support was transferred to the DCHD's budget.

(continued)

	<u>Total</u>	<u>Allocation of Funds</u>	
FY89	\$72,900	Historic Preservation Grant Fund	\$25,400
		Montgomery County Historical Society	\$35,500
		Maryland Historical Society	\$10,000
		Salvage Depot	\$ 1,500
FY90	\$104,500	Historical Preservation Grant Fund	\$27,500
		Montgomery County Historical Society	\$36,000
		Maryland Historical Society	\$10,000
		Salvage Depot	\$ 2,500
		Glen Echo Foundation	\$30,000
FY91	\$74,000	Historical Preservation Grant Fund	\$27,500
		Montgomery County Historical Society	\$35,000
		Maryland Historical Society	\$10,000
		Salvage Depot	\$ 500

Source: FY81 - FY91 Operating budgets.

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4. In Practice: The Historic Preservation Grant Fund. As noted above, every year since FY85, funds from the Historical Activities Support/non-departmental account have been allocated to the Historic Preservation Grant Fund, administered by the HPC. These funds have been used by the HPC for what is sometimes referred to as the "Mini-Grant Program".

Table 21 (page 45a) summarizes the total level of funding and activity of the Historic Preservation Grant Fund for FY87 through FY90. Appendix B lists the individual grant recipients with a description of the specific projects funded during the past four years. The data show that:

- The allocation of County funds to the Historic Preservation Grant Fund increased 35 percent between FY87 and FY90, from \$20,000 to \$27,500;
- Over 90 percent of those who apply each year receive some level of funding from the program;
- The number of grants awarded each year has ranged between 11 and 20, with a total of 60 grants awarded between FY87 and FY90; and
- The average grant size since FY87 has been \$1,614; grant awards have ranged from \$300 to \$6,150.

The process established by the HPC for administering the Historic Preservation Fund is summarized on Table 22 (page 45b). A review of program records indicates that the HPC has awarded grants to a variety of projects to include publications, video productions, oral or written history projects, landscaping plans or historic district designs, and education programs. The following organizations have received multiple grant awards during the past four years: the Chevy Chase Historical Society, the Woodside Historical Commission, the Historic Medley District, the Gaithersburg Heritage Alliance, and the Ad Hoc Committee to Save Hawkins Lane.

K. Staff Support

This section is organized into five parts:

Part 1, reviews the history of staff support for the HPC;

Part 2, examines the responsibilities and estimated cost of Department of Housing and Community Development (DHCD) staff assigned to support the HPC;

Part 3, examines the staff support for historic preservation provided by other County Government departments: the Office of the County Attorney, the Department of Environmental Protection, the Office of Planning Policies, and the County Council staff;

Table 21

Summary of Historic Preservation Grant Fund Activity
FY87 - FY90

<u>Year</u>	<u>Total Fund Allocation</u>	<u>Amount of Grants Awarded</u>	<u>Number of Grants Awarded</u>	<u>Number of Grant Applicants</u>	<u>Average Grant Size</u>	<u>Grant Range</u>
FY87	\$19,200	\$19,200	11	12	\$1,740	\$850-2,833
FY88	25,400	25,000	20	22	1,250	40-2,500
FY89	25,400	25,160	15	15	1,677	300-4,000
FY90	<u>27,500</u>	<u>27,500</u>	<u>14</u>	<u>15</u>	<u>1,964</u>	<u>407-6,150</u>
TOTAL: (FY87-FY90)	\$97,500	\$96,860	60	65	\$1,614	\$300-6,150

Source: DHCD files.

Table 22

Historic Preservation Grant Fund Procedures

- (1) The availability of grants from the Historic Preservation Grant Fund (HPF) is advertised each year in local papers. In addition, an information sheet is mailed to previous grantees and others who inquire about the program.
- (2) DHCD staff assigned to support the HPC provide application forms to potential HPF grantees. The application deadline for receiving a grant is August 1 of the year in which a grant is requested.
- (3) DHCD staff examine applications for completeness, and forward to the Department of Finance, Division of Risk Management to identify the potential insurance requirements for each grant request.
- (4) A Grants Subcommittee, composed of three HPC members, evaluates all HPF applications, and forwards funding recommendations to the full HPC.
- (5) The full HPC evaluates the HPF applications, along with the Grants Subcommittee's recommendations, and formally votes on the allocation of HPF funds in public session.
- (6) Depending upon the size of the grant, DHCD staff implements the HPC's allocation decisions following one of three procedures. If a grant is:
 - a) Less than \$1,000: the grant is disbursed through the Office of Procurement as a direct payment;
 - b) Between \$1,000 and \$5,000: the grant award is reviewed by the County Attorney's Office for form and legality, and then disbursed by the Office of Procurement as a purchase order;
 - c) More than \$5,000: the grant is reviewed by the County Attorney's Office and drafted in contract form. The contract is then sent to the grantee for signature, returned to DHCD, and forwarded to the Office of Procurement and processed as a contract award.
- (7) Oversight of HPF grants is exercised by DHCD staff. All grant recipients are required to report on the progress of their grant project on a bi-monthly basis, and must notify DHCD staff of any changes to the project's proposed timetable, scope, or personnel.

Source: DHCD records and interviews with staff.

Part 4, reviews the staff support for historic preservation provided by M-NCPPG; and

Part 5, analyzes three staffing issues: the adequacy of staff support provided to the HPC; the relationship between HPC members and DHCD officials, and staffing alternatives.

1. History of Staff Support

County law requires the County Government to provide staff support to the HPC. The statute identifies the County Attorney as the HPC's legal counsel, but does not identify which office or department of County Government shall be assigned to provide the HPC with other professional or administrative staff support.

When members were first appointed to the HPC in late 1979, the task of providing administrative support to the HPC was assigned to an Assistant Chief Administrative Officer. Advice regarding the evaluation of historic resources was provided initially by Montgomery County Parks Department staff who had worked to compile the Atlas of historic resources.*

In early 1981, the lead responsibility for providing staff support to the HPC was transferred within the Executive branch from the Office of the Chief Administrative Officer (CAO) to DHCD because the staff time needed to support the HPC was more than was available on a part-time basis from the CAO's office. From early 1981 until January 1983, staff support for the HPC was provided primarily by one of DHCD's planners, with continued assistance from the Parks Department's Office of the Park Historian:

In January 1983, recognizing that the needs of the HPC were increasing, DHCD hired a part-time Grade 18, Program Assistant, to provide support to the HPC; this marked the beginning of DHCD's hiring of staff dedicated to supporting the HPC. In FY84, the working title of this Program Assistant became: "Executive Director of the Historic Preservation Commission", and in FY86, the Program Assistant position was upgraded from a Grade 18 to a Program Assistant II, Grade 21. The Program Assistant worked increasing numbers of hours each year, so that by FY88, while technically still only a part-time position, the Program Assistant was working almost on a full-time basis.

The Program Assistant position assigned to staff the HPC was originally located administratively in the Office of the DHCD Director; the Program Assistant reported directly to the Director of DHCD, and clerical support for the HPC was provided by the Director's office. During FY88, the function of providing support to the HPC was administratively transferred to the Division of Community Planning and Development (CPD); and the Program Assistant assigned to staff the HPC was placed under the direct supervision of the Chief of CPD.

In August 1988, the Program Assistant who had been assigned to staff the HPC since 1983 resigned. Following the resignation, DHCD staff worked with the Office of Personnel to create a full-time position to provide staff support to the HPC; and in February 1989, a full-time Grade 21, Program Assistant II, with the working title of Historic Preservation Specialist, was hired. At that time, a Grade 13, Administrative Aide in the CPD Division was also assigned to support the HPC.*

Coincident with this OLO evaluation, at the request of the DHCD Director, the Office of Personnel performed a grade classification study of the two positions assigned to support the HPC. As a result, in July 1990, the Grade 21, Program Assistant II position was upgraded to a Grade 23, Program Manager I position; and the Grade 13, Administrative Aide position was upgraded to a Grade 16, Office Services Manager position. Both of these positions continue to report to the Chief of the CPD Division.

In July 1990, the Historic Preservation Specialist hired in February 1989 resigned. At the time of this writing, the recruitment for this recently upgraded Grade 23, Program Manager position has begun. During this interim period, which is expected to last approximately six months, a DHCD planner has been assigned on a full-time basis to provide professional staff support to the HPC.

2. Responsibilities and Cost of DHCD Staff Support for the HPC

a. Staff responsibilities. As described above, two workyears (one Grade 23, Historic Preservation Specialist, and one Grade 16, Office Services Manager) within the Division of Community Planning and Development (CPD) are assigned to provide professional and administrative staff support to the HPC. During the past six months, a Public Administration Intern has also been assigned to assist with HPC-related activities.

In addition to the staff dedicated on a full-time basis to the HPC, time is spent on HPC business by the CPD Division Chief, a DHCD grants coordinator, the DHCD's Administrative Services Coordinator, the Deputy Director of DHCD, and the Director of DHCD. DHCD's Code Enforcement Division also supports the work of HPC by enforcing the demolition by neglect provisions of Chapter 24A. (This function was reviewed earlier in this report, see page 38.)

* Between the time that the Program Assistant resigned, and the new Historic Preservation Specialist was hired, other DHCD staff were assigned on an interim basis to provide staff support for the HPC; individuals who helped out during this period included the CPD Division Chief, and an assistant to the DHCD Director.

Estimates of the time spent on various job responsibilities were obtained through interviews with the incumbents and a review of written position descriptions. The time of the Historic Preservation Specialist assigned to support the HPC is allocated as follows:

- Prepare materials for HPC's consideration of HAWPs, to include ensuring applications are complete, providing technical assistance to applicants, conducting site visits, and preparing staff recommendations (60% of time);
- Work with the County Attorney's office to develop executive regulations, draft decision, etc. for the HPC (10% of time);
- Develop and monitor contracts to conduct research on historic resources (10% of time);
- Serve as liaison to other County offices and State agencies (5% of time);
- Make recommendations to DEP regarding building permit applications for work on Atlas sites (5% of time); and
- Perform various other tasks to support HPC's work, to include maintaining HPC's records, helping the Chair set the agenda, answering questions posed by County staff or members of the public, and drafting correspondence for the Chair's signature (10% of time)

The time of the Office Services Manager assigned to support the HPC is allocated as follows:

- Provide information on laws and regulations concerning historic preservation, to include information on HAWPs, the Master, and the County's historic preservation tax credit program (30% of time);
- Keep minutes of HPC meetings and maintain other HPC records (15% of time)
- Coordinate meeting of legal requirements for advertising and public notification of matters pending before the HPC (10% of time);

- Process HAWPs approved/denied by the HPC (10% of time);
- Maintain updated listing of individual sites and historic districts designated on the Master Plan (5% of time);
- Monitor Historic Preservation Grant Fund projects (10% of time); and
- Assist Historic Preservation Specialist with various other assignments (20% of time).

b. Estimated Cost of Providing Staff Support to the HPC.

Table 23 (page 49a) contains data on DHCD's costs of supporting the work of the HPC since FY88. Part I of the Table lists staff and operating expenses, and Part II of the Table lists the level of the County's Certified Local Government (CLG) grant approved each year by the Maryland Historical Trust, along with the County's match.* Table 23 excludes the level of County appropriations to the Historical Activities Support/non-departmental account, which was discussed earlier in this chapter (see page 44).

The salaries/fringe numbers include only the cost of the two staff positions assigned on a full-time basis to support the HPC.** The operating expense data includes funds allocated in DHCD's budget to support the work of the HPC, plus an estimate by DHCD's Administrative Services Coordinator of additional support provided elsewhere in DHCD's budget for such necessities as: copying material for HPC meeting packets, and use of the motor pool by the Historic Preservation Specialist to perform field work.

The CLG grant plus the County's matching grant can reasonably be considered additional operating expenses because these funds are spent on projects that assist the HPC to perform its statutory responsibilities. For example, as listed in Table 24 (page 49b), CLG funds have been used for the past four years to fund research on historic resources and to publish the Preservationist.

* For background on the CLG program, see page 12.

** As noted above, other DHCD staff do spend a proportionate share of their time on HPC business. However, the cost of time spent by others (e.g., the Chief of CPD, DHCD's grants coordinator, the Deputy Director of DHCD, and the Director of DHCD) is not easily quantified.

Table 23

Estimated DHCD Expenditures for Historic Preservation
FY88 - FY91

I. DEDICATED STAFF AND OPERATING EXPENSES

	<u>FY88</u>	<u>FY89</u>	<u>FY90</u>	<u>Projected FY91</u>
Salaries/Fringe	\$46,510	\$49,780	\$77,020	\$84,180
Operating Expenses	31,750	38,315	35,000	39,500
Total:	\$78,260	\$88,095	\$112,020	\$123,680

II. CERTIFIED LOCAL GOVERNMENT (CLG) FUNDS AND COUNTY MATCH*

	<u>FY88</u>	<u>FY89</u>	<u>FY90</u>	<u>Projected FY91</u>
CLG Grant From State	\$12,875	\$13,750	\$18,000	\$20,900
County CLG Matching Grant	12,875	13,750	18,000	20,900
Total:	\$25,750	\$27,500	\$36,000	\$41,800

* Figures represent grant and County match amounts enumerated in County's contracts with Maryland Historical Trust.

Source: DHCD files.

Table 24

Projects Funded by Certified
Local Government Program Grants
FY88 - FY91

<u>Year</u>	<u>Projects</u>
FY88	<ul style="list-style-type: none">● <u>Publishing The Preservationist</u>● Researching historic sites● Creating historic design guidelines for Hyattstown● Producing slide/tape presentation
FY89	<ul style="list-style-type: none">● <u>Publishing The Preservationist</u>● Researching historic sites
FY90	<ul style="list-style-type: none">● <u>Publishing The Preservationist</u>● Researching historic sites● Cataloging and producing maps and photos of County Master Plan sites● Surveying development of 20th century themes of ecclesiastical buildings
FY91 (proposed)	<ul style="list-style-type: none">● <u>Publishing The Preservationist</u>● Researching historic sites● Updating and republishing HPC brochure on the historic preservation process and programs

Source: HPC files of CLG grants, 1987 - 1990.

The data show that staff and operating expenses dedicated to support the work of the HPC have increased during the past four years. DHCD's FY91 allocation of \$84,180 to support two full-time staff represents a significant increase over the FY88 allocation of \$46,510 to support two part-time staff. If DHCD's expenses plus the CLG and County match are added together, operating support for HPC activities increased almost 30 percent within the past four fiscal years.

3. Staff Support for Historic Preservation from Other County Government Departments and Offices

Direct staff support for HPC activities extends beyond DHCD to the Office of the County Attorney and the Department of Environmental Protection. In addition, although not directly in support of HPC's activities, staff in the Office of Planning Policies, Department of Transportation, and Office of the County Council spend time on historic preservation issues.

a. Office of the County Attorney. The law establishing the HPC specifies that the County Attorney shall serve as legal counsel to the Commission. This policy is consistent with Section 21 of the County Charter, which states that the County Attorney shall be the legal advisor to the County Executive, all departments, and other instrumentalities of the County Government.

Soon after the HPC was appointed in 1979, an Assistant County Attorney was assigned to provide legal advice to the HPC. During the past eleven years, this responsibility has been rotated among five different attorneys. For the most recent two year period, an Assistant County Attorney from the Personnel/Civil Rights Team was assigned to provide advice to the HPC; as of August 1990, the responsibility was transferred to an Assistant County Attorney from the Land Use Team.*

The Office of the County Attorney estimates that this fiscal year, approximately \$25,000 worth of staff time will be spent on HPC business. Service from the Office of the County Attorney to the HPC includes providing legal advice on specific HAWP cases, reviewing/editing HPC decisions, and answering procedural questions. The amount of time spent by the Office of the County Attorney on HPC business has varied depending upon factors such as the competing workload demands of the attorney assigned to the HPC, the nature of HAWP applications filed, and the overall working relationship between the Office of the County Attorney, DHCD, and the HPC.

* Attorneys in the Office of the County Attorney are assigned to work on one of seven "teams" - Land Use, Claims, Personnel/Civil Rights, Finance/Contract, District Court, Opinion/Legislation, and Public Safety.

During the past two years, there has been a notable increase in the time spent by the Office of the County Attorney on HPC business. In particular, this has involved: assisting the HPC write a number of HAWP decisions involving complex legal issues, defending HPC decisions have been appealed, reviewing draft executive regulations, and initiating legal advice on procedural matters.

b. The Department of Environmental Protection. DEP staff currently support the work of the HPC in the following ways:

- As part of maintaining a premise address data base, DEP is responsible for tracking which properties are designated on the Master Plan and which are listed on the Atlas;
- DEP staff distribute HAWP applications; receive "completed" HAWP applications, and forward HAWP applications to DHCD staff assigned to support the HPC;
- In accordance with instructions received from the HPC, DEP staff issue or deny an HAWP application;
- DEP staff determine whether an application for a demolition or building permit to perform work on an historic resource listed on the Atlas constitutes "substantial alteration", and if so, forwards the application to the Planning Board for further review;* and
- DEP staff are responsible for conducting inspections and issuing civil citations for violations of Chapter 24A.**

The Office of the DEP Director estimates that during this fiscal year, when the above responsibilities are aggregated, approximately one DEP workyear, equal to approximately \$28,000 in staff time will be spent on historic preservation-related tasks. In citing this estimate, it is important to note that the work is absorbed by numerous staff in the Division of Construction Codes Enforcement, and no DEP staff is expressly dedicated to performing historic preservation work.

c. Other County Government Departments and Offices. Although not directly in support of the HPC, staff from a several other County Government departments spend time working on issues that affect the preservation of historic resources in the County.

* For more about substantial alteration cases, see page 36.

** The absence of a routine inspection program was discussed earlier; see page 32.

A task that regularly involves staff from numerous Executive branch departments plus County Council staff is the processing of amendments to the Master Plan for Historic Preservation.*

Within the Executive branch, the Office of Planning Policies (OPP) is responsible for coordinating the review of master plan amendments, which includes obtaining comments from various Executive branch departments and offices. OPP estimates that last year (FY90), approximately \$3,000 in Executive branch staff time was spent processing amendments to the Master Plan for Historic Preservation.

County Council staff time spent on historic preservation matters also focuses on the processing of amendments to the Master Plan for Historic Preservation. This includes time staffing public hearings, Council worksessions, and final Council action.

Other Executive and legislative branch initiatives at times concern the preservation of historic resources. Some recent examples are: the Rural Roads Task Force, the adaptive reuse of the historic Jessup Blair house for single parent housing, and the federal government's proposal for new construction at the historic Walter Reed annex located in Forest Glen. In addition, there are numerous examples of where the potential location of a public facility could impact an historic site. These projects can involve staff from many different executive and legislative branch offices.

4. M-NCPPC staff support for historic preservation

This section summarizes the historic preservation activities of the Montgomery County Planning Department and the Montgomery County Parks Department, and explains how the work of M-NCPPC staff relates to the work of the M-PC.

a. The Planning Department. Staff of the Historic Preservation section within the Urban Design Division provide technical support to the Planning Board on historic preservation issues, which include: the evaluation and designation of historic sites and districts, and development projects on designated and proposed site plans, subdivisions, potential historic resources, the impact of proposed road projects on historic resources, and the development of legislation regarding preservation programs.

* For description of the Master Plan designation process, see Table 7, page 24a.

As shown in Table 25 (below), the Planning Department's commitment to historic preservation activities has increased during the past four fiscal years. In FY88, an estimated 1.6 position years costing \$96,320 was allocated in the budget to historic preservation; this year's approved operating budget allocates 2.3 position years costing over \$153,000 to historic preservation.

Table 25

Estimated M-NCPPC Planning Staff and Operating Expenses for Historic Preservation FY88 - FY91				
	FY88	FY89	FY90	FY91
Position Years	1.6	1.2	2.0	2.3
Salaries/Fringe	\$96,320	\$73,920	\$130,400	\$153,180

Source: M-NCPPC records

During the past several years, HPC's evaluation of historic resources listed on the Atlas has become more closely coordinated with the work of M-NCPPC's Planning Department. In particular, HPC's schedule of Atlas site research and evaluation is established in conjunction with M-NCPPC's Historic Preservation Planner. This coordination has helped to reduce the interval of time between the HPC's and the Planning Board's evaluation of Atlas sites, and has worked to minimize the need for M-NCPPC staff to conduct duplicative research of Atlas sites.

The Planning Department staff also assists the HPC with its statutory role to review subdivision applications. In particular, M-NCPPC's Historic Preservation Planner reviews all subdivision applications, and forwards to the HPC only those applications that have the potential for affecting an historic site designated on the Master Plan, or an historic resource on the Atlas. This screening of subdivision applications eliminates the need for either HPC members and/or DHCD staff to inspect all subdivision applications (totaling 250-300 each year in recent years) in order to find the applications appropriate for HPC review.

b. The Parks Department. As noted earlier in this chapter, from 1980-1983, staff from the Parks Department provided professional staff support to the HPC. The advice from the Parks Department was primarily in terms of HPC's research and evaluation of historic resources listed on the Atlas.

Today, staff of the Office of the Park Historian only occasionally interact with the HPC; most often to apply for an HAWP for work on one of M-NCPPC's historic sites. The FY91 budget allocates three workyears to historic preservation activities in the Office of the Park Historian, which is currently located within the Park Department's Division of Natural Resource Management.

The Office of the Park Historian administers departmental programs relating to the identification, preservation, and interpretation of historic and archaeological resources on park land. Responsibilities include the restoration of historic structures, research and writing of reports and interpretive materials, acquisitions and care of collections, display of historic exhibits, and the identification, inventory and mapping of archaeological resources. In addition, the Office coordinates historic interpretive programs throughout the park system.

5. Analysis of Staffing Issues

a. Adequacy of Staffing. As evidenced by the data reviewed in this chapter, County resources dedicated to supporting historic preservation, and in particular, to supporting the work of the HPC, have increased during the past decade. However, this evaluation finds that the current complement of staff assigned to support the HPC does not enable HPC to perform all of its statutory responsibilities.

The growing volume and complexity of HAWP applications has increased the staff time required to review and prepare HAWP applications for HPC action. As a result, the staff time necessary to prepare material for the HPC's bi-weekly meetings leaves little staff time for other projects.

At present, a number of HPC's statutory responsibilities are not being carried out as effectively as they could be. In particular, substantially more could be done at the staff level to expedite the HPC's review of HAWPs and HPC's evaluation of historic resources. In addition, as discussed earlier in this chapter, more needs to be done in terms of providing information and educational materials to the public about historic preservation, and administering existing programs to encourage historic preservation.

DHCD staff and HPC members agree that the primary reason these responsibilities are not being carried out effectively is a lack of staff time. DHCD officials and HPC members also agree that it is unreasonable to expect the HPC members themselves to perform these functions without staff support provided by the County Government.

Based upon personal observation and extensive interviews with DHCD staff, it is apparent that the individuals assigned to support the HPC work many hours trying to complete their job assignments. The individual who held the job of Historic Preservation Specialist from February 1989 through July 1990 voiced the view that while the job was a challenging and often rewarding one, it was also very frustrating because the demands of the job exceed the time available in a 40-hour work week.

In addition to citing the need for additional staff support from DHCD, a number of HPC members voiced dissatisfaction with the overall level of service from the Office of the County Attorney during the past ten years. While acknowledging that the situation has improved recently, HPC members expressed frustration with the lack of continuity, (i.e., the turnover in legal staff assigned to the HPC), and concern that the HPC has at times been assigned attorneys who are relatively inexperienced in land use law.*

The feeling that the HPC needs access to additional legal advice was also expressed by others interviewed during the course of this OLO study, including lawyers who appear before the HPC, citizens, and DHCD staff assigned to support the HPC. The primary reason cited for needing additional legal assistance is the increasing complexity of selected HAWP applications, as evidenced by increased citizen opposition, and increased participation of attorneys and expert witnesses in the HAWP proceedings.

b. The Relationship Between HPC Members and DHCD Officials.
Interviews with County Government staff and HPC members (past and present) indicate that since 1987 the relationship between HPC members and DHCD management has, at times, been notably strained. However, it appears that during the course of this OLO study, while some problems remain, the overall working relationship between HPC members and DHCD officials has improved.

It appears that friction between members of the HPC and County officials initially developed out of several substantive differences of opinion about the historic designation and future development of specific sites in the County. The friction continued in part because of an apparent lack of clarity and mutual understanding about the appropriate role of staff assigned to support the HPC, and perhaps broader differences of opinion about the overall role of the HPC.

HPC members perceive that, at times, the County has not fully supported the work of the HPC, and has treated Commissioners "inappropriately". For example, HPC members report feeling frustrated that: additional staff have not been assigned to support historic preservation; DHCD officials have not consistently consulted the HPC about the allocation of

* As noted earlier, as of August 1990, an attorney from the Land Use Team has been assigned to provide legal advice to the HPC.

County resources on historic preservation-related matters; and the Office of the County Attorney took six months to complete its review of executive regulations drafted by the HPC.*

In turn, County officials perceive that, at times, the HPC has not understood its role, and has treated citizens and staff assigned to support the HPC "inappropriately". For example, DHCD officials perceive that: the HPC has not always understood or appreciated the many competing budgetary pressures and workload demands on the department; the HPC has, at times, criticized DHCD staff in public when staff was making a sincere effort to perform a difficult task; and that certain HPC members have acted in a rude or condescending manner in public session to a citizen applying for an HAWP.**

A recurring source of friction between HPC members and DHCD officials has been an apparent lack of mutual understanding about the role of DHCD staff assigned to support the work of HPC. This misunderstanding has included confusion about whether DHCD staff can take directives from HPC members, and disagreement over whether DHCD staff can appear in public on behalf of the HPC. HPC members express frustration that it has been difficult to get staff support for special projects, while DHCD officials express frustration that HPC members have not consistently understood how much staff time is needed just to provide support to the HPC on routine matters. HPC members also voice frustration that, if the position of the HPC is contrary to that of the County Executive, then DHCD staff assigned to the HPC are not allowed to speak in public on behalf of the HPC.***

While certain disagreements have not been entirely resolved, it appears that, as noted above, the working relationship between DHCD and HPC members has recently begun to improve. As is often the case, the evaluation process during the past few months has itself afforded an opportunity for improved communication and a forum for an exchange of ideas. At this time, all parties appear to be making a genuine effort to forget past differences, and to develop a more constructive approach to working together.

* Executive regulations were drafted by the HPC and sent to the County Attorney for review in November 1989; the regulations were not returned to the HPC until May 1990.

** In early 1990, recognizing that some problems existed between DHCD officials and HPC members, the DHCD Director proposed hiring a consultant to help identify areas of disagreement and improve communication. At the recommendation of OLO, this initiative was placed on hold pending the outcome of this study.

*** For a number of years in the mid-1980's, the Program Assistant assigned to the HPC routinely appeared in public on behalf of the HPC; since mid-1988, however, the practice has been that DHCD staff are permitted to appear in public on behalf of the HPC only when HPC's position is consistent with that of the Executive.

6. A Discussion of HPC Staffing Alternatives

As part of this study, OLO sought the opinions of those interviewed on alternatives for providing staff support to the HPC. The three options most frequently discussed were:

- Option (I): Keeping the responsibility for providing staff support to the HPC within the Department of Housing and Community Development;
- Option (II): Changing the law to assign M-NCPPC's Montgomery County Planning Department with responsibility for providing staff support to the HPC; or
- Option (III): Changing the law to establish HPC as an independent commission with its own staff located either within the executive or legislative branch of County Government.

The remainder of this chapter discusses the pros and cons of these three alternatives.

a. Option I. In general, the primary reasons cited for keeping the responsibility for providing staff support for the HPC within the Department of Housing and Community Development are that:

- Current law places the responsibility for staffing the HPC with the Executive branch;
- HPC members are appointed by the County Executive and confirmed by the Council, and the HPC is therefore appropriately staffed by Executive branch employees;
- HPC's responsibilities require coordination among Executive branch departments, and this can most efficiently be accomplished if the staff supporting the HPC is also located within the Executive branch;
- An increasing percentage of HPC's time is spent acting upon HAWPs, which is a regulatory function related to the building permit function handled by the Executive branch;
- The staff of DHCD includes professionals with appropriate background and expertise, (e.g., planners, architects, grants managers) who can supplement the work of staff assigned to support the HPC; and

- Being a relatively large department, DHCD currently "subsidizes" historic preservation by not specifically charging all operating expenses (e.g., use of the motor pool) to the HPC function.

The primary negative factors to be considered in keeping the current staffing arrangement are that:

- DHCD has multiple responsibilities, and when compared to some of the department's other demanding missions (e.g., creating affordable housing), historic preservation is competing for resources against other very important objectives;
- The arrangement continues the current assignment of historic preservation activities to two different agencies (DHCD and M-NCPPC), which results in some duplication of staff effort and confusion to the public about which agency is responsible for what function;
- The friction between DHCD officials and HPC members (as discussed earlier in this chapter) has created stress during the past three years that must be overcome if a more productive working relationship is to be established; and
- It is feasible that future situations will arise where the goals of historic preservation conflict with other important goals of DHCD, and such conflicts of purpose may create a difficult working climate for both DHCD staff and HPC members.

b. Option II. The primary advantages cited to assigning responsibility for providing professional and administrative staff support to M-NCPPC's Planning Department are that:

- The County's historic preservation ordinance was enacted pursuant to authority contained in the Regional District Act, and M-NCPPC is a logical place to administratively locate staff support for a function that is part of the County's land use and planning function;
- Staffing the HPC by the M-NCPPC Planning Department appears to work well in Prince George's County, which is governed by the same network of State enabling legislation;

- Consolidating the County's historic preservation efforts would reduce the public's confusion about where to go with questions concerning historic preservation, and eliminate duplication of staff effort by County Government staff and M-NCPPC staff;
- This location would provide greater opportunities for coordination and economies with respect to HPC's legally-mandated role to provide advice to the Planning Board on historic designations and subdivision applications; and
- The M-NCPPC staff includes experts in the appropriate subject areas: historic preservation, urban planning, community planning, architecture, landscape architecture, etc.; and

The primary disadvantages cited to relocating the staffing responsibility to M-NCPPC's Planning Department are that:

- It would likely be more difficult to coordinate HPC's work with that of Executive branch departments;
- Although HPC members (appointed by the Executive and approved by the Council) would presumably continue to make decisions on HAWPs, the change would be perceived as moving a regulatory function from the Executive branch to the Planning Board;
- There would continue to be the potential for staff to become caught in between conflicting views of decision-makers; e.g., the HPC could take a position contrary to that of the Planning Board, and the Planning Department staff could feel caught in the middle; and
- M-NCPPC's Silver Spring offices are already very crowded, and it would be a challenge to provide adequate space for additional staff.

c. Option III. A third staffing option would be to establish the HPC as an independent commission, either as part of the Executive or Legislative branch. The primary advantage of this alternative is that it would provide the HPC with greater public visibility and identity as a separate commission, not affiliated with any particular department or agency. Advocates for this change argue that it would also provide the HPC members with more direct control over budgetary resources, and would reduce the potential for conflict between HPC goals and departmental goals. Examples of other adjudicatory boards that have been set-up as independent entities are: the Ethics Commission, the Board of License Commissioners, the Board of Appeals, and the Merit System Protection Board.

A major disadvantage of establishing the HPC as an independent entity would be the fiscal impact of such a change. In addition to costing more in terms of staff and operating expenses, establishing HPC as an independent commission could result in an increased isolation of the historic preservation function, instead of an increased coordination of HPC's actions with other County activities that affect the preservation of historic resources. Finally, staff assigned to support to the HPC would continue to be merit system staff hired by either the Chief Administrative Officer (e.g., Ethics Commission staff) or the Council Staff Director (e.g., Board of Appeals staff), which means that the potential for having staff feel split loyalties, although perhaps reduced, would not be eliminated.

V. COMPARATIVE INFORMATION

Section A compares the structure, staffing and responsibilities of the Montgomery County HPC to the Prince George's County HPC, as the only other preservation commission governed by the Regional District Act;

Section B summarizes data collected from historic preservation staff in 12 other jurisdictions. The sample, which was selected on the basis of recommendations from the Maryland Historical Trust, the National Alliance of Preservation Commissions, and DHCD and M-NOPPC staff, includes two other Maryland counties (Anne Arundel, Howard), three Maryland cities (Frederick, Hagerstown, Rockville), the District of Columbia and five additional jurisdictions known for their historic preservation activities.

A. Comparison of HPCs in Montgomery and Prince George's Counties

Montgomery and Prince George's Counties both derive the authority to enact local laws governing the preservation of historic resources from the Express Powers Act and the Regional District Act.* Prince George's County enacted its own historic preservation ordinance several years after Montgomery County, and the two laws are similar in many respects.

A comparison of the composition and statutory responsibilities of the Montgomery and Prince George's historic preservation commissions is contained in Appendix C. The comparison shows that:

- Both HPCs have nine members, but Prince George's membership requirements are more restrictive and detailed;
- Both HPCs are assigned a range of regulatory, advisory, and administrative responsibilities, to include serving as a clearinghouse for information on historic preservation and to generally undertake activities to advance the goals of historic preservation;

* For more about these State laws, see page 4.

- Both HPCs have authority to decide whether an HAWP is issued or denied; in both counties, the department that actually issues the HAWP is the department that issues building permits; by law, HAWP applications in Prince George's are filed with the Department of Licenses and Permits, and in Montgomery HAWP applications are filed with the Department of Environmental Protection;*
- The appeal of an HAWP decision is to the Board of Appeals in Montgomery County and to the Circuit Court in Prince George's;
- In Montgomery County, the HPC's role with respect to the designation of historic sites on the Master Plan is purely advisory; in contrast, in the Prince George's HPC has authority to designate properties on the Master Plan, with their decision being appealable to the Council.
- In Montgomery County, the Planning Commission is responsible for maintaining the Atlas, whereas in Prince George's County, the HPC is responsible for maintaining the County's inventory of historic resources.
- In both counties, legal support for the HPC is provided by the Office of the County Attorney; in Montgomery County, administrative and technical support for the HPC is provided by the County Government, specifically by the Department of Housing and Community Development; in Prince George's administrative and technical support for the HPC is provided by the Planning Department of M-NCPPC.

B. Comparison of HPCs in Other Jurisdictions

During May and June 1990, OLO conducted telephone interviews with historic preservation staff in 12 jurisdictions. The data obtained is summarized in Table 26, beginning on page 61a.

In the jurisdictions surveyed, the number of historic sites protected by local ordinance ranges from 12 (Cobb County) to over 20,000 (D.C.). The average number of properties protected in the communities surveyed is approximately 2,500, which is comparatively less than the 4,450 properties protected in Montgomery County.**

* In practice, HAWP applications in Prince George's are filed with the M-NCPPC staff assigned to support the HPC, while in Montgomery, HAWP applications are submitted to DEP.

** The figure of 4,450 properties protected in Montgomery County includes properties designated on the Master Plan plus those listed on the Atlas.

Table 26

A Survey of the Structure and Staffing of Historic Preservation Programs - Part I

Jurisdiction	Historic Preservation Entity	Date Established	Number of Members on Board/Commission	Required Fields of Expertise on Board/Commission	Estimated # of Sites Protected ¹
Anne Arundel County, MD	Office of Planning & Zoning	1985	N/A	N/A	1,960
Cobb County, GA	Historic Preservation Comm.	1985	5	None	12
District of Columbia	Historic Preservation Review Board	1983	11	1 architect 1 architectural historian 1 archeologist 1 historian	20,500
Frederick City, MD	Historic District Commission	1954	7	1 architect	1,250
Galveston, TX	Galveston Historic Review Board (residential) Strand/Mechanic Historic Review Board (commercial)	Residential 1976 Commercial 1988	Residential - 7 Commercial - 7	Residential: 1 architect Commercial: 1 architect	1,000
Hagerstown, MD	Preservation Design District Commission	1987	7 voting 2 non-voting	At least 2 members with expertise in either architecture, history, architectural history, or archeology.	450
Howard County, MD	Historic District Commission	1972	7	None	150
Kansas City, MO	Landmarks Commission	1977	9	1 architect 1 attorney 1 realtor 1 mortgage banker art or architectural historian	1,000
Liberty, MO	Historic District Review Commission	1986	7	1 realtor 1 historian 1 attorney 1 architect	300
Montgomery County, MD	Historic Preservation Commission	1979	9	1 historian 1 architect 1 preservationist 1 urban designer	4,450
Rockville, MD	Historic District Commission	1983	5	None	150
San Antonio, TX	Board of Review for Historic Districts and Landmarks	1967	11	6 in architecture, history, architectural history, or land-use planning. 5 in community development or real estate, banking or accounting, law, consumer advocacy, neighborhood conservation or preservation.	3,000
Seattle, WA	Landmarks Preservation Board	1973	11	2 architects 2 historians 1 representative from the City Planning Commission 1 realtor 1 banker/financier	850

¹ Includes both individual sites, and sites located within historic districts, that receive any form of protection under the jurisdiction's historic preservation law (e.g., in Montgomery County, this includes sites and districts protected by the Master Plan for Historic Preservation or the Locational Atlas and Index of Historic Sites).

Source: Phone interviews with historical preservation administrators in the jurisdictions surveyed, conducted by OLO during May/June, 1990.

(continued)

A Survey of the Structure and Staffing of Historic Preservation Programs - Part II

Jurisdiction	Decision Authority on HAWPs	Role in Historic Site Designation	Appeals Body for HAWPs	Administrative/Technical Support for Preservation Entity		Legal Support for Preservation Entity
				Bureaucratic Location	Staff	
Anne Arundel County, MD	Yes ¹	None. Uses State historical designation process.	Circuit Court	Office of Planning & Zoning	1 Historic Sites Planner 1 County Archeologist 1 Asst. Co. Archeologist 1 GIS Technician (P/T)	County Attorney
Cobb County, GA	Yes	Advisory to County Commission.	Board of Commissioners	Planning and Zoning Dept.	1 Historic Preservation Planner	County Attorney
District of Columbia	No ²	Final designation authority.	D.C. Court of Appeals	Department of Consumer and Regulatory Affairs	1 Division Chief 1 Architect 1 Archeologist 4 Architectural Historians 1 Grants Manager 2 Grants Staff 2 Support Staff	Corporation Attorney
Frederick City, MD	Yes	Advisory to Planning Commission and City Council.	Circuit Court	Planning Department	1 Staff Consultant (P/T) 1 Secretary (P/T)	City Attorney
Galveston, TX	Yes	Advisory to Planning Commission and City Council.	Board of Adjustments	Planning Department	1 Senior Planner (P/T) 1 Assistant Planners (P/T) 2 Enforcement Ofcs. (P/T) 2 Sec. Admins. (P/T)	City Attorney
Hagerstown, MD	Yes	Advisory to Planning Commission and City Council.	Circuit Court	Planning Department	1 Senior Planner (P/T)	City Attorney
Howard County, MD	Yes	Advisory to Zoning Board and Planning Board.	District Court	Planning Department	1 Historic Preservation Planner 1 Secretary	County Attorney
Kansas City, MO.	Yes	Advisory to Planning Commission and City Council.	None specified	City Development Department	1 Administrator 1 Secretary 1 Intern	City Attorney
Liberty, MO	Yes	Advisory to Planning Board and City Council.	Appeals Board	Department of Community Development	1 Community Development Coordinator (P/T)	City Attorney
Montgomery County, MD	Yes	Advisory to Planning Board and County Council.	Board of Appeals	Department of Housing and Community Development	1 Program Assistant II 1 Principal Admin. Aide ³	County Attorney
Rockville, MD	Yes	Advisory to City Council.	Circuit Court	Planning Department	1 Planner I (P/T)	City Attorney
San Antonio, TX	Yes	Advisory to Zoning Commission and City Council.	City Council	Department of Building Inspections	1 Historic Preservation Officer 1 Assistant to the H.P.O. 1 Secretary	City Attorney
Seattle, WA	Yes	Final Designation Authority.	Hearing Examiner	Department of Community Development	5 Urban Conservation Planners	City Attorney

¹ In Anne Arundel County, Office of Planning and Zoning staff evaluate building permit applications and proposed subdivisions affecting historic and archeological resources as part of the permit review process.

² The D.C. Historic Preservation Review Board has the authority to deny "certificates of appropriateness", i.e., HAWPs, but positive recommendations must be forwarded to the Mayor's Agent for approval.

³ A recent classification study of these positions, conducted by the Montgomery County Office of Personnel, has recommended upgrading both positions, see page of this OLO report.

Source: Phone interviews with historic preservation administrators in the jurisdiction surveyed, conducted by OLO during May/June, 1990.

1. Structure and Composition. Of the 12 jurisdictions surveyed, all but one have at least one board or commission composed of citizen members to review sites for historic designation, and to authorize the issuance of permits for work on historic sites. One jurisdiction (Galveston, Texas) has two review boards, one for residential historic properties and one for commercial historic properties. In Anne Arundel County, where there is no preservation commission, building permits affecting historic or archaeological resources are handled at the staff level as part of the regular building permit process.

A majority of the jurisdictions surveyed established their historic preservation board or commission within the past ten years. Four jurisdictions, similar to Montgomery County, created a historic preservation commission during the 1970's.

The size of the historic preservation boards/commissions in the jurisdictions surveyed vary from five members (Cobb County) up to 11 members (D.C., San Antonio, Seattle). The average of seven members is somewhat smaller than the nine-member HPC in Montgomery County.

Similar to Montgomery County, a majority of jurisdictions surveyed require certain fields of expertise to be represented on the board/commission; four of the twelve jurisdictions have no specific requirements for expertise. The most common requirement is for expertise in architecture. Other expertise frequently required include citizens with special training or knowledge in: archaeology, architectural history, history, and urban design. A number of the jurisdictions surveyed (Kansas City, Liberty, San Antonio, Seattle) require that the historic preservation board/commission include a representative from a business-related field.

2. Statutory Authority and Staffing. All of the jurisdictions surveyed that have an historic preservation commission have granted decision-making authority to the commission on permits for alteration/improvement to an historic site. In the District of Columbia, the Historic Preservation Review Board has final authority to deny such permit requests, but approval must be forwarded to the Mayor's Agent.

Eleven of the twelve jurisdictions surveyed have a process for appealing decisions on historic area work permits. In six jurisdictions, appeals go directly to the courts. In three jurisdiction, appeals go to a local administrative appeal board (similar to the County's Board of Appeals) or a hearing examiner. In the other two jurisdictions, the appeal is to the locally elected legislative body.

Nine of the historic preservation commissions surveyed are similar to the County's HPC in that their role with respect to designating historic sites and districts is purely advisory. In the District of Columbia and Seattle, however, the historic preservation commission has final designation authority. Anne Arundel County relies upon the Maryland Historical Trust's designation process.

In all of the jurisdictions surveyed, legal support for the historic preservation function is provided by the city or county attorney. The location of staff providing administrative and technical support to the historic preservation commission does, however, vary. In seven jurisdictions, staff support for historic preservation is provided by the local planning department. Three jurisdictions (Kansas City, Liberty, Seattle), similar to Montgomery County, provide support through the local government's department of community development. In San Antonio, staff support is provided by the Department of Building Inspections, and in D.C., staff support is provided by the Department of Consumer and Regulatory Affairs.

The average number of staff assigned to provide administrative and technical support to a preservation board/commission is three full-time employees. By far, the jurisdiction that allocates the largest number of staff to support its historic preservation review board is the District of Columbia, with eight professionals and four grant and support staff. In five jurisdictions, staff is only allocated on part-time basis, and the smallest allocation of staff is one part-time planner. (Hagerstown and Rockville.)

In seven of the jurisdictions surveyed, there is at least one planner assigned to provide professional support to the historic preservation commission. Three jurisdictions instead assign an administrator or coordinator. Only one jurisdiction (Galveston) has enforcement officers assigned to the historic preservation function.

VI. CONCLUSIONS

A. General

The basic structure of the HPC and range of responsibilities assigned by law to the HPC are much the same today as they were when the HPC was established in 1979. The law assigns HPC with an unusually broad range of advisory, regulatory, and administrative responsibilities.

OLO's evaluation of the structure, staffing, workload, and general conduct of the HPC supports the following general observations:

- The operation of the HPC during the past decade has been affected greatly by an increase in the volume and complexity of applications for Historic Area Work Permits (HAWPs); and the continuation of a significant number of properties on the Atlas not yet evaluated for Master Plan designation;
- HPC members take their role very seriously, and volunteer many hours to perform the duties assigned by law to the HPC;

- Although County resources dedicated to the work of the HPC and to historic preservation in general have increased during the past decade, the current staffing structure does not enable the HPC to effectively meet all of its statutory responsibilities; and
- The public's perception of how HPC performs its adjudicatory role varies considerably; while many regard the HPC as a hard-working, dedicated, and knowledgeable Commission, these are others who have concerns about the HAWP application process and the manner in which the HPC considers those applications.

The remaining sections of this chapter summarize OEO's major conclusions, which are grouped under headings that generally parallel the organization of this report.

B. The Structure and Composition of the HPC

1. Compared to other adjudicatory boards and commissions in the County, the nine-member HPC is relatively large. Only two other adjudicatory boards appointed by the County are composed of an equal or greater number of members: the 15-member Human Relations Commission (HRC), and the nine-member Commission on Landlord-Tenant Affairs.

2. In accordance with Chapter 24A, the HPC makes all decisions sitting as a commission of the whole. The HPC has, however, successfully used committees (composed of from one to five HPC members) to perform discrete tasks and make recommendations for action to the full Commission. In contrast to the HPC, several other County-appointed commissions, including HRC and the Commission on Landlord-Tenant Affairs, are authorized by law to conduct much of their business (to include final decision-making) in panels composed of three to five members.

3. HPC members are reimbursed for actual expenses incurred (e.g., mileage, parking, baby sitting), but not compensated. The provision in Chapter 24A that specifies HPC members shall serve without compensation is inconsistent with a provision contained in County Code Chapter 2, which requires members of all adjudicatory boards and commissions to be compensated. The County's practice of compensating only selected adjudicatory boards will be consistent with County law if pending amendments (Bill 46-90, introduced June 5, 1990) are enacted.

4. During the past ten years, individuals with impressive backgrounds and broad experience have been appointed to serve on the HPC. The HPC has consistently included members with special training or knowledge in the fields of history, architecture, and preservation; while HPC members have represented the County geographically, there have been few racial minorities appointed to serve on the HPC. (It should be noted that the current statutory requirements for expertise on the HPC are open to interpretation.)

5. Interviews with members of the public indicate that the HPC is perceived by many to be composed of preservation advocates. While not necessarily inconsistent with HPC's responsibilities, which include undertaking activities to advance the goals of preservation in the County, the public's perception of HPC members as preservation advocates may impair HPC's ability to be perceived as an objective, quasi-judicial body.

C. HPC's Written Procedures and Recordkeeping

1. Minutes of HPC's meetings have been well kept and serve as the best record of HPC's decisions during the past ten years. Substantial progress has been made during the past year to improve other HPC records, which were not consistently organized prior to 1989.

2. Although the record evidences HPC devoting significant attention to establishing written procedures for the conduct of Commission business, many of those who interact with the HPC are unaware of HPC's written rules and policies. This is likely because the various resolutions constituting HPC's adopted procedures were never compiled into one document and made readily available to members of the public, and because the HPC has never formally adopted County-wide design standards and guidelines governing decisions on HAWPs.

3. Information about HPC's meeting procedures will become more readily available to the public when the HPC (in accordance with a requirement added to Chapter 24A in September 1989) promulgates method (2) executive regulations that outline Commission procedures. These regulations are expected to be transmitted to the Council for final action later this year. In addition, the HPC has expressed its intent to develop and adopt County-wide design standards and guidelines for HAWPs.

4. The role of the Local Advisory Panels (LAPs) appointed by the HPC has changed at various times during the past ten years. At present, the role of the LAPs is not clearly defined by the HPC, and there is disagreement among HPC and LAP members as to what the role of the LAPs should be. The HPC is in the process of developing written executive regulations that clarify the role of the LAPs.

5. HPC agendas have generally been set by the HPC Chair, with assistance from DHCD staff assigned to support the Commission. For a short period of time during 1989, HPC used a consent calendar for selected HAWPs. This consent calendar approach was discontinued after the County Attorney raised concerns that approving HAWPs on a consent calendar did not allow appropriately for the opening and closing of each case record.

D. HPC's Workload in General

1. HPC's meetings have increased both in number and length during the past ten years, largely to accommodate an increase in the volume and complexity of HAWP applications. In contrast to the early 1980's when a majority of HPC's time was spent on evaluating historic resources, the HPC today spends an estimated 75-80 percent of its time on HAWPs.

2. The number of HAWP applications is likely to continue to increase in future years, especially if proposed historic districts currently under review are designated on the Master Plan, e.g., Takoma Park, Garrett Park, Chevy Chase.

3. As the amount of time required for HAWPs has increased, the amount of time available for other HPC business has declined. The record indicates that, comparatively less time is spent today on HPC's advisory and administrative responsibilities than was spent during the early 1980's.

4. The only aspect of HPC's workload that has declined in recent years is HPC's review of building permits submitted for work on Atlas sites. Based upon the advice of the County Attorney, HPC discontinued this practice in August 1989. Since that time, IEP staff, in consultation with DHCD staff, determine whether such applications constitute proposals to "substantially alter" an historic resource.

E. Rendering Advice on Master Plan Designations and Subdivision Applications

1. Between 1980 and June 30, 1990, the HPC evaluated more than 500 historic resources listed on the Atlas. The number of resources evaluated annually ranged considerably (between 15 and 90 sites), depending upon factors such as the availability of funds for research, the level of staff support for the HPC, the Planning Board's schedule, and the time available on the HPC's agenda.

2. Research on historic resources was originally provided by the Office of the Park Historian in M-NCPPC. Since the mid-1980's, most research has been conducted by consultants on contract to DHCD.

3. Approximately 90 percent of the time, the recommendations of the Planning Board and County Executive, and final decision of the Council on whether to designate an historic site or district on the Master Plan has correlated positively with the recommendation of the HPC. (While current law is clear that Council and Executive action is required to designate Master Plan sites, the law is unclear as to whether Council and Executive action is also required to remove historic resources from the Atlas.)

4. The process of designating historic sites on the Master Plan is lengthy. However, the time it takes to process an amendment to the Master Plan for Historic Preservation is not unlike the time it takes to process any amendment to the General Plan.

5. The time lag between HPC's evaluation of an historic resource and the processing of a formal master plan amendment has, in some instances, required M-NCPPC staff to update the research conducted on a site. This has happened most often when interim alterations have been made to the historic resource that render HPC's evaluation outdated.

6. The almost 500 Atlas sites that remain to be evaluated by the Council for final designation is a serious problem. From the perspective of property owners, being listed on the Atlas for an indefinite period of time can be seen as placing an unreasonable restriction on the use of private property. From the preservationists' vantage point, indefinite listings on the Atlas increases the possibility that valuable historic resources may be altered and/or deteriorate before a decision is reached on designation.

7. The criteria listed in Chapter 14A for determining whether an historic resource should be designated on the Master Plan are similar to the criteria adopted by most other jurisdictions around the country. However, some members of the community perceive the County's criteria to be overly broad and subjective.

8. HPC's review of subdivision applications remained relatively steady during the past decade. The practice of delegating the screening of subdivision applications to M-NCPPC staff, which began several years ago, has helped to focus HPC's time on those subdivision cases that have the greatest potential of affecting historic sites and resources.

F Acting Upon Historic Area Work Permits (HAWPs)

1. To date, the HPC has denied only a handful of HAWP applications; approximately half of all HAWPs are approved as submitted and another 40 percent are approved with conditions. While the HPC reaches decisions on the majority of HAWPs within one meeting, during the past several years, an increasing number of HAWPs have required more than one HPC meeting to be resolved.

2. Since the HPC was established, only three HAWP decisions have been appealed. In two cases, the Circuit Court upheld the HPC's decision to deny the HAWP; the third appeal is pending before the Board of Appeals.

3. Problems posed by the current procedures governing HAWPs include: DEP's data base of premise addresses does not accurately record all historic sites; the DEP permit staff charged with the intake of HAWP applications has neither the time nor the training to provide technical assistance to HAWP applicants; conditions imposed on the issuance of an HAWP are not incorporated into the building plans approved as part of the building permit; and there is no routine enforcement of HAWPs. In addition, there are no written standards and guidelines governing HPC's decision-making on HAWPs.

4. The processing deadlines for HAWPs contained in current law also pose some problems. Besides being open to interpretation, HPC members have found it difficult to reach decisions on complex HAWPs within 15 days from the close of the record; in addition, the current requirements limit the HPC Chair's ability to better manage HPC's agendas. The time period for decision-making on HAWPs is shorter than the time allowed for other land-use regulatory decisions.

5. The legal requirement for the DEP Director to forward all HAWPs to the Planning Board for its review and comments is not currently followed.

6. In the event that the issuance of an HAWP is appealed, current law does not provide a mechanism for DEP to withhold the HAWP, or the applicant's building permit, pending the outcome of the appeal. This means that an applicant could proceed at his/her own risk, and before the appeal process is completed, take action that irreparably harms an historic site.

7. Public perceptions of how the HPC handles HAWPs vary considerably. While many regard the HPC as hardworking, dedicated, and knowledgeable, others have concerns about the HAWP application process and the manner in which the HPC considers those applications. Specific problems identified by applicants included: confusion about the role of the Local Advisory Panels; a perception that the HPC bases its decision on personal standards and not on a known set of standards and guidelines; and a perception that certain HPC members were ill-prepared, inattentive, or rude to applicants.

8. The penalties available for imposing upon violators of Chapter 24A are limited to those available for a Class A violation, as set forth in Section 1-19 of the County Code.

G. Demolition by Neglect

1. No inspections were conducted pursuant to the demolition by neglect provisions of Chapter 24A until a memorandum of understanding was negotiated in 1985 to delegate authority for enforcement from DEP to DHCD's Division of Code Enforcement. Since that time, approximately half of the cases for which enforcement action was begun have been closed, while the remaining cases are still in the process of being resolved.

2. The law is unclear as to whether appeals of demolition by neglect decisions are, similar to HAWPs, appealable to the Board of Appeals. No demolition by neglect citation has ever been appealed to the HPC, providing no evidence of how this appeal procedure works in practice.

H. Public Education and Administration of Historic Preservation Programs

1. Although not unique, it is unusual for the law to assign an adjudicatory commission, such as the HPC, additional responsibilities for public education and program administration.

2. The HPC has undertaken or sponsored a number of public education activities during the past ten years, including: publishing a newsletter; sponsoring booths at County events; and distributing grant funds for education projects. However, DHCD staff and HPC members agree that much more could and should be done to educate the public about historic preservation in the County.

3. Funds for the Historic Preservation Grant Fund (totaling between \$20,000-\$27,500 each year) are allocated in a non-departmental account, and awarded by the HPC to support historic preservation projects; the average grant awarded since FY87 has been \$1,617 and projects funded have included publications, video productions, oral or written history projects, and education programs.

4. The HPC has performed its statutory role to review all historic preservation tax credit applications; however, the program is not well publicized and has been used to only a limited extent.

5. Both the Historic Preservation Loan Fund (HPLF) and the historic preservation easement program, established by law in 1984 and 1988 respectively, can best be described as "inactive". Although regulations for the easement program were drafted, final regulations have never been issued and the program has never been used. Executive regulations for the HPLF were issued in 1985 and two loans for preservation projects were issued in FY86; however, there has been no activity from the HPLF since that time.

I Staffing Support

1. County law requires the Executive branch of the County Government to provide staff support to the HPC. The law identifies the County Attorney as the HPC's legal counsel, but does not identify which office or department shall be assigned to provide other professional or administrative staff support to the HPC. In addition, the law does not clarify which of the many responsibilities of the HPC are appropriately performed by staff and which are to be performed directly by HPC members.

2. County resources dedicated to support the work of the HPC as well as to support historic preservation in general have increased during the past ten years. Since 1981, the lead responsibility for providing professional and administrative staff support to the HPC has been delegated to DHCD, and since 1983, DHCD has hired staff dedicated to performing that function. At present, two workyears (one Historic Preservation Specialist and one Office Services Manager) within the Division of Community Planning and Development (CPD) are assigned on a full-time basis to provide staff support to the HPC. Staff from other County departments and M-NCPPC also support the work of the HPC and/or related historic preservation activities.

3. During the past two years, there has been a notable increase in the amount of time spent by the Office of the County Attorney on HPC business. Given the increase in the complexity of HAWP applications, the HPC will likely continue to need additional legal assistance from the Office of the County Attorney.

4. Positive aspects of locating administrative and technical staff support for the HPC within the Division of Community Planning and Development are that: additional staff are available to lend their expertise and support to the HPC; and the location also offers ready opportunities to coordinate historic preservation with other DHCD programs. However, it must also be recognized that locating support for the HPC within a division that has multiple functions provides little identity for historic preservation activities; and results in historic preservation staff being located (bureaucratically) several levels down from the Department Director.

5. Due primarily to a lack of staff time, under the current staffing arrangement a number of the HPC's functions are not being adequately performed. For example: the historic preservation tax credit, easement, and loan programs are not effectively publicized or promoted; inadequate attention has been given to the HPC's public education role; there is no routine enforcement of Chapter 24A; the HPC's activities are not well coordinated with other County functions that impact the preservation of the County's historic resources; and few new initiatives to encourage historic preservation have been developed.

6. Compounding the staffing level problem is that, since 1987, the relationship between HPC members and DHCD management has, at times, been strained. It appears that friction between members of the HPC and County officials resulted initially from several substantive differences of opinion about the designation and future development of specific historic resources in the County. The friction has continued in part because of an apparent lack of clarity and mutual understanding about the appropriate role of staff assigned to HPC, and disagreements about the role of the HPC in general.

7. It is important to note that during the course of this evaluation, the working relationship between DHCD officials and HPC members improved. There is evidence of resolution to some past disagreements, and an increased willingness from all parties to work together.

J. Staffing Alternatives

1. As outlined earlier in this report, there are pros and cons of continuing to assign the DHCD with responsibility for providing staff support to the HPC, and pros and cons for considering an alternative staffing arrangement.

2. While there are viable staffing alternatives to be considered, OLO concludes that at the present time, the arguments for retaining DHCD as the department charged with staffing the HPC outweigh the arguments for change. If the package of recommendations offered in the following chapter are adopted (e.g., to increase the level of staff assigned to the HPC; to enhance the identity of the historic preservation function within DHCD; and to improve certain procedures), DHCD should be in a position to more effectively provide staff support to the HPC.

K. Comparative Information

1. A comparison of Montgomery County's HPC to Prince George's HPC indicates that although the two are similar in terms of size and authority over HAWPs, there are some notable differences: Prince George's HPC membership requirements are more restrictive; Prince George's HPC has authority to designate historic sites on the Master Plan; and staff support for Prince George's HPC is provided by M-NCPPC Planning Department staff.

2. Compared to historic preservation boards and commissions surveyed in 12 other jurisdictions, the County's HPC is larger than average. The County's requirements for expertise on the HPC are generally similar to requirements in other places, except that the County currently does not require representation from a business-related field.

3. Eleven of the 12 jurisdictions surveyed, like the County, delegate the authority to act upon HAWPs to their historic preservation board or commission. The authority to designate historic sites varies as does the process for appealing a preservation commission decision.

4. Staff support for other HPCs in the jurisdictions surveyed most often comes from the planning department or the community development department. Legal support is consistently provided by the city or county attorney.

DRAFT

VII. RECOMMENDATIONS

Changes are required in order for the Historic Preservation Commission (HPC) to perform its statutory functions efficiently and effectively. Specifically, changes are needed: to enable the HPC to manage an increasing workload; to improve the processing of Historic Area Work Permits; to complete the evaluation of historic resources listed on the Atlas; and to better educate the public about historic preservation.

This chapter offers a package of recommendations for changes to the laws and regulations governing the HPC, the staff resources supporting the HPC, and other aspects of the HPC's operations. The shared goal of these changes, which will require a combination of legislative, administrative, and appropriation action to implement, is an Historic Preservation Commission that performs its statutory responsibilities effectively and efficiently, and in so doing:

- Maintains ongoing and appropriate lines of communication with the Council, the County Executive, Executive branch staff, and the Planning Board and M-NCHPC staff;
- Is respected by members of the community, and takes action to ensure that the Commission's procedures, recommendations, and decisions are well understood;
- Consistently receives sound legal and other professional staff advice upon which to base recommendations and decisions;
- Consistently meets legally mandated requirements for conducting business; and
- Makes recommendations and decisions in a timely manner, with opportunities for input from members of the community who may be affected by the HPC's action.

A final goal of these OLO recommendations is to ensure that HPC members' time is used efficiently, and for the work of the HPC to become more fully coordinated with other activities in the County that affect the preservation of historic resources.

Summary of Recommendations

The following list summarizes OLO's recommendations, which are grouped under headings that generally parallel the organization of this report; the remainder of this chapter then explains each recommendation in greater detail. Following each recommendation in parentheses is some combination of an "L", "A", and/or "\$". "L" indicates that the recommendation requires a change in the law; "A" indicates that the recommendation requires an administrative change; and "\$" indicates that the recommendation carries a notable fiscal impact.

Commission Structure and Procedures

1. Amend the law to require that the HPC also include representation from the fields of business, real estate, and law. (L)
2. Authorize the HPC to establish panels composed of three HPC members who are delegated decision-making authority. (L,A)
3. Authorize the HPC to send cases to the Hearing Examiner in the Office of Zoning and Administrative Hearings for report and recommendation. (L,A)
4. Clarify in regulation an expanded role for the HPC chair. (A)
5. Amend the law to enable HPC members to be compensated. (L,\$)
6. Finalize executive regulations that outline HPC's routine procedures, and the role of the Local Advisory Panels; and develop executive regulations that contain standards for HPC's review of Historic Area Work Permits. (A)
7. Amend the law to clarify that all HPC decisions are appealable to the Board of Appeals; and to clarify the intent of providing HPC with authority "to delineate the extent of appurtenances and environmental setting associated with an historic site or resource." (L)

Evaluation of Atlas Sites

8. Adopt a schedule for the review of all remaining Atlas sites, and establish a sunset date for the Atlas. At the same time, establish a process for nominating sites in the future to be considered for designation on the Master Plan. (L,A)
9. Delegate the responsibility for researching remaining Atlas sites to the Planning Department of M-NCPPC. (A,\$)
10. Clarify whether Council action is required to remove properties from the Atlas. (L)

Historic Area Work Permits

11. Where appropriate, include standards for future regulatory action in amendments to the Master Plan for Historic Preservation, and provide by law that the HPC must follow such standards in acting upon HAWPs. (L,A)
12. Authorize the HPC to delegate the approval of routine HAWP applications to staff. (L,A)
13. Simplify process for HPC action on relatively straightforward and non-controversial HAWP applications. (A)
14. Authorize the Director of DEP to delegate to DHCD: the intake of HAWP applications; and the inspections of HAWPs. (L,A)
15. Forward copies of selected HAWP applications to the M-ICPPF Planning Department staff for review and comment. (A)
16. Amend the law to require that an approved HAWP is a prerequisite for receiving a building permit for historic sites designated on the Master Plan. (L,A)
17. Amend the law to clarify the allowable time period for HPC action on HAWP applications, and consider extending the deadline for HPC action. (L)
18. Amend the law to require that all HPC decisions on HAWPs be in writing. (L)
19. Authorize the Board of Appeals to stay the issuance of an HAWP pending the outcome of an appeal. (L)
20. Amend Chapter 24A to provide that in addition to levying fines, the penalty imposed by the County for violations of the Chapter can include orders to restore or repair damage to an historic site. (L)

Public Education and Program Administration

21. Develop better techniques for informing the public about the status of properties designated on the Master Plan for Historic Preservation. (A)
22. Develop materials and programs to better educate the public about the County's historic preservation programs, to include improved publicity about the HPC, the HAWP application process, and financial incentives for historic preservation. (A)
23. Improve the administration of existing historic preservation programs. (A)

Staffing, Training, and Communication

24. Establish a separate Historic Preservation Office within DHCD, and authorize an additional senior staff position to manage the County's historic preservation efforts. (A,\$)
25. Continue to provide HPC with an enhanced level of legal assistance. (A,\$)
26. Develop an annual training seminar for all commissioners that serve on the County's adjudicatory boards and commissions, and develop ongoing training for County staff who have primary responsibility for providing support to a County-appointed board, committee, or commission. (A,\$)
27. Schedule separate annual meetings between the HPC and: a County Council committee, the County Executive, and the Planning Board. (A)

Follow-up to Evaluation

28. Provide for a formal follow-up to this evaluation to take place during FY94.

The remainder of this chapter explains OLO's recommendations in greater detail.

COMMISSION STRUCTURE AND PROCEDURES

Recommendation 1: Amend the law to require that the HPC also include representation from the fields of business, real estate, and law. (L)

Current law (Section 24A-4) requires that the four fields of history, architecture, preservation, and urban design shall be represented on the HPC by "a minimum of one member qualified by special interest, knowledge, or training." In order to broaden the expertise represented on the HPC, the law should be amended to require that, to the extent possible, the fields of business, real estate, and law are also represented on the Commission.

Numerous jurisdictions around the County require that membership on an historic preservation commission or board include persons with a business, real estate, and/or legal background; such requirements have been adopted in Prince George's County, Kansas City, San Antonio, and Seattle. In addition to providing additional expertise, expanding the membership requirements to include expertise from a business-related field enhances the ability of an historic preservation commission to be perceived by the public as a balanced, adjudicatory body.

Section 24A-4 should also be amended to clarify whether the law allows an individual possessing expertise in more than one field to fulfill more than one requirement; e.g., whether an architect who also has a graduate degree in preservation can be appointed to fulfill the requirement for an expert in architecture as well as the requirement for an expert in preservation.

Recommendation 2: Authorize the HPC to establish panels composed of three HPC members who are delegated decision-making authority. (L,A)

To enable the HPC to handle an increasing workload, the HPC should be authorized by law to establish three-member panels with decision-making authority. This amendment would provide the HPC with the same authority extended to the Landlord-Tenant Commission in 1979: at that time, the Landlord-Tenant Commission, similar to the HPC today, faced an increasing workload and lengthy meetings.

The law should require HPC to promulgate method (2) executive regulations that detail how the panels would be appointed and conduct business.

Recommendation 3: Authorize the HPC to send cases to the Hearing Examiner in the Office of Zoning and Administrative Hearings for report and recommendation. (L,A)

To provide the HPC with another tool for handling an increasing workload, the law should be amended to authorize the HPC to refer HAWP applications and demolition by neglect appeals to the Hearing Examiner in the Office of Zoning and Administrative Hearings (OZAH) for report and recommendation. Final decision authority would remain with the HPC.

This change would provide the HPC with an option available to the Board of Appeals and the Human Relations Commission. The law should require the HPC to promulgate method (2) executive regulations that detail the procedures for referring cases to OZAH, e.g., upon a majority vote of the HPC, or upon recommendation of the Chair, with approval by the full Commission.*

Allowing the HPC to refer cases to OZAH would make the Hearing Examiner available to the Historic Preservation Commission as an "evidentiary traffic cop." The Hearing Examiner would conduct the public hearing, compile written findings of fact, and render a recommendation based upon the same laws

* The regulations governing referral of HPC cases to OZAH should also include a provision governing appeals. Specifically, if the Hearing Examiner hears an HAWP that is later appealed, then the BOA will have to hear the appeal directly and cannot refer the case to the Hearing Examiner.

governing HPC's decisions. In addition to providing the HPC with another way to manage an increasing volume of cases, the expertise of the Hearing Examiner is likely to prove increasingly useful to the HPC as the Commission confronts HAWP applications that raise complex legal land use issues.

**Recommendation 4: Clarify in regulation an expanded role for the HPC Chair.
(A)**

The HPC Chair should be expected to assume responsibility for: providing leadership to the HPC, moving the work of the HPC along expeditiously, and working closely with DHCD staff assigned to support the HPC. The Chair should also assume the lead in representing the HPC in public, and in resolving any conflicts that arise between the HPC and the County Government.

To reenforce an expanded role for the HPC Chair, executive regulations governing HPC's procedures should outline the authority and responsibility of the Chair to:

- Preside at all meetings of the HPC;
- Assign tasks to HPC members;
- Provide direction for managing the HPC's work; and
- Serve as the HPC's principal spokesperson and liaison to the County Government and other agencies.

**Recommendation 5: Amend the law to enable HPC members to be compensated.
(L,\$)**

The law should be amended to allow HPC members to be compensated. HPC members currently spend 25-30 hours per month on HPC business, a commitment that equals or exceeds the time spent by members of other adjudicatory boards and commissions that currently receive compensation, e.g., Landlord-Tenant Commission, Human Relations Commission, Merit System Protection Board.

It is recommended that HPC members be compensated at a rate of \$35 per meeting attended (comparable to Landlord-Tenant Commission); and that the HPC Chair be compensated at a rate of \$5,000 per year in recognition of the additional time and effort required to serve as Chair (an estimated additional 20-25 hours per month). Setting a separate compensation rate for the Commission Chair would parallel the practice followed with other quasi-judicial boards, such as the Board of Appeals and the Merit System Protection Board.

Recommendation 6: Finalize Executive Regulations that outline HPC's routine procedures, and the role of the Local Advisory Panels; and develop executive regulations that contain design standards for HPC's review of Historic Area Work Permits. (A)

Method (2) executive regulations that outline HPC's procedures have already been drafted by the HPC and reviewed by the Office of the County Attorney. A second set of executive regulations that outline the appointment and role of the Local Advisory Panels were originally drafted by the HPC in late 1989, and are in the process of being reviewed and rewritten based upon input from members of the Local Advisory Panels. These two sets of regulations should be finalized and promulgated through the standard procedures contained in Section 2A-15 of the Code.

With assistance from staff and/or a consultant, developing written design standards and guidelines for HAWPs should be a priority of the HPC during the coming year. In accordance with Section 24A-4(b), once drafted by the HPC, it would be appropriate for these standards and guidelines to also be formally adopted as method (2) executive regulations.

All the HPC's executive regulations should be compiled into a publication that is readily available to the public. This would address the perception voiced by some HAWP applicants that the HPC operates without written standards and procedures.

Recommendation 7: Amend the law: to clarify that all HPC decisions, including demolition by neglect appeals, are appealable to the Board of Appeals; and to clarify the intent of providing HPC with authority "to delineate the extent of appurtenances and environmental setting associated with an historic site or resource". (L)

The HPC is delegated decision authority in Chapter 24A to act upon HAWP applications, and demolition by neglect appeals. The law currently specifies that an HAWP decision may be appealed to the Board of Appeals, but does not specify where appeals of the HPC decisions on demolition by neglect appeals are forwarded. The law should be amended to explicitly state that all HPC decisions, including demolition by neglect appeals, are appealable to the Board of Appeals.

A second technical change to Chapter 24A involves Section 24A-5(k), which gives the HPC authority "to delineate the extent of appurtenances and environmental setting associated with an historic site or resource." It is unclear as to when this authority applies, i.e., is it with respect to sites recommended for designation on the Master Plan and/or to subdivision applications that affect an historic resource. The law should be amended to clarify the HPC's role in delineation.

EVALUATION OF LOCATIONAL ATLAS SITES

Recommendation 8: Adopt a schedule for the review of all remaining Atlas sites, and establish by law a sunset date for the Atlas. At the same time, establish a process for nominating sites in the future to be considered for designation on the Master Plan. (L,A)

The HPC should recommend to the Planning Board, County Executive, and County Council a schedule for the review of all remaining Atlas sites. Once the schedule has been integrated into the Planning Board's work program adopted by the Council and County Executive, Chapter 2(A) should be amended to establish an appropriate sunset date for the Locational Atlas.

Appendix D contains a draft schedule for reviewing the remaining Atlas sites during the next five years. OLO prepared this schedule, based upon the results of M-NCPPC's 1989 study of remaining Atlas sites and in consultation with the HPC, and staff from M-NCPPC's Planning Department, DHCD, the Office of Planning Policies, and Office of the County Council. The draft schedule contained in Appendix D integrates the review of Atlas sites into the Planning Board's most recently approved master plan review schedule; other sites are grouped geographically by planning area into separate master plan amendments, each containing a reasonable number of sites.

Concurrent with establishing a sunset date for the Atlas, the law should be amended to provide a process for nominating sites in the future for designation on the Master Plan. The process should provide the County with the authority to place properties temporarily in moratorium from demolition, but also place a time limit on the County Government's time to reach a final decision about Master Plan designation.

Recommendation 9: Delegate the responsibility for researching remaining Atlas sites to the Planning Department of M-NCPPC, and provide the Planning Department with additional resources to fund the research needed to complete the review of Atlas sites as scheduled. (A,\$)

In order to minimize the duplication of staff effort and approach the task of researching the remaining Atlas sites efficiently, OLO recommends that the responsibility for researching Atlas sites be delegated to the Planning Department of M-NCPPC. Once the research is completed, the research would be available to the HPC, the Planning Board, the County Executive, and the County Council.

Based upon the draft schedule for the review of Atlas sites contained in Appendix D, it is estimated that \$20,000 will be needed for each of the coming five fiscal years to fund the research of remaining Atlas sites. It is recommended that the Planning Department consider hiring one part-time researcher to accomplish this task.

The Director of DHCD and the Planning Director should enter into a written memorandum of understanding that clarifies that the research conducted by Planning Department staff will be provided to the HPC. In addition, the memorandum should establish that efforts will be made to accommodate any special requests for research made by the HPC.

Recommendation 10: Clarify whether Council action is required to remove properties from the Atlas. (L)

A master plan amendment to designate an historic resource included in the Atlas onto the Master Plan is an amendment to the General Plan, and by State law clearly requires action by the County Executive and Council. However, current law should be amended to clarify whether Executive and Council action is similarly required to remove a property from the Atlas.

HISTORIC AREA WORK PERMITS

Recommendation 11: Where appropriate, include standards for future regulatory action in amendments to the Master Plan for Historic Preservation, and provide by law that the HPC must follow such standards in acting upon HAWPs. (L,A)

When designating either individual sites or districts on the Master Plan, the Planning Board, County Executive, and County Council should, where appropriate, include standards for future regulatory review, to provide the HPC and other applicable agencies (e.g., the County Department of Transportation) with guidance regarding the intent of historic designation. These standards should serve the purpose of providing the HPC with direction in reviewing HAWP applications; it must be recognized, however, that standards are not intended to be rigid design strictures, and each HAWP application will still need to be reviewed individually.

Standards provided in the Master Plan could include, for example, articulating what features of a property's architecture or environmental setting makes the property worthy of designating and therefore worthy of protection under Chapter 24A. Another form of guidance is to categorize sites designated in a district as either primary, secondary, or non-contributing resources, and to provide specific standards of review to be applied to resources in each category.

Consideration should be given to amending Chapter 24A to reenforce the connection between Master Plan designation and HAWPs. Specifically, the law could explicitly provide that in reviewing applications for HAWPs, the HPC should adhere to guidance contained within the approved and adopted Master Plan for Historic Preservation, as amended.

Providing such a legal connection would be similar to other statutory requirements that directly link master plan recommendations to actual land use decisions, e.g., the subdivision regulations require that the Planning Board must consider the applicable master plan when determining the acceptability of a preliminary plan proposal; and certain zones such as the mixed use development zone can only be applied in areas so designated on an approved and adopted master plan.

Recommendation 12: Authorize the HPC to delegate the approval of routine HAWP applications and minor modifications to staff. (L,A)

The HPC should be authorized to delegate to staff the approval of routine HAWPs and minor modifications to HAWP applications. This would provide another tool for processing more efficiently an increasing volume of HAWP applications.

The law should require HPC to develop, in the form of method (2) executive regulations, written criteria for determining which HAWP applications can be reviewed and approved by staff without need for a public hearing and full Commission consideration. The regulations should include a procedure for keeping the HPC informed about HAWPs approved at the staff level.

A similar delegation of authority to staff to approve HAWPs has been implemented in Prince George's County since 1983. In Prince George's County, staff supporting the HPC are authorized to issue HAWPs, "for alterations to structures and environmental settings which will not significantly change the exterior features of an historic site or contributing structure within an Historic District or its environmental setting, and which will have no significant effect on its historical, architectural, cultural or archaeological value." Regulations adopted by the Prince George's HPC further define what categories of structural work can be approved by staff.

Recommendation 13: Simplify process for HPC action on relatively straightforward and uncontested HAWP applications. (A)

There are HAWP applications which are unlikely to meet the criteria for "routine" (and thereby not able to be handled at the staff level as recommended in Recommendation 12), but are nonetheless relatively straightforward and non-controversial. While the opportunity for a public hearing and full HPC discussion of these HAWPs should be afforded, the HPC Chair should conduct the HPC's meeting to allow for an expedited hearing and decision process on such HAWPs.

The Office of the County Attorney has advised the HPC that establishing a "consent calendar" for these straightforward and uncontested HAWPs violates the need for a separate record for each HAWP application. However, while taking care to establish a separate record for each HAWP application, the HPC Chair can expedite the process by efficiently opening the record, and if no comments are proffered, immediately closing the record and asking for a motion to approve.*

Recommendation 14: Authorize the Director of the Department of Environmental Protection to delegate to the Department of Housing and Community Development: the intake of HAWP applications; and the inspection of HAWPs. (L.A.)

1. The intake of HAWP applications. The Director of DEP should be authorized to delegate the responsibility for accepting HAWP applications to DHCD. By law, the statutory review time for an HAWP should begin when the application is filed with DHCD staff, who would be legally responsible for forwarding a copy of completed HAWP applications to DEP within three days after filing.

This change would enable staff members who are trained in historic preservation and familiar with the concerns of the HPC to be responsible for accepting HAWP applications from members of the public. In addition to being in a better position to determine when an HAWP application is "complete," DHCD staff assigned to support the HPC, who have the appropriate expertise, are better able to offer technical assistance to citizens before an HAWP application is formally submitted.

2. The inspection of work performed with an approved HAWP. DEP does not currently conduct any routine inspections of HAWP-related work. The Director of DEP should be authorized to delegate the responsibility for inspecting work performed with an approved HAWP to DHCD staff. DEP should inform DHCD when work has commenced on an historic site that received an HAWP; inspection(s) performed by DHCD staff would be limited to the aspects of work addressed in the HAWP, and would be in addition to the building permit inspections conducted by DEP staff.

Within DHCD, the inspections of HAWP-related work could be shared by a combination of staff assigned to the HPC, and Code Enforcement staff. Similar to transferring the intake function, the advantage to shifting the inspection function is that the individuals performing inspections will be more familiar with the issues discussed by the HPC in issuing the HAWP, and the particulars of any conditions placed by the HPC on the permit.

* In July 1990, the HPC Chair implemented an expedited handling of straightforward and uncontested HAWPs similar to this recommendation.

Recommendation 15: Forward copies of selected HAWP applications to the M-NCPPC Planning Department staff for review and comment.
(A)

The current legal requirement for the Director of DEP to forward all HAWP applications to the Planning Board for review and comment has never been implemented. Because HAWP applications sometimes raise broader questions concerning the County's planning, land use, and/or zoning policies, a procedure should be established to enable the HPC to seek advice from the M-NCPPC Planning Department staff and/or the Planning Board on selected HAWPs.

If HAWP applications are submitted to DHCD (see above Recommendation 14), then the HPC Chair, with DHCD staff assistance, should identify those incoming HAWP applications that the HPC would like the Planning Commission staff to review and comment on. Any such applications should then be forwarded to M-NCPPC's Historic Preservation Planner for comments by either the technical staff or the Planning Board. Such comments should be submitted to the HPC prior to the date of the public hearing on the application.

The process recommended would be similar to the Board of Appeals' current practice of seeking technical advice on special exception and variance cases from the M-NCPPC staff. In addition to providing the HPC with access to additional professional advice upon which to render a decision, this process will help ensure that the Planning Commission is aware of the broader planning and zoning issues that are raised by HAWP applications.

Recommendation 16: Amend the law to require that an approved HAWP is a prerequisite for receiving a building permit for historic sites designated on the Master Plan. (L,A)

The law should require that for properties designated on the Master Plan, obtaining an HAWP is a prerequisite for receipt of a building permit. In addition, DEP's permit staff should ensure that a property owner receives one consistent set of approved plans, and that such plans integrate any conditions placed on the issuance of the HAWP with any conditions placed on the issuance of the building permit.

Recommendation 17: Amend the law to clarify the allowable time period for HPC action on HAWP applications, and consider extending the deadline for HPC action. (L)

Section 24A-7(f), Action by the Commission should be rewritten to clarify how long the HPC has to take action on an HAWP application. Consideration should also be given to extending the allowable time period for HPC action.

The current limit of 15 days after the close of the record for a decision on HAWPs is a shorter period of time than that allowed for other land-use regulatory decisions. In practice, the current deadlines also limit the HPC's ability to manage its agenda efficiently.

Extending the time period for HPC decision on HAWPs to either 60 days from the time of filing, or 30 days from the close of the record would make the HPC's deadlines more closely aligned with those imposed on the Board of Appeals for special exceptions and variances, and on the Planning Board for subdivisions. Some extension to HPC's processing deadline will be especially warranted if, as recommended below, all of HPC's decisions are required to be written.

Recommendation 18: Amend the law to require that all HPC decisions on HAWPs be in writing. (L)

Under current law, the HPC is required to provide a written explanation of its HAWP decisions only in cases of denial. In order to provide a better record of HPC's decisions that can be made readily available to the public, the HPC should be required to provide a written explanation of all HAWP decisions, both approvals and denials.

Recommendation 19: Authorize the board of Appeals to stay the issuance of an HAWP pending the outcome of an appeal. (L)

In cases where an HPC decision to issue an HAWP is appealed, there is nothing in current law to prevent the HAWP from being issued by DEP while the appeal is pending. To prevent some irreversible damage from being done to an historic site (e.g., the cutting down of an historic tree), the Board of Appeals should be authorized to stay the issuance of an HAWP pending the outcome of an appeal.

Recommendation 20: Amend Chapter 24A to provide that, in addition to levying fines, the penalty imposed by the County for violations of the Chapter can include orders to restore or repair damage to an historic site. (L)

Current law classifies violations of Chapter 24A as Class A violations. In addition to levying a fine, analogous to the authority provided to the Planning Board with respect to violations of an approved site plan, the County should be authorized to require violators of Chapter 24A to take action to restore or repair damage to an historic site.

PUBLIC EDUCATION AND PROGRAM ADMINISTRATION

Recommendation 21: Develop better techniques for informing the public about the status of properties designated on the Master Plan for Historic Preservation. (A)

The County should investigate techniques used successfully in other jurisdictions for informing the public about the status of properties designated on the Master Plan. This is especially important in terms of informing potential purchasers of historic sites about what it means to own property designated on the Master Plan.

One suggestion is to explore whether the Montgomery County Board of Realtors would agree to include in all sale contracts a statement that indicates whether a property is designated on the Master Plan for Historic Preservation. Alternatively, the status of designated properties could be entered officially as part of the land records.

Another technique worth exploring is the use of plaques that indicate a property has been designated as an historic site on the Master Plan. In addition to increasing the likelihood that a potential purchaser knows in advance that the property has been declared historic and worthy of protection, plaques have been found to foster a positive perception of designation.

Recommendation 22: Develop materials and programs to better educate the public about the County's historic preservation programs, to include improved publicity about the Historic Preservation Commission, the HAWP application process, and financial incentives to encourage historic preservation. (A)

Much could be done to better inform and educate County citizens in general about historic preservation, and in particular, about the HAWP process and about County programs available to support and strengthen preservation efforts. The HPC, with staff assistance, should review and update its plan for public education, and take action to implement the plan during the next several years.

Recommendation 23: Improve the administration of existing historic preservation programs. (A)

Attention should be given to improving the administration of the County's existing easement program and Historic Preservation Loan Program (HPLF), both of which can currently be described as "inactive." Executive regulations for the easement program should be promulgated, and the executive regulations for the HPLF. (most recently adopted in 1985), should be reviewed, updated, and re-promulgated. The level of funding available from the Rehabilitation Loan Fund for the HPLF must also be clarified in the budget.

Additional efforts to publicize the availability of the easement program, rehabilitation loan program, and tax credit program should also be made.

STAFFING, TRAINING, AND COMMUNICATION

Recommendation 24: Retain the Department of Housing and Community Development (DHCD) as the department assigned the lead responsibility for providing professional and administrative staff support to the HPC, but establish a separate Historic Preservation Office within DHCD; and authorize an additional staff position to manage the County's historic preservation efforts. (A,\$)

1. Establish an Historic Preservation Office within DHCD

A separate Historic Preservation Office should be established within the Department of Housing and Community Development. The mission of this office should be to manage the County Government's historic preservation efforts, an integral part of which is to provide staff support for the HPC. The Historic Preservation Office should report directly to the Office of the DHCD Director.

It is recommended that the Historic Preservation Office be responsible for providing general staff support to the HPC, to include:

- o Preparing responses for the HPC Chair's signature on routine and non-routine correspondence;
- o Working with the HPC Chair to set agendas and manage the HPC's workload;
- o Attending all HPC meetings, and maintaining HPC minutes and HPC records;

- Managing the processing of HAWPS applications from intake through Commission review and inspection of the actual work performed;*
- Formulating and presenting professional staff recommendations for the HPC regarding HPC recommendations on designations/subdivisions and actions on HAWPs;
- Drafting HPC decisions for final HPC approval;
- Ensuring that all notice and other due process requirements are followed;
- Working with M-NCPPC staff to ensure that adequate research on historic resources is provided to the HPC (see Recommendation 9); and
- Organizing orientation sessions for new HPC members, and developing staff training to include knowledge of relevant laws and regulations, and other County programs and functions.

The Historic Preservation Office should also be responsible for carrying out the public outreach and program administration functions assigned to the HPC. In particular, this means that the Historic Preservation Office, in consultation with the HPC, would be responsible for:

- Managing the County's historic preservation grant and revolving loan programs;
- Managing the County's historic preservation easement and tax credit programs;
- Providing information and educational materials to the public about historic preservation; and
- Undertaking other activities to advance the goals of historic preservation in the county.

Finally, the Historic Preservation Office staff should be responsible for coordinating HPC's work with that of Executive branch departments and offices, the M-NCPPC staff, the Planning Board, the Council, and other County departments and agencies involved with activities that affect the preservation of historic resources.

* See Recommendation 14.

2. Create a new senior professional staff position to manage the Historic Preservation Office.

Based upon study of the current staffing situation and taking into account the additional tasks that this report recommends be performed, OLO recommends that the functions of the Historic Preservation Office could reasonably be accomplished with the addition of one senior professional staff position to manage the Historic Preservation Office. Combined with the two staff currently assigned on a full-time basis to support the HPC, the staffing complement of the Historic Preservation Office would then total three workyears.

The newly created position should be a full-time professional staff person with the skills, education, and expertise to manage the Historic Preservation Office and coordinate the County's historic preservation efforts. To parallel the nomenclature adopted at the state level and in numerous other jurisdictions, the working title of this position could be the County's "Historic Preservation Officer".

The hiring process for this position should follow standard merit system advertising and selection procedures. County personnel regulations specify procedures for the Office of Personnel to determine the exact title and grade of this job. Recommended minimum qualifications for the Historic Preservation Officer position are included in Appendix E.

3. Provide some physical identification for the Historic Preservation Office.

To enhance the ability of County staff to educate the public about historic preservation, and the work of the HPC, it would be helpful to provide some physical identity for the Historic Preservation Office. Two specific issues to be addressed are: the need for some identifying sign outside the offices, and the need for a telephone line that is consistently answered "Historic Preservation Office."

Note on Communication between DHCD Officials and HPC Members

It is important for a line of communication to remain open between HPC members and DHCD officials. As noted earlier in this report, DHCD officials and HPC members have made progress in recent months towards reaching a better understanding about the role of DHCD staff assigned to support the HPC. In particular, there should be a clear understanding about what functions HPC members themselves are going to perform, and which activities are appropriately performed by County Government staff working in consultation with the Commission. In addition, DHCD officials and HPC members should agree upon a procedure for resolving future differences of opinion or misunderstandings about the role of staff and support from the County.

Recommendation 25: Continue to provide HPC with an enhanced level of legal assistance. (A,\$)

The increased level of legal support provided to the HPC during the past two years should be continued. The Assistant County Attorney assigned to advise the HPC should be available to provide the HPC with oral or written opinions, to provide procedural advice to the HPC, and to alert HPC members about statutory requirements that must be met. When requested by the HPC, this attorney should also be available to draft or review HPC decisions on HAWPs, especially in cases dealing with complex legal issues. The Assistant County Attorney assigned to the HPC should, when requested by the HPC, attend HPC's public meetings and executive sessions.

In addition, the Assistant County Attorney assigned to the HPC should keep the HPC informed about relevant court decisions. It should be the responsibility of this attorney to prepare a briefing for incoming HPC members to explain the parameters of HPC's authority, and the case law involving the HPC and HPC decisions.

Finally, because appeals from the HPC now go to the Board of Appeals (BOA), the Office of the County Attorney must be conscious to assign staff consistent with the Attorney General's conflict guidelines for adjudicatory proceeding in order to minimize any perceived conflict of interest. In particular, during the time an attorney is assigned to the HPC, he/she should not also be providing advice to the BOA on any matter that may be later presented before the BOA.

Recommendation 26: Develop an annual training seminar for all commissioners that serve on the County's adjudicatory boards and commissions, and develop ongoing training for County staff who have primary responsibility for providing support to a County-appointed board, committee, or commission. (A,\$)

Each year, the County should offer a training seminar to all commissioners that serve on the County's adjudicatory boards.* The Office of Personnel, Division of Organization Development and Training, could organize such training, with in-house assistance from the Office of the County Attorney, the County Council staff, and other County departments.

* This includes the: Board of Appeals, Animal Matters Hearing Board, Human Relations Commission, Commission on Landlord-Tenant Affairs, Commission on Common Ownership Communities, Merit System Protection Board, Sign Review Board, Ethics Commission, Board of License Commissioners, and the Planning Board.

A training session for board members should include information relevant to all boards that perform an adjudicatory function. For example, the agenda should cover: how to conduct meetings in accordance with the Administrative Procedures Act, an explanation of ex parte communication, and guidance on compliance with the County's Ethics law. The seminar should also include training sessions on how to chair a quasi-judicial proceeding, to include tips on dealing with angry citizens or board members.

The Division of Organization Development and Training should also develop training opportunities for County staff assigned to provide support to the County's many boards, committees, and commissions. Providing the necessary and appropriate level of staff support to a group of appointed citizens is often a challenging task. This assignment grows especially difficult in situations when the stated position of a board or committee can be in conflict with the position of the County Government. Much of this training could be accomplished with the assistance of County employees who have learned through experience the skills required to effectively staff citizen boards and commissions.

Recommendation 27: Schedule separate annual meetings between the HPC and: a County Council Committee, the County Executive, and the Planning Board. (A)

To encourage ongoing and appropriate communication, the HPC should meet annually with a Council Committee, the County Executive, and the Planning Board. Without violating the ex parte rules on any particular HAWP case, the general purpose of these meetings would be to generally discuss the legislative intent, along with any perceived problems, of the laws and regulations governing the HPC's decision making.*

Recommendation 28: Provide for a formal follow-up to this evaluation to take place in FY94. (A)

The Council should charge the Office of Legislative Oversight with monitoring the operations of the HPC over the next three years, and with conducting a follow-up evaluation during FY94. If, at that time, the problems identified in this evaluation have not been addressed, then consideration should be given to modifying the basic structure, administrative location, and/or authority of the HPC.

* The HPC has met with the Planning Board for the past several years, and has met occasionally with the Council during the past decade.

Excerpt From County Code Chapter 24A,
Historic Resources Preservation

Sec. 24A-3. Master plan for historic preservation; criteria for designation of historic sites or districts.

(a) As part of the general plan for the physical development of that portion of the county within the Maryland-Washington Regional District, there shall be prepared, adopted and approved a master plan for historic preservation which shall constitute an amendment to the general plan for the Maryland-Washington Regional District. Such plan shall designate historic sites and historic districts and describe their boundaries; it shall propose means for the integration of historic preservation into the planning process; and it shall suggest other measures to advance the goals of historic preservation.

(b) In considering historic resources for designation as historic sites or historic districts, the planning board shall apply the following criteria:

- (1) *Historical and cultural significance.* The historic resource:
- a. Has character, interest or value as part of the development, heritage or cultural characteristics of the county, state or nation;
 - b. Is the site of a significant historic event;
 - c. Is identified with a person or a group of persons who influenced society; or
 - d. Exemplifies the cultural economic, social, political or historic heritage of the county and its communities.

(2) *Architectural and design significance.* The historic resource:

- a. Embodies the distinctive characteristics of a type, period or method of construction;
- b. Represents the work of a master;
- c. Possesses high artistic values;
- d. Represents a significant and distinguishable entity whose components may lack individual distinction; or
- e. Represents an established and familiar visual feature of the neighborhood, community or county due to its singular physical characteristic or landscape. (Ord. No. 9-4, § 1.)

Listing of Montgomery County Preservation Fund Grants
FY 1987 - FY 1990

<u>Grant Recipient</u>	<u>FY 1990</u> <u>Project</u>	<u>Award</u>
Woodside Historical Committee	Book on the history of Woodside	\$ 6,150
Chevy Chase Historical Society	Oral history project	\$ 2,175
Montgomery Preservation, Inc.	Awards ceremony	\$ 950
Montgomery Preservation, Inc.	Montgomery prize	\$ 500
Historic Medley, Inc.	Preservation of a display	\$ 450
Historic Medley, Inc.	Intern to staff museum	\$ 407
Town of Brookeville	Comprehensive Plan	\$ 5,000
Glen Echo Park Foundation	Model of Spanish ballroom	\$ 1,000
Peerless Rockville	"A Day at the Old Baptist Ceremony"	\$ 2,000
Friends of the Red Brick Courtroom	Publication and program	\$ 2,500
Gaithersburg Heritage Alliance	Cataloguing and Reorganization of Museum	\$ 600
Gaithersburg Heritage Alliance	Printing of brochures	\$ 600
Ad Hoc Committee to Save Hawkins Lane	Design guidelines	\$ 2,668
Montgomery County Historical Society	Feasibility study of Beall-Dawson House	\$ 2,500
	TOTAL:	\$27,500

FY 1989

<u>Grant Recipient</u>	<u>Project</u>	<u>Award</u>
Town of Washington	Feasibility study of renovation of McCathran Hall	\$ 1,500
Sugarloaf Regional Trails, Inc.	Preparation of National Register nomination for Sugarloaf Historic District	\$ 4,000
Montgomery Preservation, Inc.	Montgomery Prize	\$ 500
Gaithersburg Heritage Alliance	Printing costs for Gaithersburg driving tour	\$ 500
Chevy Chase Historical Society	Sponsorship of a Chevy Chase historical map and survey	\$ 2,500
Capital View Park Historical Society	"Phase I" of Capital View Avenue streetscape plan	\$ 2,625
Volunteers in Archeology	Continuation of the Valley Mill Dig	\$ 1,800
Woodside Historical Committee	1989 Centennial celebration illustrated history	\$ 1,600
Chevy Chase Historical Society	Recording and transcription of oral histories	\$ 4,000
Glen Echo Park Foundation	Slide/tape program on the history of Glen Echo Park	\$ 500
Gaithersburg Heritage Alliance	"Phase I" of historic photograph collection	\$ 355
United Black Cultural Center	Preparation of project on the history of Black enterprise and entertainment	\$ 1,500
Historic Medley District	Photography of "Friends' Advice" (Master Plan 18/15) for National Register nomination	\$ 300
Maryland Mine Historical Project	Restoration of the Gold Mine Water Tower	\$ 2,300
Ad Hoc Committee to Save Hawkins' Lane	Preparation of National Register nomination	\$ 1,180
	TOTAL:	\$25,160

FY 1988

<u>Grant Recipient</u>	<u>Project</u>	<u>Award</u>
Historic Takoma, Inc.	Markers interpreting historic structures	\$ 1,000
Gaithersburg Business and Professional Womens' Club	Living histories of women in the work force	\$ 500
Town of Washington Grove	Video: "Town Within a Forest"	\$ 2,500
Capital View Park Historical Society	Landscape design for Capitol View Park	\$ 400
Germantown Citizens' Association	Markers in historic district denoting historic significance of the area	\$ 800
Chevy Chase Historical Society	Conduct oral histories of workers and business-owners	\$ 2,500
Rockville/Magruder Archeology Club	Valley Mill Site project	\$ 2,500
Montgomery Community College	Summer courses for high school students	\$ 1,450
Montgomery County Committee of the Maryland Historical Trust	Montgomery Prize	\$ 500
Sandy Spring Museum	Photographic exhibit on historic structures in the area	\$ 1,668
Sandy Spring Museum	Hands-on activity packet	\$ 2,050
Woodside Historic Commission	Photographic studies on the historic structures of Woodside	\$ 1,200
Chevy Chase Historical Society	Purchase two videos on Maryland history	\$ 367
Gaithersburg Heritage Alliance	Recreate turn-of-the-century funeral operation	\$ 2,325
Historic Medley District	One-hour videotape on County flora	\$ 1,500
Gaithersbueg Heritage Alliance	Tour to accompany Gaithersburg walking tour	\$ 500
Historic Medley District	Seneca Schoolhouse program	\$ 1,000
Maryland Gold Mining	Stabilization of the Maryland Mine Blacksmith Shop	\$ 1,100
Chevy Chase Historical Society	Archival photograph collection	\$ 500
Forest Glen Park Citizens' Association	History of Forest Glen Park	\$ 640

FY 1987

<u>Grant Recipient</u>	<u>Project</u>	<u>Award</u>
Kensington Local Advisory Committee	Street landscape plan	\$ 2,000
Third Maryland Infantry Regiment	Recreation of Civil War-era infantry companies	\$ 1,220
Rockville/Magruder High School Archeology Club	Field school for archeology students	\$ 2,833
Rosemary Zibart/Hands On Science	Eight-week architecture curriculum for elementary school students	\$ 850
Rosemary Zibart/MCPS	Video on oral histories for 9-13 year olds	\$ 1,400
Montgomery College Continuing Education	Archeology field trips	\$ 1,000
Walter Goetz/MCHS	Historic mine project	\$ 2,750
Historic Medley District	Brochure on the John Pool House arboretum	\$ 1,347
Historic Medley District	Endowment fund to pay teachers at the Seneca Schoolhouse	\$ 1,250
Chevy Chase Historical Society	Oral history project	\$ 2,500
Maryland Historical Society	Educational services for Montgomery County	\$ 2,050
	TOTAL:	\$19,200

Source: DHCD files.

Historic Preservation Commissions:
A Comparison of Montgomery County and Prince George's County Statutes

	<u>MONTGOMERY COUNTY</u>	<u>PRINCE GEORGE'S COUNTY</u>
LEGAL FRAMEWORK	<ul style="list-style-type: none"> • Article 25A and Article 28, <u>Annotated Code of MD</u> • Chapter 24A, <u>Montgomery County Code</u> 	<ul style="list-style-type: none"> • Article 25A and Article 28, <u>Annotated Code of MD</u> • Subtitle 29, <u>Prince George's County Code</u>
COMPOSITION	<p>Nine members:</p> <ul style="list-style-type: none"> • Appointed by County Executive and confirmed by Council. • Must be County residents. • The four fields of history, architecture, preservation, and urban design shall be represented by a minimum of one qualified citizen. • The remaining members shall be selected "to represent the geographical, social, economic, and cultural concerns of the residents of the County". 	<p>Nine members:</p> <ul style="list-style-type: none"> • Appointed by County Executive and confirmed by Council. • Must be County residents. • One citizen with an expertise in history. One citizen with an expertise in preservation. One architect with an expertise in urban design. • One representative from each of the following groups: Prince George's County Farm Bureau, Municipal Association, Chamber of Commerce, County Board of Realtors, Suburban Maryland Home Builders' Association, and a non-architect from Prince George's County Historical and Cultural Trust.* • To the extent possible, the members shall be selected "to represent the geographical, social, economic, and cultural concerns of the residents of the County".

* If no names are submitted by the groups, the County Executive may select any other nominee.

MONTGOMERY COUNTY

PRINCE GEORGE'S COUNTY

Regulatory

Regulatory

RESPONSIBILITIES

- Authorizes the Director, Department of Environmental Protection (DEP) to issue or deny historic area work permits for work on property containing an historic resource.
- Serves as appellate body on demolition by neglect decisions.

- Authorizes the Director, Department of Environmental Resources (DER) to issue or deny historic area work permits for work on property containing an historic resource.
- Decides on demolition by neglect cases.
- Designates property on the Master Plan for Historic Preservation. Appeal is to the Council.*

Advisory

Advisory

Makes recommendations regarding:

Makes recommendations regarding:

- Designation of property on the Master Plan for Historic Preservation.
- Subdivision proposals.
- Programs and legislation concerning historic preservation.
- Updates to the Locational Atlas and Index of Historic Sites in Montgomery County.

- Subdivisions, site plans, special exceptions and zoning map amendments affecting historic preservation.
- Programs and legislation concerning historic preservation.
- The upkeep and use of publicly-owned historic properties.

* If a municipality objects to a historic district boundary, a 2/3rds vote by the Council is necessary to override.

MONTGOMERY COUNTY

PRINCE GEORGE'S COUNTY

Educational

Educational

RESPONSIBILITIES
(cont'd)

- Serves as information clearinghouse on historic preservation in the County for County government, individuals, citizens' associations, historical societies, and LACs.
- Provides information and educational material to the public.
- Undertakes activities to advance the goals of historic preservation in the County.

- Serves as information clearinghouse on historic preservation in the County for County government, individuals, citizens' associations, historical societies, and LACs.
- Provides information and educational material to the public.
- Undertakes activities to advance the goals of historic preservation in the County.

Administrative

Administrative

- Appoints members to local advisory panels to assist and advise the commission on the performance of its functions.
- Employs consultants or other temporary personnel as needed.
- Promulgates executive regulations (method (2)) necessary for the proper transaction of HPC business, subject to County Council approval.

- Appoints members to local advisory panels to assist and advise the commission on the performance of its functions.
- Employs consultants or temporary personnel as needed.
- Promulgates rules and regulations necessary for the proper transaction of business, subject to Council approval.
- Maintains and updates an inventory of historic resources.
- Adopts architectural and design guidelines.

Program Administration

Program Administration

- Administers the historic preservation easement program and any revolving funds or grant programs to assist in historic preservation.

- Administers any grant, incentive, easement programs, or other preservation funds to assist in historic preservation.

MONTGOMERY COUNTY

PRINCE GEORGE'S COUNTY

GENERAL
STAFFING

- | | | |
|--|---|---|
| 1) Technical/
Administrative
Support | • DHCD, Community Planning
and Development Division. | • M-NCPPC, Area Planning
Division, Historic
Preservation Section. |
| 2) Legal
Assistance | • County Attorney. | • County Attorney. |

HISTORIC AREA
WORK PERMITS

- | | | |
|----------------|---|---|
| 1) Intake | • Department of
Environmental Protection
(DEP). | • Department of Licenses and
Permits (DLP).* |
| 2) Enforcement | • Department of
Environmental Protection | • Department of
Environmental Resources. |
| 3) Appeal | • Board of Appeals. | • Circuit Court. |

* In practice: M-NCPPC, Area Planning Division, Historic Preservation
Section.

Draft Schedule for HPC Evaluation of Atlas Sites

Year of Review	Amendment	Number of Resources/Districts	M-NCPPC Locational Atlas Update Survey Categorization*						Estimated Cost of Additional Research**
			I	II	III	IV	V	VI	
CY 90	Woodside	1 district			1				\$ 500
CY 90	N. Bethesda	6 resources	1		3	1	1		\$2,000
CY 90	Aspen Hill	7 resources		2		3	2		\$1,000
CY 91	Purge	58 resources (estimated)					58		None
CY 91	Potomac	25 resources	7	4	7	6		1	\$ 9,000
CY 91	Chevy Chase Historic District	1 district	1						\$ 5,000
CY 92	Travilah/Barnstow	26 resources	2	6	12	6			\$10,000
CY 92	Eastern County	37 resources	2	2	5	27		1	\$ 4,500
CY 93	Olney	31 resources	6	9	7	8		1	\$11,000
CY 93	Western Co. (A)***	34 resources	2	6	12	11		3	\$10,000
CY 94	Western Co. (B)***	45 resources	9	8	13	11		4	\$15,000
CY 94	North County (B)***	37 resources		6	13	15		3	\$ 9,500
CY 95	North County (A)***	53 resources		1	18	30		4	\$ 9,500

* For an explanation of the categorization system, see excerpt from M-NCPPC's Atlas Update Survey on the following page.

** The additional cost of research is estimated by allowing \$500 per site for all sites in categories I, II, and III. The exception to this is the cost of research for the Chevy Chase Historic District, which is estimated at \$5,000.

*** Western County (A) = Planning Areas 12 + 16.
 Western County (B) = Planning Areas 17 + 18.
 North County (A) = Planning Areas 10 + 11.
 North County (B) = Planning Areas 14 + miscellaneous sites.



Montgomery County Government

MEMORANDUM

September 4, 1990

TO: Gus Bauman, Chairman
Montgomery County Planning Board

VIA: Andrew Mansinne, Jr., Director *Andrew Mansinne, Jr.*
Office of Legislative Oversight

FROM: Karen Orlansky, Program Evaluator
Office of Legislative Oversight

SUBJECT: DRAFT OLO Report No. 90-2, A Description and Evaluation of the
Montgomery County Historic Preservation Commission

The enclosed DRAFT copy of OLO Report No. 90-2 is being forwarded for your review and comment prior to submission to the County Council. As you know, it is OLO's practice to request that the contents of this DRAFT report be protected until the Council takes official action on its release.

The cooperation of Planning Commission staff during the course of preparing this report was greatly appreciated. In particular, OLO extends special thanks to Melissaa Banach and Gwen Marcus for discussing issues covered in this report; I found their advice and insights very helpful.

As always, we appreciate the time taken by Planning Board Members and staff to review a DRAFT OLO report. Please feel free to call me with any technical corrections. Should you wish to submit written comments to be incorporated into the final report submitted to the Council, I will need to receive those comments by October 5, 1990.

KO/cca
Enclosure

cc: Melissa Banach, Planning Director
Doug Alexander, Chief, Urban Design Division
✓Gwen Marcus, Historic Preservation Planner

Office of Legislative Oversight

100 Maryland Avenue, Rockville, Maryland 20850, 301/217-7990

From the desk of*Barbara Preller*

Sept. 19

Doug/Gwen:

Melissa discussed your memo with Karen Orlansky. Karen will receive a copy of it and is willing to think about it. She will get back in touch with us soon. Melissa will discuss the issue with Gus yet.

Barbara



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

September 18, 1990

MEMORANDUM

TO: Melissa Banach
Acting Planning Director

VIA: Doug Alexander, Chief
Urban Design Division

FROM: Gwen Marcus, Historic Preservation Planner *GWM*
Urban Design Division

SUBJECT: Preliminary Comments on Draft OLO Report re: Montgomery
County Historic Preservation Commission

I have reviewed the draft OLO report on the Historic Preservation Commission (HPC). On the whole, the report is very thorough and complete. It documents the inception of the County's historic preservation program, evaluates its current practices, and compares the program to other jurisdictions in Maryland and elsewhere around the United States.

Several of the major recommendations contained in the report have a direct bearing on the M-NCPPC historic preservation planning workload. Ones which relate directly to M-NCPPC work include:

- o A number of recommendations deal with the evaluation of Locational Atlas resources and a sunset date for the Atlas.
 1. The report suggests a time period of approximately five years to complete the evaluation of Atlas resources.
 2. The report recommends delegating the researching of Atlas resources to M-NCPPC staff. The report recommends that M-NCPPC hire a part-time staff person exclusively to do research. It estimates that the cost of doing the research should be approximately \$20,000 per year.
 3. The report suggest clarifying the process for removing resources from the Locational Atlas.
- o Another recommendation in the report is that selected HAWP applications be sent to M-NCPPC staff for review and comment.

- o The report suggests that better techniques for informing the public about the status of properties designated on the Master Plan should be developed.
- o Regular, annual meetings between the HPC and the Planning Board are recommended.

My reaction towards these suggestions is positive for the most part:

- I feel the proposed sunset date and schedule for the Locational Atlas is realistic.
- I think that having our staff do the research on Atlas resources will be very workable and will eliminate current duplications of effort.
- I agree that a part-time staffperson who can focus exclusively on research is more efficient and effective than contracting out different resources to a variety of consultants. This will, of course, need to be considered as part of the upcoming budget process.
- I think the suggestions regarding clarification of the process for removing resources from the Atlas, regarding ways of informing the public about Master Plan sites, and regarding annual meetings with the Planning Board are well-founded.

I do, however, have a basic concern that, while additional responsibilities are being directed to M-NCPPC staff which will continue to put this office in the forefront of historic preservation activities in the County (i.e. review of and comment on HAWP applications), the report also recommends creating a "Historic Preservation Office" to coordinate activities at DHCD. It strikes me that this may continue and even exacerbate existing public confusion about who does what in terms of historic preservation in Montgomery County.

The division of responsibility that has evolved over the last three years is that M-NCPPC staff deals with designation of historic sites and the HPC deals with design review after a site has been designated. Clearly, there is overlap - the HPC participates in the designation process and M-NCPPC staff looks at various proposals (especially subdivisions) for Master Plan sites. However, the basic distinction of duties - if it is to be continued - is important to keep straight and to communicate to the public.

While the report's recommendation that M-NCPPC staff do the research on Atlas resources is very much in keeping with the general designation responsibility that we currently have and will eliminate duplication of effort, the report also recommends that "selected" HAWP applications be sent to M-NCPPC staff for review and comment. This clearly begins to get us into the design review business.

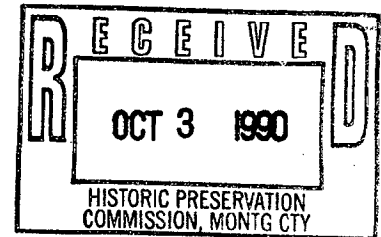
Frankly, I am not opposed to doing design review - I enjoy it. However, I am concerned about this office taking on additional duties that are basically HPC staff functions and becoming even more identified with historic preservation activities in the County, when the "official" County Historic Preservation Office is at DHCD. My fear is that this mixing of responsibilities will make us even more of a "shadow HPC staff" than we currently are and will make the job of any person hired to head up the DHCD Historic Preservation Office very difficult and confusing.

I would generally suggest that M-NCPPC stick to historic preservation duties associated with designations, subdivisions, and other large-scale public projects, while leaving design review of Master Plan sites up to the HPC and their staff.

If it seems important for M-NCPPC staff to be involved in the design review process, I would recommend that we take a look once again at the possibility of transferring the HPC staff function to M-NCPPC and truly having one Historic Preservation Office. The OLO report includes a very good discussion of staffing alternatives on pages 57-60. It is clear that there are problems and opportunities associated with each alternative.

In conclusion, the OLO report will be very important and useful in improving the effectiveness of the HPC and in solving problems that have been identified over the years. The impact on M-NCPPC's historic preservation planning program will be, in general, positive. It is, however, important to keep duties, responsibilities, and roles clearly defined.

October 1, 1990



*sent to OLO
10/5/90*

Leonard Taylor, Chairperson
Historic Preservation Commission
Suite 1001
561 Monroe Street
Rockville, Md 20850

Dear Mr. Taylor:

Thank you for submitting to me a draft copy of "A Description and Evaluation of the Montgomery County Historic Preservation Commission". As requested, I am submitting my comments on the document.

I presume that the facts, figures and History of the HPC is accurate. Therefore I am addressing the recommendations made by the O.L.O. report.

#1. Broadening the base of available professionals is always helpful; however, let's not forget that "Preservation" is our middle name.

#2. No comment.

#3. I believe this would help expediate H.A.W.P. etc. in the public's interest. Let's do it.

#4. Excellent recommendation.

#5. It's about time HPC members are compensated for their time.

#6. H.P.C. is still in a state of flux and written guidelines will always be of help.

#7. O.K.

#8. A schedule to complete the review of Atlas sites is fine but it should not be given a sunset date.

#9. Historic Preservation will be an on-going function of M.N.C.P.P.C. and they have experienced staff to review the sites.

October 1, 1990

"A Description and Evaluation of the Montgomery County
Historic Preservation Committee."

#10. The County Executive and the Council Members should be restricted to making History only, not changing it.

#11. This recommendation is particularly important to Hyattstown and I hope it is implemented.

#12. O.K.

#13. O.K.

#14. Of all the recommendations, I feel strongest about this one. M.N.C.P.P.C. should handle H.A.W.P. They have the expertise already, and there would be no "conflicts" in recommendations.

#15. O.K. but more time may be needed.

#16. Yeah!

#17. Good.

#18. I thought they were already.

#19. Excellent idea.

#20. Now you're putting some teeth into the Ordinance.

#21. Education is always best prevention.

#22. Same as #21.

#23. The existing programs are good but due to numerous "loop-holes", they are sometimes ineffective. Let's close the gaps.

#24. As I stated before, M.N.C.P.P.C. is the best place for H.P.C., although the rest of this recommendation is good.

#25. We're already behind the ball. This will help.

#26. Good

#27. Excellent idea.

#28. Good

October 1, 1990

"A Description and Evaluation of the Montgomery Historic
Preservation Commission."

#29. The County may in the future need to "take under it's
wing" specific properties or entire Districts to ensure their
protection and survival. We need to make provisions for this
now.

Thank you for the opportunity to review the draft of
this Evaluation. If I can be of any further assistance,
please do not hesitate to give me a call.

Very truly yours,

Jeffrey C. Gross/br.

Jeffrey C. Gross
Committee Member

JCG:ber
CC: File

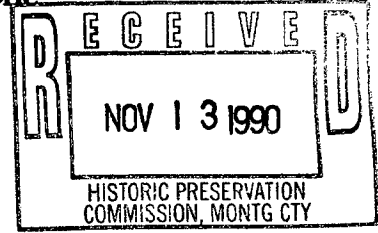


Montgomery County Government

report sent 4/14/90

MEMORANDUM

November 13, 1990



TO: Leonard Taylor, Chairman
Historic Preservation Commission

VIA: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

FROM: Karen Orlansky^{KO}, Program Evaluator
Office of Legislative Oversight

SUBJECT: OLO Report No. 90-2, A Description and Evaluation of the Montgomery County Historic Preservation Commission

On this date, the Council unanimously approved the enclosed Office of Legislative Oversight report for public release. OLO Report 90-2 will be scheduled for further discussion by the Council during the coming months.

As I have stated before, the cooperation of HPC members during the course of preparing this report was greatly appreciated. I look forward to additional work with members of the Commission as the report's findings and recommendations are discussed in more detail in the months ahead.

I will keep you informed about the Council's scheduling of OLO Report No. 90-2 for discussion and action. If you have any questions about the final report, please don't hesitate to give me a call.

KO/cca

Enclosure

- cc: Barbara Wagner, Vice-Chair, HPC
- Joseph Brenneman, HPC Member
- Walter Booth, HPC Member
- Philip Cantelon, HPC Member
- James King, HPC Member
- Jeff Miskin, HPC Member
- Albert Randall, HPC Member
- Bridget Hartman, Former HPC Member

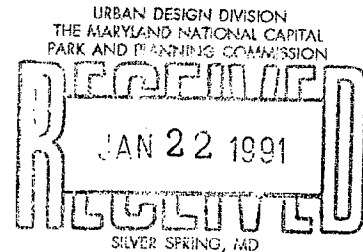


PHED Committee
Agenda Item #(6)
January 24, 1991

Montgomery County Government

MEMORANDUM

January 18, 1991



TO: PHED Committee

FROM: Karen Orlansky, ^{KO.} Program Evaluator
Office of Legislative Oversight

SUBJECT: Office of Legislative Oversight (OLO) Report No. 90-2, A Description and Evaluation of the Montgomery County Historic Preservation Commission

OLO Report No. 90-2, A Description and Evaluation of the Montgomery County Historic Preservation Commission (HPC) was received and released by the Council on November 13, 1990. The report is scheduled for initial discussion by the PHED Committee on January 24, 1991. This memorandum identifies a number of major issues raised by the OLO report that the PHED Committee may want to consider on January 24th.

Recognizing the County's current fiscal situation, this memorandum primarily identifies issues that can be addressed within existing budgetary resources, either through administrative actions and/or legislative amendments to County Code Chapter 24A, Historic Resources Preservation. The exception to this is Issue #1, which raises the question of whether DHCD should continue to provide staff support for the HPC; this issue deserves attention, even though its resolution may have a fiscal impact.

For each of the issues identified, the on-the-record views of HPC members, Executive branch departments, the Planning Board Chair, and M-NCPPC Planning Department staff, and the Montgomery County Civic Federation are referenced as appropriate. In addition, OLO has been informed that written statements outlining the views of the new County Executive and the Planning Board will be available at the PHED's January 24th meeting.

Issue #1: Should staff support for the HPC continue to be provided by DHCD?

Current law requires the County Government to provide staff support to the HPC. The statute identifies the County Attorney as the HPC's legal counsel, but does not assign a specific office or department of County Government to provide the HPC with other staff support.

Since 1981, the lead responsibility for providing professional and administrative staff support to the HPC has been assigned to the Department of Housing and Community Development (DHCD). The pros and cons of several alternative staffing arrangements are discussed in the OLO report (circle 29).

OLO recommends that the historic preservation function can receive the needed level of public visibility and autonomy by establishing a separate Historic Preservation Office within DHCD. This office should report directly to the Office of the DHCD Director (circle 23). When the fiscal situation allows, OLO also recommends that the senior staff assigned to the HPC be upgraded and an additional staff position be assigned to historic preservation (circle 25).

During the past few months, the DHCD Director began implementing internal departmental changes that will result in the staff assigned to the HPC reporting directly to the Office of the DHCD Director. The senior staff position assigned to support the HPC has been upgraded (to a Grade 25), although filling this position on a permanent basis is on hold due to the current hiring freeze. While DHCD also agrees with OLO that the historic preservation function needs an additional staff person, budgetary constraints make that unlikely at this time (circle 49).

HPC members do not believe that HPC's goals can be accomplished with the current staffing arrangement. HPC Members advocate creating an "independent Office of Historic Preservation," that enables the Commission to develop program priorities and an annual work plan with a self-managed staff and budget. HPC Members believe that: ". . . placement of HPC under the jurisdiction of any executive branch department conflicts with the Commission's mandate as a quasi-judicial body charged with making impartial, professional judgments on preservation issues." HPC Members also believe that additional resources (budget, staff, computer capability) are required in order for the HPC to administer the historic preservation law in a responsible manner (circle 35).

The Planning Board Chair suggests that discussion of the staffing location issue may be warranted at this time (circle 59). On January 17, 1991, the Planning Board voted to support establishing the HPC as an independent Executive branch office that reports directly to the Office of the County Executive.

M-NCPPC Planning Department staff believe that if the HPC is to be retained within DHCD, there will need to be a major effort to give the group a high level of autonomy and adequate staff support; M-NCPPC staff also believe that it would be possible for HPC to function successfully either as an independent commission or with staff support provided by M-NCPPC (circle 68).

The views of the new County Executive on the staffing location issue will be made available at the PHED's January 24th meeting.

Issue #2: Should the HPC be authorized to establish panels with decision-making authority?

To enable the HPC to handle an increasing workload, OLO recommends that the law authorize HPC to establish three-member panels with decision-making authority (circle 13). This amendment would provide the HPC with similar authority already extended to the Landlord-Tenant Commission and Human Relations Commission.

The DHCD Director strongly supports this recommendation, noting that the use of panels by the Landlord-Tenant Commission has worked to streamline the decision-making process (circle 41). M-NCPPC Planning Department staff also believe panels are a viable option for handling an increasing workload, but find it important that panels only be created at the discretion of the full HPC, and that panel membership be balanced and unbiased (circle 63).

HPC members are concerned that establishing panels not be made mandatory (circle 34).

Issue #3: Should the HPC be authorized to delegate the approval of certain Historic Area Work Permit (HAWP) applications to staff?

OLO recommends that the law authorize the HPC to delegate to staff the approval of routine Historic Area Work Permit (HAWP) applications. This would reduce the workload of HPC Members, and provide another tool for processing more efficiently an increasing volume of HAWP applications. A similar delegation of authority to staff has operated in Prince George's County since 1983 (circle 18).

HPC members feel that this recommendation raises issues that may have a far-reaching impact on preservation and requires further study (circle 34).

M-NCPPC Planning Department staff support the method of delegating routine and non-controversial decisions to HPC staff (circle 66). The DHCD Director also supports delegating additional work to staff, and recommends that proposed changes having a "substantial impact" (to be defined in law) on an historic site be subject to the full HAWP process, while changes not having a substantial impact be reviewed and approved at the staff level (circle 45).

Issue #4: Should the HPC be authorized to send cases to the Hearing Examiner for report and recommendation?

To provide the HPC with another tool for handling an increasing workload, OLO recommends that the law also authorize the HPC to refer Historic Area Work Permit (HAWP) applications and demolition by neglect appeals to the Hearing Examiner in the Office of Zoning and Administrative Hearings (OZAH) for report and recommendation. Final decision authority would remain with the HPC (circle 13). This change would provide the HPC with an option already available to the Board of Appeals and the Human Relations Commission.

The Hearing Examiner fully supports this recommendation (circle 56). M-NCPPC Planning Department staff believe that the ability to ask the advice of the Hearing Examiner on specific cases may be a valuable tool for the HPC in the future, especially as historic preservation cases become more complex (circle 64). The DHCD Director also supports authorizing the HPC to refer HAWP cases to the Hearing Examiner (circle 41); however, the DHCD Director recommends that appeals of demolition by neglect actions go directly to the Board of Appeals (circle 43).

HPC members feel that these recommendations raise issues that may have a far-reaching impact on preservation in the County, and require further study (circle 34).

Issue #5: Should a sunset date be established for the Locational Atlas?

OLO recommends that the law establish a sunset date for the Atlas. The sunset date should be determined after a schedule for review of all remaining Atlas sites is adopted (circle 16). A draft schedule for reviewing the remaining Atlas sites is included in the OLO report (circle 16a).

The Planning Board Chair and M-NCPPC Planning Department staff strongly support this recommendation, and believe that the five year schedule proposed in the OLO report for evaluating the remaining resources is realistic (circle 57 and circle 64). HPC members also express general agreement with this recommendation, (circle 33), as does the DHCD Director (circle 43).

Issue #6: Should responsibility for researching remaining Atlas sites be delegated to the Planning Department of M-NCPPC?

Current law requires the HPC to research historic resources and to recommend to the Planning Board which ones should be designated on the Master Plan for Historic Preservation. In order to minimize duplication of staff effort, OLO recommends that the task of researching remaining Atlas resources be delegated to the Planning Department of M-NCPPC (circle 16). Funds currently utilized by the HPC to hire consultants for research could be transferred to M-NCPPC's budget; the County should be able to continue to receive at least partial funding for this task through matching grants allocated by the Maryland Historical Trust.

The DHCD Director and the Planning Board Chair support this recommendation (circles 43 and 58). In support of this recommendation, M-NCPPC Planning Department staff cite three primary arguments for involving M-NCPPC staff in the research that ultimately makes the case for or against designation on the Master Plan for Historic Preservation: 1) To streamline the process by which research is obtained; 2) to improve the quality and consistency of the research; and 3) to link the research effort more closely to the Master Plan designation process (circle 64).

The Director of the Office of Planning Policies supports delegating the research task to M-NCPPC, but recommends that it be accomplished by a consultant contract, and not by adding a part-time researcher to the preservation planning staff (circle 55).

HPC Members support delegating the research of Atlas sites to M-NCPPC staff, but do not see this change as eliminating the need to allocate funds to the HPC for additional research (circle 34).

Issue #7: Should the expertise on the HPC be broadened to include representation from the fields of business, real estate, and/or law?

Current law requires that the four fields of history, architecture, preservation, and urban design be represented on the HPC by a minimum of one member qualified by special interest, knowledge, or training. OLO recommends that the law be amended to state that, "to the extent possible, the fields of business, real estate, and law should also be represented on the HPC." The phrase "to the extent possible" would encourage but not mandate that individuals with expertise in these additional fields be appointed to the HPC. The intent of this change is to broaden the expertise on the HPC. Similar requirements are found in numerous other jurisdictions around the country (circle 12).

The DHCD Director supports this recommendation (circle 41). HPC Members suggest that the law recommend such representation, but not require it (circle 33).

M-NCPPC Planning Department staff believe that this recommendation has value and will aid in building a public perception of the HPC as a balanced and objective group. M-NCPPC staff recommend that perhaps the recommendation should be modified to limit the business representation to a specific number (2 or 3) of appointed HPC members (circle 63).

The Montgomery County Civic Federation opposes adding real estate and/or business representatives to the HPC (circle 70).

The question has been raised about what effect this change would have on the County's status as a Certified Local Government (CLG).^{*} It is OLO's understanding that the HPC can include members with other types of expertise as long as its membership continues to fulfill the CLG requirements, i.e., at least five members, of which a minimum of two must be qualified (according to State criteria) in architecture, history, architectural history, or archaeology. A 1990 survey of CLGs conducted by the National Park Service indicates that 55 percent of the CLG historic preservation commissions surveyed included representatives of business interests, and 42 percent included real estate professionals and attorneys.

^{*}In Maryland, a CLG is a local government that meets federal standards established by the Department of Interior and State standards established by the Maryland Historical Trust, for purposes of being eligible to receive matching grant funds for preservation activities.

Issue #8: Should the PHED Committee sponsor legislation to amend Chapter 24A, Historic Resources Preservation?

OLO recommends that the PHED Committee direct Council staff to prepare draft legislation that amends Chapter 24A, Historic Resources Preservation, to implement those statutory changes proposed by the OLO report that are supported by the PHED Committee. Once a draft bill is prepared, the PHED Committee should meet again to mark-up the draft before formally introducing legislation for full Council consideration.

Issue #9: Should a working group be appointed to conduct a comprehensive review of County Code Chapter 24A, Historic Resources Preservation?

A number of Executive Branch departments recommend that an interagency working group be appointed to conduct a comprehensive review of the County's historic preservation law (circle 37). Specific areas identified as meriting examination include:

- Whether economic and fiscal circumstances and/or public access and visibility should play a role in master plan designation; and
- Whether it continues to be appropriate to assign one commission both program advocacy and adjudicatory responsibilities.

If the Council decides to appoint such a working group, OLO recommends that the membership include representatives of the community as well as representatives of County agencies. However, OLO strongly recommends that action on OLO's report recommendations not be postponed until the working group completes its work.

Other Issues Raised in the OLO Report

The OLO report raises numerous other issues that are not identified in this memorandum for initial discussion by the PHED Committee. As stated earlier, this memorandum focused primarily upon major issues that could be addressed within existing budgetary resources, either through legislative or administrative actions.

If the PHED Committee decides to sponsor legislation to amend the County's historic preservation law, then additional opportunities to discuss related matters will develop as part of the legislative process. A number of the issues relating to the level of resources allocated to the historic preservation function may be discussed during upcoming deliberations on the FY92 operating budget.

The issue of compensating HPC Members will be addressed by the next Committee on Committees, which has been directed by the Council to examine the overall system of compensating members of County-appointed boards, committees, and commission. The Committee on Committees is scheduled to be appointed during 1991.

KO/cca
303/1

This packet contains:

	<u>Circle Number</u>
Excerpts from OLO Report 90-2	
Executive Summary -----	8
Recommendations -----	9
Discussion of staffing alternatives -----	29
Historic Preservation Commission comments -----	33, 35
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EXECUTIVE SUMMARY

This report describes and evaluates the structure, workload, staffing, and overall operations of the County's Historic Preservation Commission (HPC).

Established in 1979, the HPC has nine citizen members, appointed by the Executive and confirmed by the Council. County law assigns the HPC an unusually broad range of adjudicatory, advisory, and administrative responsibilities, to include acting upon Historic Area Work Permits (HAWPs) applications, rendering advice on historic site designations, administering historic preservation grant and loan programs, and public education.

The operation of the HPC has been affected greatly by an increase in the volume and complexity of HAWP applications, and by the large number of Atlas resources not yet evaluated for designation on the Master Plan for Historic Preservation. This study finds that, although County resources dedicated to supporting the HPC have increased, the current staffing structure does not enable the HPC to meet effectively all of its statutory responsibilities. In addition, the report finds that while many citizens regard the HPC as hard-working, dedicated, and knowledgeable, there are others who have concerns about the HAWP process and the manner in which HAWP decisions are made.

This report recommends a package of legislative, administrative, and staffing changes to address problem areas. Major recommendations include:

- Authorize the HPC to establish decision-making panels, to refer cases to the Hearing Examiner, and to delegate certain matters to staff;
- Revise HPC membership requirements to include representation from business-related fields; and compensate HPC members at a level comparable to members of other adjudicatory commissions;
- Establish a sunset date for the Atlas, and adopt a schedule for evaluating the remaining Atlas resources for Master Plan designation;
- Delegate the intake of HAWP applications and the inspection of HAWPs to staff trained in historic preservation; and develop written design standards governing HAWP decision-making;
- Develop materials and programs to better educate the public about historic preservation, and improve the administration of existing preservation programs;
- Establish a separate Historic Preservation Office within the Department of Housing and Community Development, and authorize an additional staff position to manage the office; and
- Provide training to citizens appointed to serve on the County's adjudicatory boards and commissions.

Finally, this report recommends that the Council direct the Office of Legislative Oversight to conduct a follow-up evaluation in FY94. If, at that time, the problems identified in this evaluation have not been addressed, then the Council should consider modifying the basic structure, administrative location, and/or authority of the HPC.

VII. RECOMMENDATIONS

Changes are required in order for the Historic Preservation Commission (HPC) to perform its statutory functions efficiently and effectively. Specifically, changes are needed: to enable the HPC to manage an increasing workload; to improve the processing of Historic Area Work Permits; to complete the evaluation of historic resources listed on the Atlas; and to better educate the public about historic preservation.

This chapter offers a package of recommendations for changes to the laws and regulations governing the HPC, the staff resources supporting the HPC, and other aspects of the HPC's operations. The shared goal of these changes, which will require a combination of legislative, administrative, and appropriation action to implement, is an Historic Preservation Commission that performs its statutory responsibilities effectively and efficiently, and in so doing:

- Maintains ongoing and appropriate lines of communication with the Council, the County Executive, Executive branch staff, and the Planning Board and M-NCPPC staff;
- Is respected by members of the community, and takes action to ensure that the Commission's procedures, recommendations, and decisions are well understood;
- Consistently receives sound legal and other professional staff advice upon which to base recommendations and decisions;
- Consistently meets legally mandated requirements for conducting business; and
- Makes recommendations and decisions in a timely manner, with opportunities for input from members of the community who may be affected by the HPC's action.

A final goal of these OLO recommendations is to ensure that HPC members' time is used efficiently, and for the work of the HPC to become more fully coordinated with other activities in the County that affect the preservation of historic resources.

Summary of Recommendations

The following list summarizes OLO's recommendations, which are grouped under headings that generally parallel the organization of this report; the remainder of this chapter then explains each recommendation in greater detail. Following each recommendation in parentheses is some combination of an "L", "A", and/or "\$". "L" indicates that the recommendation requires a change in the law; "A" indicates that the recommendation requires an administrative change; and "\$" indicates that the recommendation carries a notable fiscal impact.

Commission Structure and Procedures

1. Amend the law to require that the HPC also include representation from the fields of business, real estate, and law. (L)
2. Authorize the HPC to establish panels composed of three HPC members who are delegated decision-making authority. (L,A)
3. Authorize the HPC to send cases to the Hearing Examiner in the Office of Zoning and Administrative Hearings for report and recommendation. (L,A)
4. Clarify in regulation an expanded role for the HPC chair. (A)
5. Amend the law to enable HPC members to be compensated. (L,\$)
6. Finalize executive regulations that outline HPC's routine procedures, and the role of the Local Advisory Panels; and develop executive regulations that contain standards for HPC's review of Historic Area Work Permits. (A)
7. Amend the law to clarify that all HPC decisions are appealable to the Board of Appeals; and to clarify the intent of providing HPC with authority "to delineate the extent of appurtenances and environmental setting associated with an historic site or resource." (L)

Evaluation of Atlas Resources

8. Adopt a schedule for the review of all remaining Atlas resources, and establish a sunset date for the Atlas. At the same time, establish a process for nominating resources to be considered in the future for designation on the Master Plan. (L,A)
9. Delegate the responsibility for researching remaining Atlas resources to the Planning Department of M-NCPPC. (A,\$)
10. Clarify whether Council action is required to remove properties from the Atlas. (L)

Historic Area Work Permits

11. Where appropriate, include standards for future regulatory action in amendments to the Master Plan for Historic Preservation, and provide by law that the HPC must follow such standards in acting upon HAWPs. (L,A)
12. Amend the law to authorize HPC to delegate the approval of routine HAWP applications and minor modifications to staff. (L,A)
13. Simplify process for HPC action on relatively straightforward and non-controversial HAWP applications. (A)
14. Authorize the Director of DEP to delegate to DHCD: the intake of HAWP applications; and the inspections of HAWPs. (L,A)
15. Forward copies of selected HAWP applications to the M-NCPPC Planning Department staff to provide an opportunity for review and comment; it should be clear that the discretion whether to submit comments remains with the Planning Board and M-NCPPC staff. (A)
16. Amend the law to require that an approved HAWP is a prerequisite for receiving a building permit for historic sites designated on the Master Plan. (L,A)
17. Amend the law to clarify the allowable time period for HPC action on HAWP applications, and consider extending the deadline for HPC action. (L)
18. Amend the law to require that all HPC decisions on HAWPs be in writing. (L)
19. Authorize the Board of Appeals to stay the issuance of an HAWP pending the outcome of an appeal. (L)
20. Amend Chapter 24A to provide that in addition to levying fines, the penalty imposed by the County for violations of the Chapter can include orders to take corrective action to cause compliance with an approved HAWP. (L)

Public Education and Program Administration

21. Develop better techniques for informing the public about the status of properties designated on the Master Plan for Historic Preservation. (A)
22. Develop materials and programs to better educate the public about the County's historic preservation programs, to include improved publicity about the HPC, the Master Plan designation process, the HAWP application process, financial incentives for historic preservation, and the division of responsibilities between Executive branch and M-NCPPC historic preservation staff. (A)
23. Improve the administration of existing historic preservation programs. (A)

Staffing, Training, and Communication

24. Establish a separate Historic Preservation Office within DHCD, and authorize an additional senior staff position to manage the County's historic preservation efforts. The respective roles of DHCD's Historic Preservation Office and M-NCPPC's historic preservation planning staff must be clearly defined and communicated to the public. (A,\$)
25. Continue to provide HPC with an enhanced level of legal assistance. (A,\$)
26. Develop an annual training seminar for all commissioners that serve on the County's adjudicatory boards and commissions, and develop ongoing training for County staff who have primary responsibility for providing support to a County-appointed board, committee, or commission. (A,\$)
27. Schedule separate annual meetings between the HPC and: a County Council committee, the County Executive, and the Planning Board. (A)

Follow-up to Evaluation

28. Provide for a formal follow-up to this evaluation to take place during FY94.

The remainder of this chapter explains OLO's recommendations in greater detail.

COMMISSION STRUCTURE AND PROCEDURES

Recommendation 1: Amend the law to require that the HPC also include representation from the fields of business, real estate, and law. (L)

Current law (Section 24A-4) requires that the four fields of history, architecture, preservation, and urban design shall be represented on the HPC by "a minimum of one member qualified by special interest, knowledge, or training." In order to broaden the expertise represented on the HPC, the law should be amended to require that, to the extent possible, the fields of business, real estate, and law are also represented on the Commission.

Numerous jurisdictions around the country require that membership on an historic preservation commission or board include persons with a business, real estate, and/or legal background; such requirements have been adopted in Prince George's County, Kansas City, San Antonio, and Seattle. In addition to providing additional expertise, expanding the membership requirements to include expertise from a business-related field enhances the ability of an historic preservation commission to be perceived by the public as a balanced, adjudicatory body.

Section 24A-4 should also be amended to clarify whether the law allows an individual possessing expertise in more than one field to fulfill more than one requirement; e.g., whether an architect who also has a graduate degree in preservation can be appointed to fulfill the requirement for an expert in architecture as well as the requirement for an expert in preservation.

Recommendation 2: Authorize the HPC to establish panels composed of three HPC members who are delegated decision-making authority. (L,A)

To enable the HPC to handle an increasing workload, the HPC should be authorized by law to establish three-member panels with decision-making authority. This amendment would provide the HPC with the same authority extended to the Landlord-Tenant Commission in 1979; at that time, the Landlord-Tenant Commission, similar to the HPC today, faced an increasing workload and lengthy meetings.

The law should require HPC to promulgate method (2) executive regulations that detail how the panels would be appointed and conduct business.

Recommendation 3: Authorize the HPC to send cases to the Hearing Examiner in the Office of Zoning and Administrative Hearings for report and recommendation. (L,A)

To provide the HPC with another tool for handling an increasing workload, the law should be amended to authorize the HPC to refer HAWP applications and demolition by neglect appeals to the Hearing Examiner in the Office of Zoning and Administrative Hearings (OZAH) for report and recommendation. Final decision authority would remain with the HPC.

This change would provide the HPC with an option available to the Board of Appeals and the Human Relations Commission. The law should require the HPC to promulgate method (2) executive regulations that detail the procedures for referring cases to OZAH, e.g., upon a majority vote of the HPC, or upon recommendation of the Chair, with approval by the full Commission.*

Allowing the HPC to refer cases to OZAH would make the Hearing Examiner available to the Historic Preservation Commission as an "evidentiary traffic cop." The Hearing Examiner would conduct the public hearing, compile written findings of fact, and render a recommendation based upon the same laws

* The regulations governing referral of HPC cases to OZAH should also include a provision governing appeals. Specifically, if the Hearing Examiner hears an HAWP that is later appealed, then the BOA will have to hear the appeal directly and cannot refer the case to the Hearing Examiner.

governing HPC's decisions. In addition to providing the HPC with another way to manage an increasing volume of cases, the expertise of the Hearing Examiner is likely to prove increasingly useful to the HPC as the Commission confronts HAWP applications that raise complex legal land use issues.

**Recommendation 4: Clarify in regulation an expanded role for the HPC Chair.
(A)**

The HPC Chair should be expected to assume responsibility for: providing leadership to the HPC, moving the work of the HPC along expeditiously, and working closely with DHCD staff assigned to support the HPC. The Chair should also assume the lead in representing the HPC in public, and in resolving any conflicts that arise between the HPC and the County Government.

To reenforce an expanded role for the HPC Chair, executive regulations governing HPC's procedures should outline the authority and responsibility of the Chair to:

- Preside at all meetings of the HPC;
- Assign tasks to HPC members;
- Provide direction for managing the HPC's work; and
- Serve as the HPC's principal spokesperson and liaison to the County Government and other agencies.

**Recommendation 5: Amend the law to enable HPC members to be compensated.
(L,\$)**

The law should be amended to allow HPC members to be compensated. HPC members currently spend 25-30 hours per month on HPC business, a commitment that equals or exceeds the time spent by members of other adjudicatory boards and commissions that currently receive compensation, e.g., Landlord-Tenant Commission, Human Relations Commission, Merit System Protection Board.

It is recommended that HPC members be compensated at a rate of \$35 per meeting attended (comparable to Landlord-Tenant Commission); and that the HPC Chair be compensated at a rate of \$5,000 per year in recognition of the additional time and effort required to serve as Chair (an estimated additional 20-25 hours per month). Setting a separate compensation rate for the Commission Chair would parallel the practice followed with other quasi-judicial boards, such as the Board of Appeals and the Merit System Protection Board.

Recommendation 6: Finalize Executive Regulations that outline HPC's routine procedures, and the role of the Local Advisory Panels; and develop executive regulations that contain design standards for HPC's review of Historic Area Work Permits. (A)

Method (2) executive regulations that outline HPC's procedures have already been drafted by the HPC and reviewed by the Office of the County Attorney. A second set of executive regulations that outline the appointment and role of the Local Advisory Panels were originally drafted by the HPC in late 1989, and are in the process of being reviewed and rewritten based upon input from members of the Local Advisory Panels. These two sets of regulations should be finalized and promulgated through the standard procedures contained in Section 2A-15 of the Code.

With assistance from staff and/or a consultant, developing written design standards and guidelines for HAWPs should be a priority of the HPC during the coming year. In accordance with Section 24A-4(h), once drafted by the HPC, it would be appropriate for these standards and guidelines to also be formally adopted as method (2) executive regulations.

All the HPC's executive regulations should be compiled into a publication that is readily available to the public. This would address the perception voiced by some HAWP applicants that the HPC operates without written standards and procedures.

Recommendation 7: Amend the law: to clarify that all HPC decisions, including demolition by neglect appeals, are appealable to the Board of Appeals; and to clarify the intent of providing HPC with authority "to delineate the extent of appurtenances and environmental setting associated with an historic site or resource". (L)

The HPC is delegated decision authority in Chapter 24A to act upon HAWP applications, and demolition by neglect appeals. The law currently specifies that an HAWP decision may be appealed to the Board of Appeals, but does not specify where appeals of the HPC decisions on demolition by neglect appeals are forwarded. The law should be amended to explicitly state that all HPC decisions, including demolition by neglect appeals, are appealable to the Board of Appeals.

A second technical change to Chapter 24A involves Section 24A-5(k), which gives the HPC authority "to delineate the extent of appurtenances and environmental setting associated with an historic site or resource." It is unclear as to when this authority applies, i.e., is it with respect to resources recommended for designation on the Master Plan and/or to subdivision applications that affect an historic resource or site. The law should be amended to clarify the HPC's role in delineation.

EVALUATION OF LOCATIONAL ATLAS RESOURCES

Recommendation 8: Adopt a schedule for the review of all remaining Atlas resources, and establish by law a sunset date for the Atlas. At the same time, establish a process for nominating resources to be considered in the future for designation on the Master Plan. (L,A)

The HPC should recommend to the Planning Board, County Executive, and County Council a schedule for the review of all remaining Atlas resources. Once the schedule has been integrated into the Planning Board's work program adopted by the Council and County Executive, Chapter 24A should be amended to establish an appropriate sunset date for the Atlas.

See (16a) ← Appendix D contains a draft schedule for reviewing the remaining Atlas resources during the next five years. OLO prepared this schedule, based upon the results of M-NCPPC's 1989 study of remaining Atlas resources; and in consultation with the HPC, and staff from M-NCPPC's Planning Department, DECD, the Office of Planning Policies, and Office of the County Council. The draft schedule contained in Appendix D integrates the review of Atlas resources into the Planning Board's most recently approved master plan review schedule; other resources are grouped geographically by planning area into separate master plan amendments, each containing a reasonable number of resources.

Concurrent with establishing a sunset date for the Atlas, the law should be amended to provide a process for nominating resources in the future for designation on the Master Plan. The process should provide the County with the authority to place properties temporarily in moratorium from demolition, but also place a time limit on the County Government's time to reach a final decision about Master Plan designation.

Recommendation 9: Delegate the responsibility for researching remaining Atlas resources to the Planning Department of M-NCPPC, and provide the Planning Department with additional resources to fund the research needed to complete the review of Atlas resources as scheduled. (A, \$)

In order to minimize the duplication of staff effort and approach the task of researching the remaining Atlas resources efficiently, OLO recommends that the responsibility for researching Atlas resources be delegated to the Planning Department of M-NCPPC. Once the research is completed, the research would be available to the HPC, the Planning Board, the County Executive, and the County Council.

See (16a) ← Based upon the draft schedule for the review of Atlas resources contained in Appendix D, it is estimated that \$20,000 will be needed for each of the coming five fiscal years to fund the research of remaining Atlas resources. It is recommended that the Planning Department consider hiring one part-time researcher to accomplish this task.

Draft Schedule for HPC Evaluation of Atlas Resources

Year of Review	Amendment	Number of Resources/Districts	M-NCPPC Locational Atlas Update Survey Categorization*						Estimated Cost of Additional Research**
			I	II	III	IV	V	VI	
CY 90	Woodside	1 district			1				\$ 500
CY 90	N. Bethesda	6 resources	1		3	1	1		\$2,000
CY 90	Aspen Hill	7 resources		2		3	2		\$1,000
CY 91	Purge	58 resources (estimated)					58		None
CY 91	Potomac	25 resources	7	4	7	6		1	\$ 9,000
CY 91	Chevy Chase Historic District	1 district	1						\$ 5,000
CY 92	Travilah/Darnestown	26 resources	2	6	12	6			\$10,000
CY 92	Eastern County	37 resources	2	2	5	27		1	\$ 4,500
CY 93	Olney	31 resources	6	9	7	8		1	\$11,000
CY 93	Western Co. (A)***	34 resources	2	6	12	11		3	\$10,000
CY 94	Western Co. (B)***	45 resources	9	8	13	11		4	\$15,000
CY 94	North County (B)***	37 resources		6	13	15		3	\$ 9,500
CY 95	North County (A)***	53 resources		1	18	30		4	\$ 9,500

* For an explanation of the categorization system, see excerpt from M-NCPPC's Atlas Update Survey on the following page.

** The additional cost of research is estimated by allowing \$500 per resource for all resources in categories I, II, and III. The exception to this is the cost of research for the Chevy Chase Historic District, which is estimated at \$5,000.

*** Western County (A) = Planning Areas 12 + 16.
 Western County (B) = Planning Areas 17 + 18.
 North County (A) = Planning Areas 10 + 11.
 North County (B) = Planning Areas 14 + miscellaneous resources.

CATEGORIZATION SYSTEM

The following system was used to categorize the resources:

Category I: Outstanding resource architecturally and/or historically. Most resources in Category I either maintain the highest level of integrity or are invaluable as ruinous evidence of former significant structures. Should be evaluated immediately for Master Plan designation.

Category II: Very good resource architecturally and/or historically. Most resources in Category II maintain their basic integrity. Should be evaluated promptly for Master Plan designation.

Category III: Good resource architecturally and/or historically. Some resources in Category III have a diminished level of integrity. Should be evaluated promptly for Master Plan designation, but with lower priority.

Category IV: Marginal resource. Falls into one or more of the following categories: 1) severely deteriorated, 2) heavily altered, 3) architectural character not strong, 4) historical significance not apparent, 5) only typical of a large number of comparable resources. Lowest priority for evaluation for Master Plan designation.

Category V: Resource which is either demolished or which could not be located based on information given on survey form. Remove demolished structures from Locational Atlas and, if after further study the resources not located to date cannot be located, remove from Locational Atlas.

Category VI: Resource was inaccessible at time of survey.

Source: M-NCPPC Locational Atlas Update Survey, October 1989.

The Director of DHCD and the Planning Director should enter into a written memorandum of understanding that clarifies that the research conducted by Planning Department staff will be provided to the HPC. In addition, the memorandum should establish that efforts will be made to accommodate any special requests for research made by the HPC.

Recommendation 10: Clarify whether Council action is required to remove properties from the Atlas. (L)

A master plan amendment to designate an historic resource included in the Atlas onto the Master Plan is an amendment to the General Plan, and by State law clearly requires action by the County Executive and Council. However, current law should be amended to clarify whether Executive and Council action is similarly required to remove a property from the Atlas.

HISTORIC AREA WORK PERMITS

Recommendation 11: Where appropriate, include standards for future regulatory action in amendments to the Master Plan for Historic Preservation, and provide by law that the HPC must follow such standards in acting upon HAWPs. (L,A)

When designating either individual sites or districts on the Master Plan, the Planning Board, County Executive, and County Council should, where appropriate, include standards for future regulatory review, to provide the HPC and other applicable agencies (e.g., the County Department of Transportation) with guidance regarding the intent of historic designation. These standards should serve the purpose of providing the HPC with direction in reviewing HAWP applications; it must be recognized, however, that standards are not intended to be rigid design strictures, and each HAWP application will still need to be reviewed individually.

Standards provided in the Master Plan could include, for example, articulating what features of a property's architecture or environmental setting makes the property worthy of designating and therefore worthy of protection under Chapter 24A. Another form of guidance is to categorize sites designated in a district as either primary, secondary, or non-contributing resources, and to provide specific standards of review to be applied to resources in each category.

Consideration should be given to amending Chapter 24A to reenforce the connection between Master Plan designation and HAWPs. Specifically, the law could explicitly provide that in reviewing applications for HAWPs, the HPC should adhere to guidance contained within the approved and adopted Master Plan for Historic Preservation, as amended.

Providing such a legal connection would be similar to other statutory requirements that directly link master plan recommendations to actual land use decisions, e.g., the subdivision regulations require that the Planning Board must consider the applicable master plan when determining the acceptability of a preliminary plan proposal; and certain zones such as the mixed use development zone can only be applied in areas so designated on an approved and adopted master plan.

Recommendation 12: Amend the law to authorize HPC to delegate the approval of routine HAWP applications and minor modifications to staff. (L,A)

The HPC should be authorized to delegate to staff the approval of routine HAWPs and minor modifications to HAWP applications. This would provide another tool for processing more efficiently an increasing volume of HAWP applications, and reducing the workload of HPC members.

Chapter 24A should be amended to enable the delegation of various types of HAWPs to staff, and should provide a process for appealing HAWP decisions rendered at the staff level. The criteria for determining which HAWP applications are appropriate for review and decision by staff, without need for a public hearing and full Commission consideration, should be articulated either directly in Chapter 24A, or alternatively in the form of method (2) executive regulations.

A similar delegation of authority to staff to approve HAWPs has been implemented in Prince George's County since 1983. In Prince George's County, staff supporting the HPC are authorized to issue HAWPs, "for alterations to structures and environmental settings which will not significantly change the exterior features of an historic site or contributing structure within an Historic District or its environmental setting, and which will have no significant effect on its historical, architectural, cultural or archaeological value." Regulations adopted by the Prince George's HPC further define what categories of structural work can be approved by staff.

Recommendation 13: Simplify process for HPC action on relatively straightforward and uncontested HAWP applications. (A)

There are HAWP applications which are unlikely to meet the criteria for "routine" (and thereby not able to be handled at the staff level as recommended in Recommendation 12), but are nonetheless relatively straightforward and non-controversial. While the opportunity for a public hearing and full HPC discussion of these HAWPs should be afforded, the HPC Chair should conduct the HPC's meeting to allow for an expedited hearing and decision process on such HAWPs.

The Office of the County Attorney has advised the HPC that establishing a "consent calendar" for these straightforward and uncontested HAWPs violates the need for a separate record for each HAWP application. However, while taking care to establish a separate record for each HAWP application, the HPC Chair can expedite the process by efficiently opening the record, and if no comments are proffered, immediately closing the record and asking for a motion to approve.*

Recommendation 14: Authorize the Director of the Department of Environmental Protection to delegate to the Department of Housing and Community Development: the intake of HAWP applications; and the inspection of HAWPs. (L,A)

1. The intake of HAWP applications. The Director of DEP should be authorized to delegate the responsibility for accepting HAWP applications to DHCD. By law, the statutory review time for an HAWP should begin when the application is filed with DHCD staff, who would be legally responsible for forwarding a copy of completed HAWP applications to DEP within three days after filing.

This change would enable staff members who are trained in historic preservation and familiar with the concerns of the HPC to be responsible for accepting HAWP applications from members of the public. In addition to being in a better position to determine when an HAWP application is "complete," DHCD staff assigned to support the HPC, who have the appropriate expertise, are better able to offer technical assistance to citizens before an HAWP application is formally submitted.

2. The inspection of work performed with an approved HAWP. DEP does not currently conduct any routine inspections of HAWP-related work. The Director of DEP should be authorized to delegate the responsibility for inspecting work performed with an approved HAWP to DHCD staff. DEP should inform DHCD when work has commenced on an historic site that received an HAWP; inspection(s) performed by DHCD staff would be limited to the aspects of work addressed in the HAWP, and would be in addition to the building permit inspections conducted by DEP staff.

Within DHCD, the inspections of HAWP-related work could be shared by a combination of staff assigned to the HPC, and Code Enforcement staff. Similar to transferring the intake function, the advantage to shifting the inspection function is that the individuals performing inspections will be more familiar with the issues discussed by the HPC in issuing the HAWP, and the particulars of any conditions placed by the HPC on the permit.

* In July 1990, the HPC Chair implemented an expedited handling of straightforward and uncontested HAWPs similar to this recommendation.

Recommendation 15: Forward copies of selected HAWP applications to the M-NCPPC Planning Department staff to provide the opportunity for review and comment; it should be clear that the discretion whether to submit comments remains entirely with the Planning Board and M-NCPPC staff. (A)

The current legal requirement for the Director of DEP to forward all HAWP applications to the Planning Board for review and comment has never been implemented. Because HAWP applications sometimes raise broader questions concerning the County's planning, land use, and/or zoning policies, a procedure should be established to enable the HPC to seek advice from the M-NCPPC on selected HAWPs.* The decision of whether to submit comments should remain entirely with the Planning Board and M-NCPPC staff.

If HAWP applications are submitted to DHCD (see above Recommendation 14), then the HPC Chair, with DHCD staff assistance, should identify those incoming HAWP applications that the HPC would like to request the Planning Commission staff to review and comment on. Any such applications should then be forwarded to M-NCPPC's Historic Preservation Planner for possible comments from either the technical staff and/or the Planning Board. If the Planning Board and/or Planning Department staff decide to comment, such comments should be submitted to the HPC prior to the date of the public hearing on the application.

Recommendation 16: Amend the law to require that an approved HAWP is a prerequisite for receiving a building permit for historic sites designated on the Master Plan. (L,A)

The law should require that for properties designated on the Master Plan, obtaining an HAWP is a prerequisite for receipt of a building permit. In addition, DEP's permit staff should ensure that a property owner receives one consistent set of approved plans, and that such plans integrate any conditions placed on the issuance of the HAWP with any conditions placed on the issuance of the building permit.

* M-NCPPC's Historic Preservation Planner currently receives the upcoming HPC agenda and accompanying materials. The information, however, is not received far enough in advance of HPC's meeting to allow the Preservation Planner to develop formal written comments; in particular, the Preservation Planner would need sufficient time to seek input from other M-NCPPC staff and/or the Planning Board.

Recommendation 17: Amend the law to clarify the allowable time period for HPC action on HAWP applications, and consider extending the deadline for HPC action. (L)

Section 24A-7(f), Action by the Commission, should be rewritten to clarify the length of time that the HPC has to take action on an HAWP application. Consideration should also be given to extending the allowable time period for HPC action.

The current limit of 15 days after the close of the record for a decision on HAWPs is a shorter period of time than that allowed for other land-use regulatory decisions. In practice, the current deadlines also limit the HPC's ability to manage its agenda efficiently.

Extending the time period for HPC decision on HAWPs to either 60 days from the time of filing, or 30 days from the close of the record would make the HPC's deadlines more closely aligned with those imposed on the Board of Appeals for special exceptions and variances, and on the Planning Board for subdivisions. Some extension to HPC's processing deadline will be especially warranted if, as recommended below, all of HPC's decisions are required to be written.

Recommendation 18: Amend the law to require that all HPC decisions on HAWPs be in writing. (L)

Under current law, the HPC is required to provide a written explanation of its HAWP decisions only in cases of denial. In order to provide a better record of HPC's decisions that can be made readily available to the public, the HPC should be required to provide a written explanation of all HAWP decisions, both approvals and denials. For routine uncontested HAWPs, the HPC's written decision could, similar to routine variances decided upon by the Board of Appeals, be written using largely boiler plate language that cites the basic findings and criteria of the ordinance under which the HAWP is recommended for approval.

It is important to note that recommending written decisions for all HAWPs is compatible with Recommendation 13 above, which recommends the HPC continue its practice of expediting the process for action on relatively straightforward HAWPs. For these HAWPs, the Board of Appeals' current handling of routine variances again provides a constructive model. The Board of Appeals reaches its decision on routine variances in public session directly after the record is closed, a practice which enables the applicant to know the outcome of his/her application on the same day as the public hearing; the Board's formal written decision is then usually issued within 10-14 days following the public hearing.

Recommendation 19: Authorize the Board of Appeals to stay the issuance of an HAWP pending the outcome of an appeal. (L)

In cases where an HPC decision to issue an HAWP is appealed, there is nothing in current law to prevent the HAWP from being issued by DEP while the appeal is pending. To prevent some irreversible damage from being done to an historic site (e.g., the cutting down of an historic tree), the Board of Appeals should be authorized to stay the issuance of an HAWP pending the outcome of an appeal.

Recommendation 20: Amend Chapter 24A to provide that, in addition to levying fines, the penalty imposed by the County for violations of the Chapter can include orders to take corrective action to cause compliance with an approved HAWP. (L)

Current law classifies violations of Chapter 24A as Class A violations. In addition to levying a fine, the County should be authorized, by law, to require violators of Chapter 24A to take corrective action to cause compliance with an approved HAWP. This would be analogous to the authority granted to the Planning Board with respect to enforcement of an approved site plan; specifically, Section 59-D-3.6 of the County Code authorizes the Planning Board, after due notice to all parties concerned and a hearing: "to revoke approval of the site plan or approve a plan of compliance which would permit the applicant to take corrective action to cause compliance with the site plan."

PUBLIC EDUCATION AND PROGRAM ADMINISTRATION

Recommendation 21: Develop better techniques for informing the public about the status of properties designated on the Master Plan for Historic Preservation. (A)

The County should investigate techniques used successfully in other jurisdictions for informing the public about the status of properties designated on the Master Plan. This is especially important in terms of informing potential purchasers of historic sites about what it means to own property designated on the Master Plan.

One suggestion is to explore whether the Montgomery County Board of Realtors would agree to include in all sale contracts a statement that indicates whether a property is designated on the Master Plan for Historic Preservation. Alternatively, the status of designated properties could be entered officially as part of the land records.

Another technique worth exploring is the use of plaques that indicate a property has been designated as an historic site on the Master Plan. In addition to increasing the likelihood that a potential purchaser knows in advance that the property has been declared historic and worthy of protection, plaques have been found to foster a positive perception of designation.

Recommendation 22: Develop materials and programs to better educate the public about the County's historic preservation process and programs. (A)

Much could be done to better inform and educate County citizens in general about historic preservation, and in particular, about the Master Plan designation process, the HAWP process, the respective roles of Executive branch and M-NCPPC historic preservation staff, and County programs available to support and strengthen preservation efforts. The HPC, with staff assistance, should review and update its plan for public education, and take action to implement the plan during the next several years.

Recommendation 23: Improve the administration of existing historic preservation programs. (A)

Attention should be given to improving the administration of the County's existing easement program and Historic Preservation Loan Program (HPLF), both of which can currently be described as "inactive." Executive regulations for the easement program should be promulgated, and the executive regulations for the HPLF (most recently adopted in 1985), should be reviewed, updated, and re-promulgated. The level of funding available from the Rehabilitation Loan Fund for the HPLF must also be clarified in the budget.

Additional efforts to publicize the availability of the easement program, rehabilitation loan program, and tax credit program should also be made.

STAFFING, TRAINING, AND COMMUNICATION

Recommendation 24: Retain the Department of Housing and Community Development (DHCD) as the department assigned the lead responsibility for providing professional and administrative staff support to the HPC, but establish a separate Historic Preservation Office within DHCD; and authorize an additional staff position to manage the County's historic preservation efforts. In addition, the respective roles of the Historic Preservation Office within DHCD and M-NCPPC's historic preservation planning staff should be clearly defined and communicated to the public. (A, \$)

1. Establish an Historic Preservation Office within DHCD

A separate Historic Preservation Office should be established within the Department of Housing and Community Development. The mission of this office should be to manage the County Government's historic preservation efforts, an integral part of which is to provide staff support for the HPC. The Historic Preservation Office should report directly to the Office of the DHCD Director.

It is recommended that the Historic Preservation Office be responsible for providing general staff support to the HPC, to include:

- Preparing responses for the HPC Chair's signature on routine and non-routine correspondence;
- Working with the HPC Chair to set agendas and manage the HPC's workload;
- Attending all HPC meetings, and maintaining HPC minutes and HPC records;
- Managing the processing of HAWPS applications from intake through Commission review and inspection of the actual work performed;*
- Formulating and presenting professional staff recommendations for the HPC regarding HPC recommendations on designations/subdivisions and actions on HAWPs;
- Drafting HPC decisions for final HPC approval;
- Ensuring that all notice and other due process requirements are followed;
- Working with M-NCPPC staff to ensure that adequate research on historic resources is provided to the HPC (see Recommendation 9); and
- Organizing orientation sessions for new HPC members, and developing staff training to include knowledge of relevant laws and regulations, and other County programs and functions.

The Historic Preservation Office should also be responsible for carrying out the public outreach and program administration functions assigned to the HPC. In particular, this means that the Historic Preservation Office, in consultation with the HPC, would be responsible for:

- Managing the County's historic preservation grant and revolving loan programs;
- Managing the County's historic preservation easement and tax credit programs;
- Providing information and educational materials to the public about historic preservation; and
- Undertaking other activities to advance the goals of historic preservation in the county.

* See Recommendation 14.

The Historic Preservation Office staff should also be responsible for coordinating HPC's work with that of Executive branch departments and offices, the M-NCPPC staff, the Planning Board, the Council, and other County departments and agencies involved with activities that affect the preservation of historic resources.

It is important for a line of communication to remain open between HPC members and DHCD officials. As noted earlier in this report, DHCD officials and HPC members have made progress in recent months towards reaching a better understanding about the role of DHCD staff assigned to support the HPC. In particular, there should be a clear understanding about what functions HPC members themselves are going to perform, and which activities are appropriately performed by County Government staff working in consultation with the Commission. In addition, DHCD officials and HPC members should agree upon a procedure for resolving future differences of opinion or misunderstandings about the role of staff and support from the County.

2. Create a new senior professional staff position to manage the Historic Preservation Office.

Based upon study of the current staffing situation and taking into account the additional tasks that this report recommends be performed, OLO recommends that the functions of the Historic Preservation Office could reasonably be accomplished with the addition of one senior professional staff position to manage the Historic Preservation Office. Combined with the two staff currently assigned on a full-time basis to support the HPC, the staffing complement of the Historic Preservation Office would then total three workyears.

The newly created position should be a full-time professional staff person with the skills, education, and expertise to manage the Historic Preservation Office and coordinate the County's historic preservation efforts. To parallel the nomenclature adopted at the State level and in numerous other jurisdictions, the working title of this position could be the County's "Historic Preservation Officer"

The hiring process for this position should follow standard merit system advertising and selection procedures. County personnel regulations specify procedures for the Office of Personnel to determine the exact title and grade of this job. Recommended minimum qualifications for the Historic Preservation Officer position are included in Appendix E.

3. Provide some physical identification for the Historic Preservation Office.

To enhance the ability of County staff to educate the public about historic preservation, and the work of the HPC, it would be helpful to provide some physical identity for the Historic Preservation Office. Two specific issues to be addressed are: the need for some identifying sign outside the offices, and the need for a telephone line that is consistently answered "Historic Preservation Office."

4. Ensure the public understands the respective roles of the Historic Preservation Office within DHCD and M-NCPPC's historic preservation planning staff.

With staff supporting the HPC located within the Executive branch and preservation planning staff supporting the Planning Board located within M-NCPPC, it is important for the division of responsibilities to be clearly defined and communicated to the public.

At present, although there are some areas of overlap,* the focus of M-NCPPC's preservation planning staff is on the designation of historic sites on the Master Plan, and the review of subdivision proposals that potentially affect an historic site or resource. While the HPC advises the Planning Board on these matters, the focus of staff support for the HPC is predominantly on design review after an historic site has been designated; in addition, the staff assigned to support the HPC devotes time to the other program administration and public education responsibilities assigned to the HPC.

The respective roles and division of responsibilities between the Historic Preservation Office within DHCD and M-NCPPC's historic preservation planning staff should be more effectively communicated to the public as part of an enhanced public education program, (see Recommendation No. 22).

Recommendation 25: Continue to provide HPC with an enhanced level of legal assistance. (A, \$)

The increased level of legal support provided to the HPC during the past two years should be continued. The Assistant County Attorney assigned to advise the HPC should be available to provide the HPC with oral or written opinions, to provide procedural advice to the HPC, and to alert HPC members about statutory requirements that must be met. When requested by the HPC, this attorney should also be available to draft or review HPC decisions on HAWPs, especially in cases dealing with complex legal issues. The Assistant County Attorney assigned to the HPC should, when requested by the HPC, attend HPC's public meetings and executive sessions.

* OLO recommends that one area of overlap, the researching of historic resources, can be reduced by delegating the research function to M-NCPPC's preservation planning staff. (See Recommendation No. 9.) OLO recommends, however, that although it potentially qualifies as an area of overlap, it would be beneficial for M-NCPPC's preservation planning staff to have the opportunity to comment upon HAWPs that raise broader questions concerning the County's planning, zoning, and/or land use policies. (See Recommendation No. 15.)

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In addition, the Assistant County Attorney assigned to the HPC should keep the HPC informed about relevant court decisions. It should be the responsibility of this attorney to prepare a briefing for incoming HPC members to explain the parameters of HPC's authority, and the case law involving the HPC and HPC decisions.

Finally, because appeals from the HPC now go to the Board of Appeals (BOA), the Office of the County Attorney must be conscious to assign staff consistent with the Attorney General's conflict guidelines for adjudicatory proceeding in order to minimize any perceived conflict of interest. In particular, during the time an attorney is assigned to the HPC, he/she should not also be providing advice to the BOA on any matter that may be later presented before the BOA.

Recommendation 26: Develop an annual training seminar for all commissioners that serve on the County's adjudicatory boards and commissions, and develop ongoing training for County staff who have primary responsibility for providing support to a County-appointed board, committee, or commission. (A,\$)

Each year, the County should offer a training seminar to all commissioners that serve on the County's adjudicatory boards.* The Office of Personnel, Division of Organization Development and Training, could organize such training, with in-house assistance from the Office of the County Attorney, the County Council staff, and other County departments.

A training session for board members should include information relevant to all boards that perform an adjudicatory function. For example, the agenda should cover: how to conduct meetings in accordance with the Administrative Procedures Act, an explanation of ex parte communication, and guidance on compliance with the County's Ethics law. The seminar should also include training sessions on how to chair a quasi-judicial proceeding, to include tips on dealing with angry citizens or board members.

* This includes the: Board of Appeals, Animal Matters Hearing Board, Human Relations Commission, Commission on Landlord-Tenant Affairs, Commission on Common Ownership Communities, Merit System Protection Board, Sign Review Board, Ethics Commission, Board of License Commissioners, and the Planning Board.

The Division of Organization Development and Training should also develop training opportunities for County staff assigned to provide support to the County's many boards, committees, and commissions. Providing the necessary and appropriate level of staff support to a group of appointed citizens is often a challenging task. This assignment grows especially difficult in situations when the stated position of a board or committee can be in conflict with the position of the County Government. Much of this training could be accomplished with the assistance of County employees, who have learned through experience the skills required to effectively staff citizen boards and commissions.

Recommendation 27: Schedule separate annual meetings between the HPC and: a County Council Committee, the County Executive, and the Planning Board. (A)

To encourage ongoing and appropriate communication, the HPC should meet annually with a Council Committee, the County Executive, and the Planning Board. Without violating the ex parte rules on any particular HAWP case, the general purpose of these meetings would be to generally discuss the legislative intent, along with any perceived problems, of the laws and regulations governing the HPC's decision making.*

Recommendation 28: Provide for a formal follow-up to this evaluation to take place in FY94. (A)

The Council should charge the Office of Legislative Oversight with monitoring the operations of the HPC over the next three years, and with conducting a follow-up evaluation during FY94. If, at that time, the problems identified in this evaluation have not been addressed, then consideration should be given to modifying the basic structure, administrative location, and/or authority of the HPC.

* The HPC has met with the Planning Board for the past several years, and has met occasionally with the Council during the past decade.

6. A Discussion of HPC Staffing Alternatives

As part of this study, OLO sought the opinions of those interviewed on alternatives for providing staff support to the HPC. The three options most frequently discussed were:

- Option (I): Keeping the responsibility for providing staff support to the HPC within the Department of Housing and Community Development;
- Option (II): Changing the law to assign M-NCPPC's Montgomery County Planning Department with responsibility for providing staff support to the HPC; or
- Option (III): Changing the law to establish HPC as an independent commission with its own staff located either within the executive or legislative branch of County Government.

The remainder of this chapter discusses the pros and cons of these three alternatives.

a. Option I. In general, the primary reasons cited for keeping the responsibility for providing staff support for the HPC within the Department of Housing and Community Development are that:

- Current law places the responsibility for staffing the HPC with the Executive branch;
- HPC members are appointed by the County Executive and confirmed by the Council, and the HPC is therefore appropriately staffed by Executive branch employees;
- HPC's responsibilities require coordination among Executive branch departments, and this can most efficiently be accomplished if the staff supporting the HPC is also located within the Executive branch;
- An increasing percentage of HPC's time is spent acting upon HAWPs, which is a regulatory function related to the building permit function handled by the Executive branch;
- The staff of DHCD includes professionals with appropriate background and expertise, (e.g., planners, architects, grants managers) who can supplement the work of staff assigned to support the HPC; and

- Being a relatively large department, DHCD currently "subsidizes" historic preservation by not specifically charging all operating expenses (e.g., use of the motor pool) to the HPC function.

The primary negative factors to be considered in keeping the current staffing arrangement are that:

- DHCD has multiple responsibilities, and when compared to some of the department's other demanding missions (e.g., creating affordable housing), historic preservation is competing for resources against other very important objectives;
- The arrangement continues the current assignment of historic preservation activities to two different agencies (DHCD and M-NCPPC), which results in some duplication of staff effort and confusion to the public about which agency is responsible for what function;
- The friction between DHCD officials and HPC members (as discussed earlier in this chapter) has created stress during the past three years that must be overcome if a more productive working relationship is to be established; and
- It is feasible that future situations will arise where the goals of historic preservation conflict with other important goals of DHCD, and such conflicts of purpose may create a difficult working climate for both DHCD staff and HPC members.

b. Option II. The primary advantages cited to assigning responsibility for providing professional and administrative staff support to M-NCPPC's Planning Department are that:

- The County's historic preservation ordinance was enacted pursuant to authority contained in the Regional District Act, and M-NCPPC is a logical place to administratively locate staff support for a function that is part of the County's land use and planning function;
- Staffing the HPC by the M-NCPPC Planning Department appears to work well in Prince George's County, which is governed by the same network of State enabling legislation;

- Consolidating the County's historic preservation efforts would reduce the public's confusion about where to go with questions concerning historic preservation, and eliminate duplication of staff effort by County Government staff and M-NCPPC staff;
- This location would provide greater opportunities for coordination and economies with respect to HPC's legally-mandated role to provide advice to the Planning Board on historic designations and subdivision applications; and
- The M-NCPPC staff includes experts in the appropriate subject areas such as: historic preservation, urban planning, community planning, architecture, landscape architecture.

The primary disadvantages cited to relocating the staffing responsibility to M-NCPPC's Planning Department are that:

- It would likely be more difficult to coordinate HPC's work with that of Executive branch departments;
- Although HPC members (appointed by the Executive and approved by the Council) would presumably continue to make decisions on HAWPs, the change would be perceived as moving a regulatory function from the Executive branch to the Planning Board;
- There would continue to be the potential for staff to become caught in between conflicting views of decision-makers; e.g., the HPC could take a position contrary to that of the Planning Board, and the Planning Department staff could feel caught in the middle; and
- M-NCPPC's Silver Spring offices are already very crowded, and it would be a challenge to provide adequate space for additional staff.

c. Option III. A third staffing option would be to establish the HPC as an independent commission, either as part of the Executive or Legislative branch. The primary advantage of this alternative is that it would provide the HPC with greater public visibility and identity as a separate commission, not affiliated with any particular department or agency. Advocates for this change argue that it would also provide the HPC members with more direct control over budgetary resources, and would reduce the potential for conflict between HPC goals and departmental goals. Examples of other adjudicatory boards that have been set-up as independent entities are: the Ethics Commission, the Board of License Commissioners, the Board of Appeals, and the Merit System Protection Board.

A major disadvantage of establishing the HPC as an independent entity would be the fiscal impact of such a change. In addition to costing more in terms of staff and operating expenses, establishing HPC as an independent commission could result in an increased isolation of the historic preservation function, instead of an increased coordination of HPC's actions with other County activities that affect the preservation of historic resources. Finally, staff assigned to support to the HPC would continue to be merit system staff hired by either the Chief Administrative Officer (e.g., Ethics Commission staff) or the Council Staff Director (e.g., Board of Appeals staff), which means that the potential for having staff feel split loyalties, although perhaps reduced, would not be eliminated.

V. COMPARATIVE INFORMATION

Section A compares the structure, staffing and responsibilities of the Montgomery County HPC to the Prince George's County HPC, as the only other preservation commission governed by the Regional District Act;

Section B summarizes data collected from historic preservation staff in 12 other jurisdictions. The sample, which was selected on the basis of recommendations from the Maryland Historical Trust, the National Alliance of Preservation Commissions, and DHCD and M-NCPPC staff, includes two other Maryland counties (Anne Arundel, Howard), three Maryland cities (Frederick, Hagerstown, Rockville), the District of Columbia, and five additional jurisdictions known for their historic preservation activities.

A. Comparison of HPCs in Montgomery and Prince George's Counties

Montgomery and Prince George's Counties both derive the authority to enact local laws governing the preservation of historic resources from the Regional District Act.* Prince George's County enacted its own historic preservation ordinance several years after Montgomery County, and the two laws are similar in many respects.

A comparison of the composition and statutory responsibilities of the Montgomery and Prince George's historic preservation commissions is contained in Appendix C. The comparison shows that:

- Both HPCs have nine members, but Prince George's membership requirements are more restrictive and detailed;
- Both HPCs are assigned a range of regulatory, advisory, and administrative responsibilities, to include serving as a clearinghouse for information on historic preservation and to generally undertake activities to advance the goals of historic preservation;

* For more about the Regional District Act, see page 4.



Montgomery County Government

MEMORANDUM

TO: Andrew Mansinne, Director
Office of Legislative Oversight

FROM: Leonard Taylor, Chairperson
Historic Preservation Commission *Leonard Taylor*

SUBJECT: Office of Legislative Oversight Report No. 90-02 - Evaluation of
Historic Preservation Commission - Recommendations With Regard to
the Historic Preservation Commission

DATE: October 5, 1990

The Historic Preservation Commission has, over the time that the research was compiled for this report, devoted many hours to discussion with Karen Orlansky of your staff regarding the HPC and its role in the historic preservation efforts of the County.

The Commission devoted a portion of its meeting on September 26, 1990 to review the draft report and to provide comments. The Commission has reviewed all of the recommendations and has formed an opinion on many of them. Below are specific responses to the recommendations. The HPC reserves the right to provide additional comments in the future, particularly at the work sessions with the Council.

The HPC generally agrees with recommendations 4, 8, 10, 13, 14, 15, 16, 17, 19, 21, 22, 26, 27 and 28, and has no further comments on them at this time. The HPC agrees with recommendations 1, 2, 5 and 9, 15 and 26, subject to the following comments:

1. The HPC suggests that the law recommend such representation, but not require it. The HPC already has difficulty finding people willing to serve due to the major time committment required.

Andrew Mansinne
Page 2
October 5, 1990

2. The Commission is concerned that establishment of panels not be mandatory.
5. Allow HPC members to be compensated. The HPC agrees that some form of honoraria is appropriate.
9. The HPC needs to be able to contract for research in order to carry out its functions. Resources must be allocated to the HPC for this important work. The HPC also agrees that it is appropriate for M-NCPPC to complete research on Atlas sites.
15. Gwen Marcus, Historic Preservation Planner at M-NCPPC, is presently mailed the same packet of information, including the agenda, that HPC Commissioners receive regarding HAWPs one week prior to the meeting.
26. The Commission feels that this would be most helpful and believes that the Chair of the Commission should be required to attend.

The HPC feels that issues raised in recommendations 3, 6, 7, 11, 12, 18, 20 and 24 may have a far-reaching impact on preservation in the County and require further study. The Commission will provide further comments during worksessions with the Council.

I want to thank you for the opportunity to comment on the OLO recommendations and look forward to being able to participate in the review of the report by the County Council. I have also attached comments received from Jeffrey Gross, Chairperson of the Boyds/Hyattstown Local Advisory Panel, for your information and review.

Attachment

cc: Karen Orlansky
Historic Preservation Commission
Richard J. Ferrara
Lewis T. Roberts

2144E

Leonard Taylor Jr.
Chair, Montgomery County Historic Preservation Commission
5705 Wilson Lane, Bethesda, MD 20814

December 8, 1990

Mr. Isiah Leggett, President
Montgomery County Council
100 Maryland Avenue
Rockville MD 20850

Re: Critical Concerns of the Historic Preservation Commission

Dear Mr. Leggett and Members of the County Council:

As County Council deliberations proceed in connection with the Office of Legislative Oversight's November 13, 1990 report on the Historic Preservation Commission (HPC), we respectfully request consideration of the issues highlighted below.

The OLO report masterfully reflects successful identification and analysis of many complex matters; we support many of the recommendations. Building on the report, the Commission recommends the following:

1. Create an Independent Office of Historic Preservation

The HPC is currently placed at the lowest level within the Department of Housing and Community Development (DHCD). The OLO report proposes to elevate HPC to "office" status but keep it in DHCD. We believe that placement of HPC under the jurisdiction of any executive branch department conflicts with the Commission's mandate as a quasi-judicial body charged with making impartial, professional judgments on preservation issues. By law, HPC's role impacts the work of the County Planning Board, the Department of Environmental Protection, the Department of Transportation, the County Attorney's Office, and other county agencies. Because of its lack of visibility, the Commission's service to other county agencies in fostering the preservation ethic—as mandated in the ordinance—is compromised. Currently, the HPC is very tightly controlled by DHCD. For example, the department modifies Commission decisions and policies; controls the Commission's budget and staff; and exercises approval over communications. To our knowledge no other county adjudicative body is so constrained. This organizational conflict of interest has on occasion placed DHCD in the uncomfortable position of having to choose between preservation and its other priorities. As a result, HPC's own department has failed to support preservation as the ordinance intended. While the HPC's responsibilities are mandated by law, DHCD's control of those responsibilities is not.

As professionals in government and the private sector, HPC commissioners recognize and appreciate the realities of shrinking budgets and competition for resources. The Commission believes the HPC should be positioned so that it can develop program priorities and an annual work plan with self-managed staff and budget. We want to meet the challenge of achieving a sunset date for the Atlas. We want to write design standards to help govern Historic Area Work Permits (HAWP). We want to provide competent review of more than double the number of current HAWPs as anticipated with the early addition of Takoma Park, Garrett Park, and Chevy Chase historic districts. To have any reasonable chance of accomplishing these goals—among many cited in the OLO report—the HPC's ability to exercise its mandate must be strengthened. It is not realistic to assume that our existing weaknesses, together with a growing HAWP workload, accelerated Atlas reviews, much needed public education efforts, and other work prescribed by law, can be addressed within the departmental structure. The structure hasn't worked in the past; we who live with it daily have no confidence it can ever work well.

2. Provide Resources Commensurate with Scope and Volume of Work

Nine volunteer commissioners, assisted by two DHCD staff members, devote most of their time to HAWPs. The Commission usually meets twice a month; for the past three years, the meetings have started at 7:30 pm and ended at 11:30 pm or later. Handling HAWPs is only one of the Commission's legal mandates. Individual commissioners do site reviews, evaluate grant proposals, represent the HPC before other county agencies, and perform a variety of other official tasks. The absence of adequate resources means that outreach and community

education, clearly envisioned in both the Master Plan for Historic Preservation and the Historic Preservation Ordinance, are virtually ignored. Inadequate resources also impact the Commission's ability to rigorously review Atlas sites and develop clear, comprehensive master plan recommendations. The Commission needs both the structure of an independent office and adequate resources to meet current workload; additional resources, including budget, staff, and computer capability, will be needed to administer the ordinance in a responsible manner with the expanding inventory of historic districts and sites. In brief, competent and fair stewardship of an inventory of historic resources of the magnitude anticipated requires a very different structure and process than the one currently in place.

3. Improve Enforcement


The HPC is surprised that so many structures on the 14-year-old Atlas have survived. The Department of Environmental Protection regularly approves permits for work on historic properties that by law require HAWPs. In spite of the ordinance's prohibition of "Demolition by Neglect," structures on the master plan are left by their owners to rot; the police powers of this provision are almost never used to rescue properties. No mechanism exists to ensure that work done on master plan resources comply with approved HAWPs. Even public agencies ignore the preservation ordinance when it does not jibe with their timetable or agenda. We believe vigorous and consistent enforcement of the county ordinance is vital if Montgomery County's commitment to historic preservation is to be taken seriously.

4. Increase Support for Master Plan Property Owners

In the abstract, most citizens think historic preservation is a good idea; however, when it comes to designating their personal property on the master plan they may hesitate. Many citizens do not know there is a preservation program in the county. Often they are unaware of the recognition, technical assistance, and financial incentives that come with designation. We would like to do more to insure that property owners know about and receive these benefits. That is what the county's education program in historic preservation should be addressing. We think it sad Montgomery County does not even provide plaques saying a property is on the historic register. This type of symbolic support, coupled with meaningful financial incentives such as tax credits, low-interest loans, and professional technical assistance are the tools used by many other local governments throughout the country to build a preservation constituency and insure its future.

Thank you for your consideration. The HPC is grateful for the opportunity to share its critical concerns with the Council. If the outlook for preservation in Montgomery County were not so grim, we would be more sanguine about the future. But your Commission feels strongly that the time has come to put the county's preservation house in order. Action on the OLO report provides an opportunity to do so. We look forward to participating actively in upcoming Council work sessions about the HPC.

Sincerely yours,


Leonard Taylor Jr.

cc: Mr. Neal Potter, County Executive
Montgomery County

Mr. Gus Bauman, Chair
Montgomery County Planning Board

Mr. Richard Ferrara, Director
Department of Housing and Community Development

Ms. Karen Orlansky
Office of Legislative Oversight



Montgomery County Government

ROCKVILLE, MARYLAND 20850

MEMORANDUM

October 5, 1990

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

FROM: Lewis T. Roberts, Chief Administrative Officer *L. T. Roberts*

SUBJECT: DRAFT OLO Report #90-2, A Description and Evaluation of the
Montgomery County Historic Preservation Commission

Thank you for the opportunity to comment on the Draft OLO Report #90-2, A Description and Evaluation of the Montgomery County Historic Preservation Commission. The report provides a thorough analysis of the structure, staffing, workload and overall operations of the Montgomery County Historic Preservation Commission (HPC). Copies of comments from the Department of Housing & Community Development, the County Attorney's Office, the Office of Management and Budget, the Office of Planning Policies, the Department of Environmental Protection, and the Personnel Office are attached.

The Executive Branch believes that there is a need for a comprehensive review of the Historic Preservation Ordinance. I suggest that an interagency working group conduct this review and prepare revisions for Council consideration. Specifically, the Executive Branch is concerned about the combination in one commission of both program advocacy and adjudication responsibilities and believes the Council should consider separating these duties to ensure both the fact and appearance of fairness in adjudication and to free program advocacy efforts from the workload of cases to be judged.

With regard to specific recommendations, full discussion of the scope of the HPC's functions should precede allocation of additional resources. The fiscal impact of each recommendation would need to be calculated and acknowledged before final decisions could be made. In the event of tight fiscal circumstances, the Council, the HPC and the Department of Housing and Community Development may have to consider alternatives in addressing the stated needs while not being a significant burden to the County's budget.

The Executive Branch looks forward to discussing OLO Report #90-2 upon its release by the County Council. Thank you again for the opportunity to comment.

LTR/jw

Attachments

M E M O R A N D U M

October 2, 1990

TO: Andrew Mansinne, Director
Office of Legislative Oversight

FROM: Richard J. Ferrara, Director *RJF*
Department of Housing & Community Development

SUBJECT: OLO Report No. 90.2 - Evaluation of Historic Preservation
Commission - Summary and General Comments on Report

The Department of Housing and Community Development has reviewed the "description - Evaluation of the Historic Preservation Commission (HPC)" (O.L.O. Report No. 90.2) and agrees in general with the thrust of the report. We would point out, however, that the review did not take into consideration the need for a comprehensive review of the law.

The Historic Preservation Ordinance was originally promulgated in 1979. Since that time the Commission has changed from mainly an advisory commission (ie, recommendations for placement on the Master Plan) to a regulatory commission heavily involved in reviewing applications for historic area work permits. We expect this latter role to continue to increase in the future. When changes were made to the ordinance in 1989, the HPC and various county departments (primarily DHCD & OPP) identified the need for a complete revision to the law. Though the OLO report makes many recommendations which will affect the law, we still believe that there remains a need to study the law in detail, in the context of these recommendations.

The Department of Housing & Community Development in general concurs with the recommendations presented in the report, as outlined below:

- Agree in general with recommendations 1-7 on "Commission Structure and Procedures", with emphasis on modifications to the present HPC approval process for HAWPs. Clear standards should be delineated for HAWPs to ensure that only important cases and those of significant community concern and impact be subject to full HPC hearings. All others, probably the majority, should be handled by staff, utilizing guidelines approved and promulgated by the Commission. We also suggest that consideration be given to making the HPC subject to the Administrative Procedures Act (Chapter 2A of the County Code).
- Agree strongly with recommendations 8-10 on "Evaluation of Atlas Sites".

- Agree as follows with recommendations on "Historic Area Work Permits". We agree in general with recommendations 11 thru 13, 15 thru 17 and 19, 20. We do not agree with recommendation 14 because we believe that HAWPs are part of the building permit process, and as a consequence, need to be received by DEP with the actual work also to be inspected by DEP as part of that process. We disagree with recommendation 18 because of staffing considerations and the amount of time necessary to prepare findings of fact for all cases. We do agree that complicated cases should have a written decision.
- Agree in general with recommendations 21 thru 23 regarding "Public Education and Program Administration". However we note that both recommendations 21 & 22 do have costs associated with them.
- Agree in general with recommendations 24 thru 26, regarding staffing, training and communication. We take no position on recommendation no. 27.
- Agree in general with recommendation 28 regarding follow up evaluation.

We have also provided more detailed comments on the recommendations (attached). Many of these comments are technical in nature and may assist your staff in their work and in assessing what the department and the HPC are currently doing to address the concerns raised in the OLO report.

AvH/rap:2512B

TECHNICAL COMMENTS TO OLO REPORT 90-2

The technical comments are outlined below. We appreciate the opportunity to comment on the report and commend the OLO staff assigned to this project for a thorough and professional job.

- 1) Amend the law to include representation on the Commission from the fields of business, real estate and law. - The Department supports this recommendation. We point out that the law should be clarified to indicate that an individual commissioner may represent more than one field of interest, for example, an architect could represent both architecture and urban design since architects are generally trained in both disciplines, or a real estate closing attorney could represent both the law and real estate.
- 2) Authorize the HPC to establish panels. - The Department strongly supports this recommendation. The use of panels by the Landlord-Tenant Commission which is also staffed by DHCD has worked well and has streamlined the decision making process. It would also partially address the problem of the increasing workload of the HPC.
- 3) Authorize the HPC to send cases to the Hearing Examiner. - The Department supports this recommendation. The use of a hearing examiner for more complex cases of interest to the Commission as a whole should assist the HPC to establish facts and to rule in accordance with the law. If the law is changed to allow such a delegation, the time period by which the HPC makes its decision must be extended, since at present the law requires the HPC to render a decision within 45 days of receipt of the application or within 15 days of the close of the record.

Since the Hearing Examiner would put together the record and after completion of the record make a recommendation to the Commission, the Commission would need adequate time to review the record and to determine whether it concurs or not with the Hearing Examiner's recommendation. If the Commission should not agree with the Hearing Examiner, it would then need adequate time to formulate its own findings and recommendation. Therefore, in revising the law to allow this method of review, special consideration should be given to the time limits.

- 4) Clarify in regulation an expended role for the HPC chair. - The Department supports this recommendation.
- 5) Amend the law to allow members to be compensated. - The Department supports this recommendation with the following comments. Members should be paid for attendance at meetings, as opposed to a monthly salary. Also since the HPC also interacts with Planning Board and County Council, there is a need to reimburse members who represent the Commission before these bodies for their actual expenses. Recommendation no. 4 does

identify the chair as the chief spokesperson for the Commission and this recommendation does suggest a larger compensation for the chair. If both these recommendations are taken together, it could be argued that if the chair does all the representation the chair does receive extra compensation. However, realistically, the chair will not always be able to represent the Commission at these meetings, therefore, there has to be a way to at least reimburse commissioners who take on this role for the Commission.

- 6) Finalize Executive Regulations. - The Department concurs in general with this recommendation. The Executive Regulations which outline the HPC's routine procedures is presently at the County Attorney for final review prior to promulgation under Method 2. The regulations with regards to the role of Local Advisory Panels are presently the subject of a subcommittee of the HPC and should be ready for first review by the attorneys within the next few months. Regarding the Executive Regulations on LAPs, the department's concern is that the regulations governing the LAPs make it clear that the LAPs' role is advisory to the HPC and would not require appearances by applicants.

Also, the recommendation that design standards be published as executive regulations may not be practical. The HPC in certain cases believes that design standards/guidelines, particularly with regards to historic districts should be district specific. Also the term "standards" is probably too tight implying that if certain specific rules are followed, an application would be automatically approved. The Department believes that the HPC should promulgate general guidelines, similar to the general design guidelines originally promulgated by the Planning Board as part of the Master Plan for historic preservation. These guidelines should be published and made available to the public, but not as Executive Regulations.

- 7) Clarify the law that all HPC decision are appealable to the Board of Appeals and to clarify the intent of the ordinance with regards to the Commission's role in the area of appurtenances and environmental setting. The OLO report notes that the Commission's decisions with regards to demolition by neglect should be appealable to the Board of Appeals. The Commission's role with regards to demolition by neglect, however, is that of an appeals board. The law notes that DEP (or its designee, DHCD's Division of Code Enforcement) issues a citation for demolition by neglect. The party cited has the right to appeal this citation to the HPC. The HPC, however, is not an impartial

appeals board; rather it is a board with a specific point of view (it is charged with protecting the County's historic heritage). Consequently, we suggest that appeals of demolition by neglect actions should be taken directly to the Board of Appeals.

Regarding delineation of appurtenances and environmental setting, the department believes that the delineation should be made as part of the HPCs role in making recommendations to The Planning Board with regards to placement on the Master Plan. The Planning Board has recently started including maps indicating environmental setting as part of the Master Plan amendment. However, in many cases the amendment will identify the existing parcel as the environmental setting without taking into consideration any future subdivision. At a minimum, the HPC in its recommendations to the Planning Board, should note the minimum environmental setting, taking into consideration existing zoning and future subdivision. The Planning Board should include specific limits to the environmental setting in the Master Plan amendment, and this should be the final determination. Presently, the amendments often make reference to reduction of the environmental setting, allowing the HPC to undertake this role. The Department believes that the delineation of appurtenances and environmental setting is properly part of the Master Plan process. The Commission's role should be advisory in this process. The law should be clarified to reflect this.

Regarding the HPC's role as to Atlas resources and subdivision, the Commission currently makes recommendations with regards to environmental setting. To clarify and simplify the process, we believe that subdivision should be treated in the same way as substantial alteration or demolition of a structure. It should start the abbreviated Master Plan amendment process.

- 8) Adopt a schedule for review of Atlas sites, establish a sunset date for the Atlas and establish a process for future nomination of sites to the Master Plan.
- 9) Delegate responsibility for research to MNCPPC.

The Department agrees with these recommendations. Budgetary concerns may increase the time needed to complete the task, and the Department would work to explore partial funding for the survey task through the grants available from the Maryland Historic Trust. It is possible that approximately \$7,500 to \$10,000 a year, which must be matched on a one for one basis, could be made available through the Certified Local Government process. These funds could be provided to the Planning Board for this task.

It needs to be pointed out that the HPC's role is to make recommendations for placement on the Master Plan. As a consequence, it has to be clear that the Planning Board will share with the HPC the results of the research and allow the HPC to maintain its initial and primary role of recommending placement on the Master Plan.

Regarding a process for the addition of properties to the Master Plan, the process should be designed to allow a periodic review of structures or sites in the County which have attained a certain age and to identify these structures as potential master plan sites. The accelerated process should then be used if there was proposed substantial alteration, demolition or subdivision on one of these identified sites. MNCPPC could be charged to do such a review once every ten years, and at that time review all buildings of more than 50 years (as an example) or other meritorious sites.

- 10) Clarify whether Council Action is required to remove properties from the Atlas. - We point out that the Atlas was compiled by MNCPPC. As a consequence we suggest that the ordinance be clarified to reflect that MNCPPC can add to and remove properties from the Atlas or from any successor list.
- 11) Where appropriate, include standards for future regulatory action in amendments to the Master Plan, and require that the HPC must follow such standards. - The Department concurs with this recommendation and strongly suggests that MNCPPC continue the precedent it is setting in the proposed Takoma Park Historic District, which includes delineation of resources as primary, secondary and non-contributing resources and proposed guidelines for review of each type of resource. We urge that master plan amendments be clearer not only with regards to how the HPC should regulate change but also with regards to environmental setting.

Master Plan amendments should not deal solely with the historic aspects of a site or resource, but should take into consideration what other existing master plans propose for the area or property. As an example the Hyattstown Historic District Amendment is in conflict with transportation plans which propose the widening of Rte. 355 through Hyattstown. There is a need for MNCPPC to, in amendments to the Master Plan for Historic Preservation, make sure that the amendments are not in conflict with other master plan documents, or where there is conflict to recommend which plan should take precedence, or to suggest mitigating factors to take these plans into account. The law needs to be made clear to state clearly that the HPC is bound by the language of the master plan.

- 12) Authorize the HPC to delegate approval of routine HAWPS to staff, as well as minor modification. - Though we agree in principal, this recommendation truly requires major rewriting of the law. The law authorizes the Commission to review HAWPS and place conditions on a permit issued by the DEP. Staff cannot make these decisions without major changes to the law. The law should most probably be rewritten to allow for various types of HAWPS, based on whether the proposed construction, alteration or demolition etc. substantially impacts upon the historic site or resource within a historic district. Changes having substantial impact should be subject to the full HAWP process; changes which do not have substantial impact should be reviewed and approved at the staff level. The law should define the term substantial impact. Also a mechanism needs to be developed to allow for minor changes to an HAWP which are required due to field conditions. This mechanism should be in line with the present field modifications which are allowed for building permits. This would take care of the approval of field changes without the requirement that applicants apply for a retroactive HAWP.
- 13) Simplify the process for HPC action on simple and uncontested HAWPS. - The HPC chair recently implemented such a process. The recommendation made in 12 above should remove this concern; however, the HPC needs to have in the law the right to do an expedited review of uncontested HAWPs.
- 14) Authorize Director of DEP to delegate to DHCD the intake of HAWPs and the inspection of HAWPs. - The Department has some difficulty with this recommendation. The main reason for having DEP accept the application is that the HAWP is necessary for an applicant to receive a building permit. The HAWP is part of the building permit process. There is also a need to indicate clearly the date on which an application is accepted, since decisions must be made within certain time frames. DEP is ideally suited for this purpose.

There needs to be clarification of what constitutes an acceptable submittal for a HAWP (the law states that the HPC sets the application requirements). Also DEP and DHCD should work together to train intake staff at DEP on a regular basis on the criteria by which to judge the completeness of a HAWP application.

Regarding inspection of work undertaken under an approved HAWP, such inspection should be undertaken as part of the building permit process. Recently in transmitting its conditions on an HAWP to the Director of DEP, the HPC has stated that the HAWP is

to be made a condition of the building permit. This allows DEP to enforce the HAWP through the building permit and construction process.

DHCD presently inspects for housing code violations and, under a delegation from the director of DEP, for demolition by neglect. Both types of violations have to do with neglect of structures. HAWPs have to do with changes, new construction etc. DEP, with its knowledge of the building process, is much better suited to inspect construction for compliance with the HAWP. It also is important to note that the HAWP and the building permit must be in agreement with each other. Having DEP do intake and inspection ensures that DEP will have an active role with regards to any structure subject to a HAWP.

We also suggest that the law be changed to require a HAWP only for work which requires a building permit. Effectively, the HPC cannot enforce the HAWP requirement for work that does not require a building permit.

- 15) Forward copies of selected HAWPs to MNCPPC staff. - The Department notes that, though HAWP applications are not necessarily forwarded within 3 days to Planning Board, the Historic Preservation Planner for the Planning Board does receive a complete packet prior to each meeting of the HPC. This packet contains all the information that the members of the Commission receive prior to an HPC meeting. Planning Board staff is free to comment on any application.
- 16) Amend the law to require an approved HAWP prior to receiving a building permit. - Our recommendation with regards to intake and inspection (no. 14) responds to this. Not only should Article 24A be amended, but the section of the County Code dealing with building permits should also be amended to reflect this requirement.
- 17) Amend the law to clarify the time period for HPC action and consider extension of the deadline for HPC action. - Our response to Recommendation 3 partially deals with this. In addition, we make the following comments. If the HPC remains in essentially its existing format, it is imperative that the deadline for action by the HPC be extended to 60 days from filing. This will allow the HPC to have one meeting a month for HAWPs and one for their advisory role. We point out that HAWPs have to be advertised two weeks prior to the public appearance, and in order to place the advertisement, all HAWPs to be considered have to be received three days prior to the publishing of the ad. If we add in the three days that DEP has to transmit, 21 days of the 45 day period have already elapsed. If all HAWPs were scheduled for one meeting a month, the Commission could more effectively handle their advisory role.

Also the time necessary for them to render a decision should be adequate to allow the HPC to render its decision on a case at its next regularly scheduled meeting. The Commission presently meets on the 2nd and 4th Wednesdays of the month. Occasionally three weeks occur between meetings, so that and a minimum of three weeks should be the time allotted for decision rendering. However, in cases where a hearing examiner has taken the record, a longer period such as 30 to 45 days should be allowed, so that the HPC would have the necessary time to review the record.

- 18) Amend the law to require all decisions on HAWPs to be in writing. - Currently the law only requires denials to be put in writing. The suggestion that all decisions be in writing could prove to be an excessive paperwork burden with each decision requiring a background section, a findings of fact section and the decision. For cases of significance where the proposed work is such that the impact will have a major impact upon a site or historic district, (example - Murray Case - new construction in Kensington, approved with conditions) the argument can be made that the approval should be in writing, but for the majority of cases it is not necessary. A possible solution to assist the public could be a compilation of staff reports and the developing of a form which would excerpt the minutes for each approval. These could be arranged chronologically or by another classification method and made available to the public and would require minimal additional work.
- 19) Authorize the Board of Appeals to stay issuance of a HAWP pending the outcome of an appeal. - The Department supports this recommendation without comment.
- 20) Amend Chapter 24A to include restoration or repair of damages to a historic site. - We point out that this change should include the requirement for historic resources in historic districts. The Department supports this recommendation with the proviso that DEP have the authority to issue such citations and restoration orders as part of the building permit process.
- 21) Develop better techniques for informing the public about the status of properties on the Master Plan. - We note that one technique is already being used (thanks to Commissioner Wagner), who revised the mailing list of the Preservationist. It is now being sent to all Master Plan addresses. This indicates to Master Plan Owners, we hope, the special status of their property. The idea of working with the Board of Realtors has been suggested previously, and the Department will explore this option. We also note that plaques have been used previously. We are currently seeking a supplier. Plaques were and would be made available at cost to owners, in order not to have a budgetary impact. If plaques were to be provided free of charge, a cost of about \$15 to \$20 a plaque is the correct price range.

- 22) Develop materials and programs to better educate the public about the County's Historic Preservation Program. - The Department supports this recommendation and points to three steps being taken this fiscal year to improve the education aspect of the HPC's role - The chair of the HPC has planned a thorough review of the uses of the Historic Preservation Grant Fund to determine how best this could serve the mandated charges of the HPC; one of these could be the redirection of the grant program to promote the education aspect of the Commission. Another educational tool is the "Preservationist" newsletter. This newsletter, as previously mentioned, goes to all Master Plan addresses. It is also used to explain procedures and to educate the public. The third step being taken is the development of a brochure in FY 91 which will be used as an education tool. We note, however, that increasing the HPC's role with regards to programs and materials will have a budgetary impact. Programs such as slide/tape shows or brochures have associated costs, and in making these recommendations, the OLO should identify a budgetary impact.
- 23) Improving the administration of existing historic preservation programs. - The Department points out that the easement program is a donation program (ie., individuals may donate easements to protect historic properties). The program was set up to assist one entity (the Bethesda Farm Women's Market) and that entity determined not to proceed with the donation of an easement. Executive Regulations are to be drafted in the near future. However, we also point out that without some tangible benefit to property owners (ie., compensation, right to develop etc.), the easement program will most probably remain inactive.

Regarding the Historic Loan Fund, this fund was originally funded with CDBG and County monies. Due to limitations imposed by the federal government, including prohibition of funding religious institutions for improvements to their properties and major reductions in funding levels, as well as under utilization, this program has not been funded in the past five years. If the County were to determine that loaning funds to restore historic properties is an important public purpose, then county funds (general revenue or bonds) could be made available for this purpose. This, of course, would have a budgetary impact. If the program were to become active, the Executive Regulations should be re-promulgated. Strong consideration should be given to making the program available to non profits only.

- 24) Retain the DHCD as lead agency with a separate office within the Department and authorization of additional staff. - This recommendation is broken into 3 parts by OLO and we will respond accordingly.

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1. Establish an Historic Preservation Office within DHCD. - The Department concurs with this recommendation, and at the present time is implementing the physical separation of Historic Preservation from the Division of Community Planning and Development. As of mid-winter 90-91, the staff assigned to the HPC will be housed within the Director's Office. CPD is being moved to accommodate the new function of regulating Homeowners Associations, and the HPC staff will report in the near future directly to the Deputy Director of DHCD.

We note that most of the functions identified as part of the Historic Preservation Office responsibilities are presently the functions done by the staff within CPD. The items identified as public outreach are already carried out by the staff with some assistance from other Division staff. Although these items may not be carried out to the extent the HPC prefers, it is imperative that priorities within the overall HPC staff workload be observed. We point out that the following activities are currently undertaken by the staff.

- °drafting of correspondence for the chair.
- °assisting the chair to set the agenda and workload.
- °attending HPC meetings and maintaining HPC minutes and records.
- °managing HAWPs from receipt from DEP to transmittal of conditions of HAWPs to DEP.
- °formulating staff recommendations for HAWPs and for subdivisions.
- °drafting, with the assistance of the County Attorney's Office, HPC decision (denials and complicated cases).
- °ensuring due process.
- °presently arranging for research through contracts on historic resources.
- °orienting new members.
- °administering the grant program and the tax credit program.
- °providing information on a regular basis to the public.
- °Other activities undertaken at present include: the educational exhibit at the County Fair and the Ethnic Festival; managing of the CLG grant, including research on sites; managing the newsletter "The Preservationist"; maintaining and updating the list of master plan sites for DEP, and making recommendations to DEP with regards to determinations of substantial alteration.

2. Create a new senior staff position to manage the office. - The Department concurs with this recommendation, and presently is exploring the possibility of upgrading the historic preservation specialist position to a senior staff position. The Department plans to request one additional staff for historic preservation; however, budgetary constraints may make this difficult. We agree with the title of Historic Preservation Officer for the senior position. We do need to point out that the Historic Preservation Specialist (Program Manager 1) may be the wrong classification for the junior staff

position. Personnel and Classification should review this position in light of what recommendations are actually implemented with regards to staffing.

3. Provide physical identification for Historic Preservation. - The Department concurs with the need for a sign stating "Historic Preservation Office" and notes that the telephone lines dedicated to Historic Preservation are consistently answered "Historic Preservation."
- 25) Continue enhanced level of legal assistance. - The Department concurs and notes that the County Attorney has assigned an attorney to DHCD who is also charged with giving legal advice on historic matters. This attorney is physically located in the Director's Office. Within the last 2 years the level of support from the County Attorney has increased consistently.
- 26) Develop an annual seminar for all Commissioners. - This training would be of great benefit to HPC and to the OLTA Board. It would also greatly assist staff. We strongly support this recommendation.
- 27) Schedule separate annual meetings between HPC, a Council Committee, the County Executive and Planning Board. - DHCD takes no position on this recommendation.
- 28) Provide for a formal follow up. - The Department concurs with the need for a follow-up evaluation.

AvH/rap:2510B

M E M O R A N D U M

October 1, 1990 1990 OCT -1 PM 1:13

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

FROM: A. Katherine Hart *A. K. Hart*
Senior Assistant County Attorney

RE: Draft OLO Report No. 90-2, A Description and Evaluation
of the Montgomery County Historic Preservation
Commission

I have reviewed a draft copy of OLO Report No. 90-2 concerning the description and evaluation of the Montgomery County Historic Preservation Commission for legal sufficiency. As usual, Karen Orlansky, Program Evaluator in the Office of Legislative Oversight, has done an admirable and commendable job in putting together OLO Report No. 90-2 on a subject matter which has a long history to it.

I have read the entire report and believe the legal issues discussed by the report are correct, and I have no further comments concerning them. Of course, some of the recommendations presented in the report do have further legal considerations which must be addressed at a later date but do not need further comment at this time. This office will be assisting other departments and the Historic Preservation Commission in order to implement some of the recommendations set forth in the report.

Thank you for the opportunity to comment on the draft OLO Report No. 90-2. If you have any questions concerning this matter, please contact me.

AKH:pae
0135.AKH:90.07627



Montgomery County Government

MEMORANDUM

October 1, 1990

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

FROM: Robert K. Kendal, Director
Office of Management and Budget

SUBJECT: OLO Report No. 90-2, A Description and Evaluation of the Montgomery County Historic Preservation Commission

Thank you for the opportunity to respond to this DRAFT report. As usual, your staff has provided a very thorough analysis of the issues.

First, I would like to address my comments to those recommendations that carry "notable fiscal impact" as described on page 73. These include:

- Recommendation 5: Amend the law to enable HPC members to be compensated.
- Recommendation 24: Establish a separate Historic Preservation Office...authorize an additional senior staff position.
- Recommendation 25: Continue to provide HPC with an enhanced level of legal assistance.
- Recommendation 26: Develop an annual training seminar for all commissioners...and develop ongoing training for County staff who have primary responsibility for providing support to a County-appointed board, committee, or commission.

Regarding Recommendation 5, I believe the Council should decide this question as a matter of equity based on the duties of the HPC members compared to comparable commissions. The fiscal impact would need to be calculated and acknowledged, of course.

In the other three cases I am concerned about the fiscal implications. In the event of tight fiscal circumstances, the Council, the HPC, and the DHCD may have to consider alternatives in addressing the stated needs while not being a significant burden to the County's budget. In particular, I believe that use of existing resources should be fully explored for Recommendation 24, including possible Council reconsideration of mandated HPC activities to accomplish with existing resources those activities that Council feels are the highest priorities. Full discussion of the scope of this Commission's functions should precede allocation of additional resources, using OLO Report No. 90-2 as the basis for such discussions.

Andrew Mansinne, Jr.
October 1, 1990
Page 2

As regards Recommendation 25, I am not clear from the description on page 89 as to what additional funding would be required, since you are apparently not recommending new resources for County Attorney support of the HPC. The extent of what is being suggested should be fully explored with the Office of the County Attorney to ensure that HPC expectations are realistic.

Recommendation 26 appears to be an excellent idea, and while some cost may be involved, I would think it would be achievable within existing budgets of those departments related to current boards and commissions.

As regards Recommendation 22 (develop materials and programs to better educate the public), you do not indicate that this recommendation carries a notable fiscal impact, when in fact it might. In particular, the development and dissemination of County-produced education materials may have serious cost implications. Alternative ways to support enhanced public education should be fully explored with advocates of historic preservation before any additional funds are expended for this purpose. The Historic Preservation Grant Fund has funded many education projects, as is documented in the report, and should continue to be considered for this purpose. Perhaps more emphasis should be placed on grants with an educational focus.

Finally, I remain concerned about the combination in one commission of both program advocacy and adjudication responsibilities. I believe the County Attorney shares these concerns. The Council should, in my view, consider separating these duties to ensure both the fact and appearance of fairness in adjudication and to free program advocacy efforts from the workload of cases to be judged.



Montgomery County Government

MEMORANDUM

September 26, 1990

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

FROM: Meg Riesett, Director *MR*
Office of Planning Policies

SUBJECT: Draft OLO Evaluation of the Historic Preservation Commission

Thank you for the opportunity to comment on Draft OLO Report 90-2, A Description and Evaluation of the Montgomery County Historic Preservation Commission. I congratulate you on the thorough information gathering, the high quality analysis and the clear writing. I concur with most of the findings and recommendations included in the draft. I have listed a few comments below.

1. Many of the problems associated with the Historic Preservation Commission derive from shortcomings of the Historic Preservation Ordinance. As your report notes, the Ordinance was adopted almost ten years ago. With the experience of one decade, several areas of the Ordinance merit reexamination and clarification, including:
 - whether the Executive and Council must approve removal of sites from the Atlas;
 - the difference in protection afforded an individual resource as opposed to a district;
 - whether economic and fiscal circumstances should play a role in master plan designation; and
 - whether public access and visibility are relevant considerations in master plan designation.

I suggest that the final report recommend that an inter-agency working group conduct a complete review of the Ordinance and prepare revisions for Council consideration.

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Office of Planning Policies

Executive Office Building, 101 Monroe Street, Fourth Floor, Rockville, Maryland 20850-2589, 301/217-2430

Andrew Mansinne, Jr.
September 26, 1990
Page 2

2. At present, the Ordinance provides that every resource which meets the criteria be given the same level of protection. Recommendation 11 suggests that the Master Plan give guidance as to the characteristics of a resource that are more or less worthy of protection. This recommendation would allow the master plan to tailor the level of protection to the quality or importance of the site -- a sort of gradation that will allow tighter restrictions for more important sites and lesser restrictions for marginal sites. We support this recommendation. This technique was used in the case of the Montgomery Mutual building in the Sandy Spring Historic District and proved useful in winning Council approval for the designation.

This recommendation could have another beneficial effect. At present, the HPC evaluates a potential master plan site at the beginning of the process, but has limited participation as the amendment travels through the Planning Board and Executive on its way to the Council. If master plans offer additional guidance about the level of protection afforded special cases, HPC and the other parties involved in historic preservation decision-making will have more opportunity for dialogue.

3. The OLO draft recommends compensation for HPC members. We support this recommendation, especially given past tension over the question of whether Commissioners or staff should represent HPC at Council hearings. By beginning to compensate HPC members for their services, a good opportunity arises to clarify that attendance at Council worksessions is an explicit responsibility of HPC membership.
4. Recommendation nine suggests that research of the remaining Atlas sites should be performed by a new part-time permanent staffer at the Planning Department. I recommend instead that this task be performed by consultant contract. As there are a finite number of sites remaining on the Atlas, there is no need to establish a permanent position. Consultants also could research newly considered sites not previously identified on the Atlas as the need arises.

A consultant contract would also keep a clearer distinction between the research function and the historic preservation planning function. This will lessen the opportunity for those who disagree with designation to charge that the research was compromised either by staff's personal predisposition toward a site or by the influence of others in the Planning Department. (Although completely unwarranted, similar accusations have been raised in the recent past.)

Thank you for the opportunity to comment on the draft. Again, I congratulate you on the preparation of an excellent report.

cc: Karen Orlansky

MR:AT/ab
P413

55



Montgomery County Government

MEMORANDUM

September 27, 1990

TO: Andrew Mansinne, Jr., Director
Office of Legislative Oversight

FROM: Philip J. Tierny, Director
Office of Zoning and Administrative Hearings

SUBJECT: Draft OLO Report No. 90-2, A Description and Evaluation of the
Montgomery County Historic Preservation Commission (HPC)

Thank you for the opportunity to review your draft report. The scope and depth of the report reflect a superb job by Karen Orlansky.

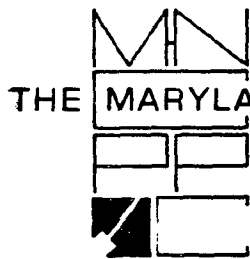
Our area of interest deals with Recommendation No. 3 authorizing HPC to refer cases to our office. The recommendation has our full support and we will be delighted to become part of HPC's administrative process.

PJT:gp

56

Office of Zoning and Administrative Hearings

100 Maryland Avenue, Rockville, Maryland 20850, 301/217-6660



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

(301) 495-4605

Montgomery County Planning Board
Office of the Chairman

October 5, 1990

Andrew Mansinne, Jr.
Director
Office of Legislative Oversight
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850


Dear Mr. Mansinne,

Thank you for the opportunity to comment on the draft copy of OLO Report No. 90-2 on the Montgomery County Historic Preservation Commission (HPC). I have consulted with a number of our staff members who are actively involved in historic preservation efforts - including Melissa Banach, Doug Alexander, and Gwen Marcus - on this report and the following comments reflect the staff's positions as well as my own.

First, I would like to emphasize that we have found the overall report to be very complete, thorough, and well thought out. It clearly represents a formidable analytic effort and is particularly valuable in its detailed documentation of the inception of the County's historic preservation program, its evaluation of current practices, and its comparison of the County's program to other jurisdictions in Maryland and elsewhere around the United States.

Many of the recommendations contained in the draft report deal with the structure of the HPC and procedures for dealing with Historic Area Work Permits. We feel that the majority of these recommendations are quite positive and will substantially improve the ability of the HPC to deal with an increasingly large and complex workload.

In addition, several of the major recommendations in the draft report have a direct bearing on the Board's historic preservation planning work. Our remaining comments will focus in on these specific recommendations.

First, the recommendations that deal with the evaluation of Locational Atlas resources are of special interest in that they will affect the Board's workload and staffing. We strongly support Recommendation #8 to establish a sunset date for the Atlas and feel that the five year schedule for evaluating the

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remaining resources is realistic. In addition, we are pleased that the recommendation recognizes the need to establish, by law, a clear process for nominating resources in the future to be considered for designation on the Master Plan for Historic Preservation.

We also support Recommendation #9 to delegate responsibility for researching remaining Atlas resources to our historic preservation planning staff - adding one part-time researcher to our current staffing level of two positions devoted to historic preservation activities. Currently this function is distributed among a variety of consultants hired by the HPC. We feel that having the research on Atlas resources done by one staff person who is familiar with and involved in the overall designation process will make the evaluations more consistent and efficient.

It is important to note that it is our understanding that this recommendation would not require additional funding, but would rather mean that HPC funds currently utilized to hire consultants for research projects would be transferred to the Planning Board's budget to fund the recommended part-time position. There are a variety of ways that this transfer of funds could occur and a variety of ways in which the part-time research position could be structured. We support the concept of folding the researching function in with the rest of our designation activities and are open to a discussion on the details for accomplishing this.

Recommendation #10 calls for additional clarification of the procedures for removing resources from the Locational Atlas. We agree that this portion of the current ordinance needs to be considered and improved.

In the discussion of Historic Area Work Permits, Recommendation #11 suggests that standards for future regulatory action be included in the amendments to the Master Plan for Historic Preservation which designate particular sites. It also recommends that the ordinance be changed to specifically link the direction provided in Master Plan amendments with the HPC's regulatory function. We strongly support these recommendations.

The designation process currently does involve decisions and guidance in the Master Plan which ultimately affects the HPC's review of Historic Area Work Permits. Language is often included in Master Plan amendments which provides direction on the nature of environmental settings, the intent of historic designation for a particular property, and even the building elements which are of highest historical or architectural significance. The HPC has always been very diligent in referring to the appropriate Master Plan guidance when reviewing Historic Area Work Permits and we see the report's recommendation in this regard as the continuation and expansion of a positive existing relationship.

One of the few recommendations that we are concerned about is Recommendation #15, which suggests that the HPC forward copies of selected Historic Area Work Permit applications to our historic preservation planning staff for review and comment. We are very willing to work with the HPC on cases that go beyond usual historic preservation issues and begin to raise broader planning concerns. However, we feel that it is important for the division of responsibility between the HPC and our historic preservation planning staff to remain clearly differentiated.

This division of responsibility that has evolved over the last three years has come to mean that our historic preservation planning staff deals with designation of historic sites and the HPC deals with design review after a site has been designated. Clearly, there is overlap - the HPC participates in the designation process and our staff looks at various proposals (especially subdivisions) for Master Plan sites. However, the basic distinction of duties - if it is to be continued - is important to keep straight and to communicate to the public.

We are concerned that directing additional responsibilities to our historic preservation planning staff for design review of Historic Area Work Permits, while also recommending the creation of an official "Historic Preservation Office" at DHCD (Recommendation #24), will continue and even exacerbate existing public confusion about who does what in terms of historic preservation in Montgomery County.

We would suggest that our staff generally continue to focus on historic preservation duties associated with designations, subdivisions, and large-scale public projects, while leaving design review of Master Plan sites up to the HPC and their staff.

However, if it seems important for our staff to be involved in the design review process, we would suggest that this may demonstrate a need to reopen the issue of consolidating historic preservation activities in the County under "one roof". OLO staff did an excellent job of looking at the various options of where the HPC staffing function should be located and there are clearly problems and opportunities associated with each alternative. Ultimately, it is essential for historic preservation activities in this County to be conducted in the most efficient and effective way possible, with maximum clarity and accessibility for the public.

Perhaps additional consideration of the location issue is warranted at this time. In addition, it would certainly be important to assess the issue of the location of HPC staff when the OLO does a formal follow-up to the current evaluation - in FY 94 or sooner.

Finally, we are very pleased to support Recommendation #27 which calls for annual meetings between the HPC and the County

Council, Executive and Planning Board. The Board has had annual dinner meetings with the HPC for the past several years (in fact, we have one scheduled for October 25th) and we have found them to be productive and useful opportunities to share ideas and points of view.

In conclusion, the draft OLO report on the HPC will be very important and helpful in improving the effectiveness of this Commission. It should go a long way towards solving problems that have been identified in the historic preservation process over the years. The impact on the Board's historic preservation planning program will, we feel, be generally positive. It is, however, essential to clearly define duties, responsibilities and roles.

Sincerely,



Gus Bauman
Chairman

cc: Melissa Banach, Acting Planning Director
Doug Alexander, Chief, Urban Design
Gwen Marcus, Historic Preservation Planner



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

AGENDA DATE: January 17, 1990

January 14, 1990

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Douglas Alexander, Chief
Urban Design Division *DA*

FROM: Gwen Marcus, Historic Preservation Planner
Urban Design Division *GM*

SUBJECT: OLO Report on Historic Preservation Commission and
M-NCPPC Preservation Role

Introduction

Montgomery County has been involved in historic preservation activities since the mid-1970's. In 1976, the Maryland-National Capital Park and Planning Commission (M-NCPPC) published the Locational Atlas and Index of Historic Sites in Montgomery County. In September, 1979, the Montgomery County Council approved a functional Master Plan for Historic Preservation (which had been drafted by M-NCPPC), along with a Historic Preservation Ordinance (Chapter 24A of the Montgomery County Code).

Over the last decade, the County's historic preservation efforts have grown substantially and have been refined. Both the strengths and weaknesses of the original Master Plan and Ordinance have been brought to light. As preservation activities move into the 1990's, it has been widely acknowledged that it is important to evaluate what the County has been doing and where it is going in the future in regard to this important public interest.

To that end, the Montgomery County Council directed the Office of Legislative Oversight (OLO) to study and evaluate the structure, workload, staffing, and overall operations of the County's Historic Preservation Commission (HPC). This study took place during 1990 and a final report was presented by OLO to the Council on November 13, 1990.

Although the OLO report is primarily concerned with the functioning of the HPC, there are a number of recommendations that relate to the historic preservation planning activities of M-NCPPC. The purpose of this staff report is, therefore, to help the Planning Board analyze and understand the implications of the OLO recommendations, so that the Board can provide well-reasoned comments to the County Council as they review the OLO report. The PHED Committee will be holding its first worksession on this OLO report on Thursday, January 24th. This meeting conflicts with the Board's regularly scheduled agenda; however, staff is planning to attend this worksession and will present Board comments as needed.

Because this is a complex topic, staff divided its report into two sections. The first section deals with the relationship between the work of the HPC and the work of M-NCPPC's historic preservation planning staff. The second section specifically covers the major recommendations in the OLO report.

Section 1: Relationship Between HPC and M-NCPPC Preservation Planning Efforts

There have been a number of Board discussions concerning the functioning of the HPC and the division of responsibilities between this body and the Planning Department's historic preservation planning section. Staff feels that additional thought needs to be given to the future roles for each group and the Board's expectations for how its historic preservation planning efforts will be handled.

First and foremost, staff would like to emphasize that - by law - historic designation in Montgomery County is a planning process and M-NCPPC has a legitimate, if not essential, role in this process. Every time a site or district is designated, not only is the Master Plan for Historic Preservation amended, but also the applicable area master plan and the General Plan, as well. The County's historic preservation program has been set up to be a complementary relationship between the legislative branch (the Planning Board and County Council) through the planning process, and the executive branch (the Executive and the HPC) through the Ordinance. We see this type of complementary relationship between planning and implementation throughout the County - a good comparison may be the relationship between the Board's planning efforts in Agricultural Preservation and the functioning of the Agricultural Board and its staff in the Office of Economic Development.

Over the last decade, the wisdom of this complementary system has been demonstrated. Historic preservation issues in recent years have become more, not less, tied into larger planning issues - such as the retention of agricultural land and open space, transportation modes, and community character/quality of life concerns. Although the Historic Preservation Commission is clearly charged with taking the lead role in protecting and preserving the County's historic resources and the Planning Board

has a much broader and diverse mandate, it is appropriate and necessary that historic preservation continue to be included in M-NCPPC's work program.

Given this complementary relationship, it is important to clearly define roles so as to avoid duplications of responsibility. In practical terms, the roles that have evolved over the last few years are that the M-NCPPC staff deals primarily with issues relating to the Master Plan designation of historic sites and districts and the HPC deals with design review after sites have been placed on the Master Plan. Clearly, there is overlap - the HPC participates in the designation process and our staff looks at various design proposals (especially subdivisions) for Master Plan sites. However, the basic distinction of duties seems to be workable and, in staff's opinion, appropriate.

Staff understands that the Board recognizes that the HPC must be strengthened and supported in performing its important functions. Certainly staff has done and will continue to do everything possible to be of help to the HPC. However, it is important for the Board to acknowledge that preservation - especially designation of sites and districts - is a distinct and complex discipline that is inextricably tied into the planning process in this County. Even with a strong and vital HPC, the Board must still be involved in preservation planning activities.

Section 2: OLO Report Recommendations

Recommendation #1: "Amend the law to require that the HPC also include representation from the fields of business, real estate, and law." Staff feels that this recommendation has value and will aid in building a public perception of the HPC as a balanced and objective group. However, it is important to clarify that the intent is not to fill the HPC with businesspeople who have no background, knowledge, or interest in preservation (and, thus, throw the HPC out of balance in another direction), but rather to encourage a broad range of viewpoints. Perhaps this recommendation should be limited to a specific number (two or three) of appointed HPC members.

Recommendation #2: "Authorize the HPC to establish panels composed of three HPC members who are delegated decision-making authority." As the number of designated historic sites and districts increases (especially with Takoma Park coming on line as a historic district), the HPC's workload will increase significantly. To avoid all-night meetings, the HPC will either need to meet more often or break up into sub-committees or panels to handle the workload. It is very important that panels be created only at the discretion of the full HPC and that, if created, they are balanced and unbiased (e.g. a Kensington Historic District panel should not include all residents of Kensington). It may be a good idea to direct that all decisions recommended by HPC sub-committees or panels be confirmed by the full HPC to assure that preservation decisions are being made on consistent basis County-wide.

Recommendation #3: "Authorize the HPC to send cases to the Hearing Examiner in the Office of Zoning and Administrative Hearings for report and recommendation." As historic preservation cases become more complex, the HPC should be able to avail itself, as needed, of all County expertise. Staff feels that the ability to ask the advice of the Hearing Examiner on specific cases may be a valuable tool for the HPC in the future.

Recommendation #4: "Clarify in regulation an expanded role for the HPC chair." Staff supports this recommendation.

Recommendation #5: "Amend the law to enable HPC members to be compensated." Staff strongly supports this recommendation. The HPC members are dedicated and hard-working. The amount of time they are asked to contribute to HPC work is significant and they should be compensated in the same way as other County boards and commissions.

Recommendation #6: "Finalize executive regulations that outline HPC's routine procedures, and the role of the Local Advisory Panels; and develop executive regulations that contain standards for HPC's review of Historic Area Work Permits." This process is currently underway and staff supports its completion.

Recommendation #7: "Amend the law to clarify that all HPC decisions are appealable to the Board of Appeals; and to clarify the intent of providing HPC with authority 'to delineate the extent of appurtenances and environmental setting associated with an historic site or resource.'" These are fairly technical changes regarding issues which are not clearly addressed in the existing law. Staff supports this recommendation.

Recommendation #8: "Adopt a schedule for the review of all remaining Atlas resources, and establish a sunset date for the Atlas. At the same time, establish a process for nominating resources to be considered in the future for designation on the Master Plan." The OLO recommendations that deal with the evaluation of Locational Atlas resources are of special interest in that they will affect the Board's workload. Staff strongly supports this recommendation and feels that the five year schedule for evaluating the remaining resources which is contained in the OLO report is realistic. In addition, staff supports the language in the recommendation which recognizes the need to establish, by law, a clear process for nominating resources in the future to be considered for designation on the Master Plan for Historic Preservation.

Recommendation #9: "Delegate the responsibility for researching remaining Atlas resources to the Planning Department of M-NCPPC." As discussed above, historic designation in Montgomery County is a master planning process. Staff feels that M-NCPPC has a legitimate and essential role to play in deciding which properties should be placed on the Master Plan for Historic Preservation. Because of this significant involvement in the designation proc-

ess, staff feels that there are a number of reasons for M-NCPPC to be involved in the research that ultimately makes the case for or against designation.

Staff understands that current budget constraints make it unlikely for any new staffing at either the HPC or M-NCPPC. However, it is staff's understanding that HPC will continue to contract for research on historic resources. There are funds granted by the State to Montgomery County because of its status as a Certified Local Government and HPC will continue to utilize these funds for consultants to research historic properties. Since the need for research still exists (even though the topic of additional staffing may be moot), staff would like to outline several reasons that make it beneficial to involve M-NCPPC staff in the researching effort. There are three primary arguments: 1. to streamline the process by which research is obtained, 2. to improve the quality and consistency of the research, and 3. to link the researching effort more closely to the Master Plan designation process by having it done by staff who are familiar with and involved in the overall amendment procedure.

First, staff feels the researching process would be streamlined and improved by doing it "in house". Currently, the HPC contracts with consultants to provide research for historic resources that M-NCPPC is scheduling for evaluation. The process that the HPC goes through of putting out requests for bids and signing contracts with these individual consultants is time consuming and bureaucratically cumbersome. It works out when evaluations are scheduled far enough in advance - although a lot of HPC staff time is spent in preparing requests for bids and monitoring consultant contracts. However, when an emergency or an unplanned evaluation comes up - like a demolition permit request - the reality is that there is no time to go through the procedures required to hire a consultant to provide the needed research. In these cases, M-NCPPC staff (who are packaging the Preliminary Draft Amendment) inevitably end up doing the research. These cases don't come up every day; however, examples of resources that we have needed to research on an "emergency" basis over the last year include the WTOP Transmitter Building, the Montgomery Arms Apartments, and the Americus Dawson Tenant House. If researching responsibilities were handled "in house", it would eliminate the staff time needed to find, hire and monitor consultants and would assure that the research would be available when it is needed - even in the case of an unexpected evaluation.

As stated above, there is logistical benefit to doing research on historic properties "in house". Another benefit is providing consistent quality. Having research done by a series of different consultants has led to wide range in the quality of the end product. When M-NCPPC staff has reviewed certain resources that have been "researched", we have found it necessary to fill in gaps and to obtain significant amounts of additional information. This has been particularly true in terms of historic districts. Staff sees this as a major duplication of effort.

Finally, if research is to be done "in house", it could conceivably be done by either HPC or M-NCPPC staff. There are pros and cons to each option. Staff would propose that, aside from the very real constraints that currently exist on the HPC's available staff time (which, in all likelihood, is why researching was contracted out to consultants in the first place), doing research on sites may be a logical extension of the M-NCPPC staff's role in the process that is utilized to designate sites on the Master Plan for Historic Preservation. Although M-NCPPC staff plays a major role in the designation of historic properties, we currently have no control over the research that is being done or over who is doing it. However, we are required to make professional judgments on difficult issues based, in large part, on that research (or we duplicate efforts by redoing research ourselves). If the Board agrees that M-NCPPC staff should be actively involved in Master Plan designations, it is important that we are able to do the necessary research that is essential to the evaluation process.

Recommendation #10: "Clarify whether Council action is required to remove properties from the Atlas." This is another technical change to part of the law that is not clear. Staff agrees that this portion of the current ordinance needs to be considered and improved.

Recommendation #11: "Where appropriate, include standards for future regulatory action in amendments to the Master Plan for Historic Preservation, and provide by law that the HPC must follow such standards in acting upon HAWPs." Staff supports these recommendations. The designation process currently does involve decisions and guidance in the Master Plan which ultimately affects the HPC's review of Historic Area Work Permits. Language is often included in Master Plan amendments which provides direction on the nature of environmental settings, the intent of historic designation for a particular property, and even the building elements which are of highest historical or architectural significance. The HPC has always been very diligent in referring to the appropriate Master Plan guidance when reviewing Historic Area Work Permits and staff sees the OLO report's recommendation in this regard as the continuation and expansion of an existing relationship. This issue was discussed extensively during the Board's consideration of the Takoma Park Historic District. The HPC expressed concerns about the location and specificity of guidelines within the Takoma Park Master Plan amendment. At that time, the Board supported including guidelines in the Takoma Park amendment and stated that the master planning process that is utilized for historic designation offers an excellent and natural opportunity for public input and participation in the development of applicable standards and guidelines.

Recommendation #12: "Amend the law to authorize the HPC to delegate the approval of routine HAWP applications and minor modifications to staff." As discussed previously, the HPC workload is heavy now and will be increasing. Staff supports this method of delegating routine and non-controversial decisions to HPC staff.

Of course, the HPC members will need to work with their own staff to develop guidelines for which cases come to them and which are handled by their staff.

Recommendation #13: "Simplify process for HPC action on relatively straightforward and non-controversial HAWP applications." Staff supports this recommendation for the reasons noted above.

Recommendation #14: "Authorize the Director of DEP to delegate to DHCD: the intake of HAWP applications; and the inspections of HAWPs." Staff supports this recommendation, but notes that it will increase the workload of the HPC staff and provisions for additional staffing (especially for inspections) may be needed.

Recommendation #15: "Forward copies of selected HAWP applications to the M-NCPPC Planning Department staff to provide an opportunity for review and comment; it should be clear that the discretion whether to submit comments remains with the Planning Board and M-NCPPC staff." This is one of the few recommendations that staff is somewhat concerned about. Staff is very willing to work with the HPC on cases that go beyond usual historic preservation issues and begin to raise broader planning concerns. However, we feel that it is important for the division of responsibility between the HPC and our historic preservation planning staff to remain clearly differentiated. As discussed in Section 1 of this report, the division of responsibility that has evolved over the last three years has come to mean that our historic preservation planning staff deals with designation of historic sites and the HPC deals with design review after a site has been designated. Clearly, there is overlap - the HPC participates in the designation process and our staff looks at various proposals (especially subdivisions) for Master Plan sites. However, the basic distinction of duties - if it is to be continued - is important to keep straight and to communicate to the public. Staff is concerned that directing additional responsibilities to our historic preservation planning staff for design review of Historic Area Work Permits, while also recommending the creation of an official "Historic Preservation Office" at DHCD (Recommendation #24), will continue and even exacerbate existing public confusion about who does what in terms of historic preservation in Montgomery County. Staff suggests that M-NCPPC generally continue to focus on historic preservation duties associated with designations, subdivisions, and large-scale public projects, while leaving design review of Master Plan sites up to the HPC and their staff.

Recommendations #16 through #20 These five recommendations (which are discussed in detail in the OLO report) are all technical changes to the law to clarify and improve the Historic Area Work Permit process. Staff concurs with these five recommendations.

Recommendation #21: "Develop better techniques for informing the public about the status of properties designated on the Master Plan for Historic Preservation." Staff strongly supports this recommendation and gladly work the HPC on any efforts in this

direction.

Recommendation #22: "Develop materials and programs to better educate the public about the County's historic preservation programs, to include improved publicity about the HPC, the Master plan designation process, the HAWP application process, financial incentives for historic preservation, and the division of responsibilities between Executive branch and M-NCPPC historic preservation staff." Staff strongly supports this recommendation. In addition to offering to assist the HPC on new educational programs, staff reminds the Board that approval has been given to work on a historic preservation video project and historic district "flyers" (both in this year's work program and both well underway).

Recommendation #23: "Improve the administration of existing historic preservation programs." Staff supports this recommendation.

Recommendation #24: "Establish a separate Historic Preservation Office within DHCD, and authorize an additional senior staff position to manage the County's historic preservation efforts. The respective roles of DHCD's Historic Preservation Office and M-NCPPC's historic preservation planning staff must be clearly defined and communicated to the public." Staff understands that the ultimate location of the HPC is a very sensitive topic. OLO staff presented a thorough discussion of the staffing alternatives on pages 57 to 60 of the report, including three options: 1. Keeping the HPC within DHCD, 2. changing the law to move the HPC staffing responsibilities to M-NCPPC (as is done in Prince George's County), and 3. changing the law to establish HPC as an independent commission. OLO staff has recommended the first option. The HPC is in favor of the third alternative (see attached letter from Leonard Taylor to Isiah Leggett).

All of these options have pros and cons and they are well analyzed in the OLO report. Staff believes that it is possible for the HPC to function successfully under any of the three alternatives. If the HPC is to be retained within DHCD there will need to be a major effort to give the group a high level of autonomy and adequate staff support. In addition, previous disagreements will need to be laid to rest by all parties. If the HPC is to function independently, they will certainly need additional staffing - both professional and administrative - and efforts will need to be made to keep the functions of the HPC closely tied into other government departments and functions. The most radical alternative would be to merge HPC staffing responsibilities into M-NCPPC. The Planning Board would need to strongly support this option in order for it to be accomplished successfully.

Recommendation #25: "Continue to provide HPC with an enhanced level of legal assistance." Staff supports this recommendation.

Recommendation #26: "Develop an annual training seminar for all

commissioners that serve on the County's adjudicatory boards and commissions, and develop ongoing training for County staff who have primary responsibility for providing support to a County-appointed board, committee, or commission." Staff supports this recommendation.

Recommendation #27: "Schedule separate annual meetings between the HPC and: a County Council committee, the County Executive, and the Planning Board." Staff supports this recommendation. As the Board knows, there have been annual dinner meetings with the HPC for the past several years (the last one was on October 25th). Staff has found them to be productive and useful opportunities to share ideas and points of view.

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② OLO

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Mr. William E. Hanna, Jr.
President
Montgomery County Council
100 Maryland Avenue
Rockville, MD 20850

November 23, 1990

Dear Bill:

In speaking with Ms. Steiner today, I want to follow up with the Resolution passed by the Montgomery County Civic Federation OPPOSING any changes of the Historical Preservation Commission as recommended by the Office of Legislative Oversight (OLO). The Executive Committee of the Federation took this action at our meeting on Tuesday, November 20, 1990.

It was the sentiment of the Federation members that any changes in the Historical Preservation Commission at this time without a great deal more study would be ill advised. Further, we specifically OPPOSED the OLO's recommendation to add real estate and/or business representatives to the Commission. We feel this would undermine the intend of the law on this Commission and the OLO recommendation goes against the purpose of the Historical Preservation Commission.

Thank you for your attention on this matter.

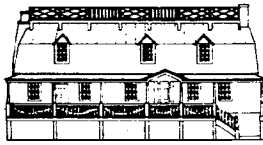
Sincerely,

ALVIN D. RIVERA
President

cc-4

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MARYLAND
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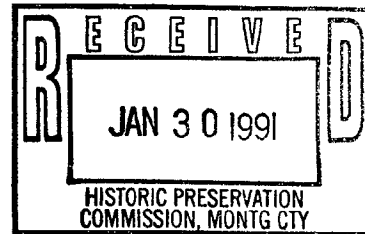
William Donald Schaefer
Governor

Jacqueline H. Rogers
Secretary, DHCD

January 22, 1991

Division of Historical and Cultural Programs
Office of Management and Planning

Mr. William E. Hanna, Jr.
Chairman
Planning, Housing, and
Economic Development Committee
100 Maryland Avenue
Rockville, MD 20850



Re: Montgomery County's
Office of Legislative
Oversight Report On
Historic Preservation
Commission

Dear Mr. Hanna:

I am writing to you and the PHED committee on behalf of the Maryland Historical Trust which functions as the State's official historic preservation agency and is a unit of the Department of Housing and Community Development's Division of Historical and Cultural Programs.

As the Trust's Administrator of Local Government Preservation Programs, it is my responsibility to administer the federal "Certified Local Government" (CLG) program in which Montgomery County is a participant. It is because of the County's successful and valued participation in the CLG program that I offer the following comments on the above-referenced OLO report:

Federal Law 96-515 (National Historic Preservation Amendments Act of 1980) established the "Certified Local Government" program concept, and contains five broad standards, all of which must be met before the local government may be certified. The five standards are:

1. "local governments must enforce state or local legislation for the designation and protection of historic properties"

Maryland

Department of Housing and Community Development
45 Calvert Street, Room 416, Annapolis, Maryland 21401 (301) 974-3642

Mr. William E. Hanna, Jr.
January 22, 1991
Page 2

2. "local governments shall have established a qualified historic preservation review commission by state or local legislation"
3. "local governments shall maintain a system for the survey and inventory of historic properties"
4. "local governments shall provide for adequate public participation in local historic preservation programs, including the process of recommending properties to the National Register"
5. "local governments shall satisfactorily perform the responsibilities listed in points 1-4 above, and those specifically delegated to it under the Act by the Maryland State Historic Preservation Officer (SHPO)."

The five standards have been incorporated into the Maryland Historical Trust's Procedures for State Certification of Local Government Historic Preservation Programs: The System in Maryland a copy of which has been enclosed for your information. Comments on the OLO report are based on the standards and accompanying amplifications found on pages 3-8 of this document.

Recommendation 1 of the OLO report would amend current law to require that the HPC also include representation from the fields of business, real estate, and law. While I understand the rationale behind this recommendation, in order to comply with standard 2 above, the proposed amendment would have to require that representatives from these fields also have demonstrated interest, competence, or knowledge in historic preservation and provide information sufficient to allow the SHPO to establish those qualifications. Failure to maintain qualified commission members could result in the County's eventual decertification as a CLG.

Recommendation 2 would authorize the HPC to establish panels composed of three HPC members who are delegated decision-making authority. Although this recommendation has merit as a way to deal with an increasing workload, it does not comply with standard 4 above which requires local governments to provide for adequate public participation. The CLG program requires that all decisions by an HPC be made in a public forum.

Recommendation 12 would amend current law to authorize the HPC to delegate the approval of routine HAWP applications and minor modifications to support staff. Again, I understand the desire to process more efficiently the ever increasing volume of HAWP's however, as with my comment for **Recommendation 2**, all decisions must be made in a public forum. Prince George's County's HPC support staff does have the authority to approve routine HAWP applications, but these applications are included on the agenda of the next regular meeting of the full HPC and are then officially approved (if there are no objections) in the public forum. If Montgomery County were to adopt this amendment, it would have to insure that it included a procedure similar to the one in Prince George's County. The

Mr. William E. Hanna, Jr.
January 22, 1991
Page 3

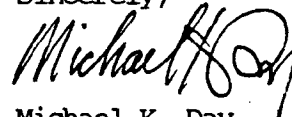
County would also have to demonstrate to the Maryland Historical Trust that the HPC's support staff possessed the professional qualifications necessary to review HAWPs.

Recommendation 17 suggests amending existing law to provide an extension of the allowable time period for HPC action on HAWP applications. Maryland procedures for the CLG program require the HPC to act upon an application within forty-five (45) days from the date the application was filed. Failure to do so would constitute an automatic approval of the proposed changes unless an extension of this forty-five day period is agreed upon mutually by the applicant and the commission or the application has been withdrawn.

Since 1986 Montgomery County has applied for and been awarded \$75,525. in matching CLG grants-in-aid made available through the Maryland Historical Trust. The Trust has recently received the County's FY1991 grant request for an additional \$20,124. to assist its historic preservation program. Although I feel that the majority of the OLO report's recommendations will strengthen the ability of the HPC to perform its duties, I respectfully request that you consider my comments and suggestions during the course of your review.

Thank you for allowing me the opportunity to share these views with you today.

Sincerely,



Michael K. Day
Administrator,
Local Government
Preservation Programs

MKD/md
enclosures
cc: Ms. Karen Orlansky
Ms. Laura McGrath
Mr. Richard Striener

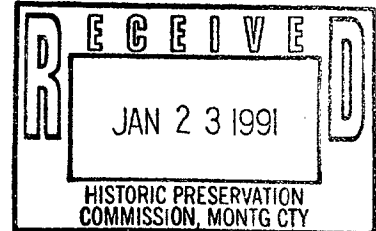
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
8787 Georgia Avenue • Silver Spring, Maryland 20910-3760
(301) 495-4605

HPC 2/4/91

Montgomery County Planning Board
Office of the Chairman

January 23, 1991

The Honorable William E. Hanna, Jr.
Chairman, PHED Committee
Montgomery County Council
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850



Bill
Dear Mr. Hanna:

On January 17th, the Montgomery County Planning Board met to discuss in detail the Office of Legislative Oversight (OLO) Report on the Montgomery County Historic Preservation Commission (HPC). The Board reviewed all of the recommendations in the OLO Report, utilizing the planning staff's analysis that is attached to this letter.

A number of the OLO recommendations were discussed at length, with the Planning Board giving particular attention to the proposed "sunset" for the current Locational Atlas inventory, the delegation of responsibility for researching of historic resources, and the issue of administrative location for the HPC and its staff. Ultimately, the Board voted to endorse the planning staff's analysis and to forward it to the Council.

In addition, there is currently some confusion as to the different, but complementary, roles of the HPC and its staff in relation to the Planning Department's historic preservation planning effort. This issue is discussed briefly in the OLO Report and at length in the attached staff analysis, which the Board endorses. The Board acknowledges and certainly wishes to maintain the very positive working relationship that presently exists between the HPC and the Planning Department; however, as the OLO Report is considered, it is very important to clearly define and communicate the functions performed by each group.

The Board recognizes that one of the primary and most difficult issues to be addressed in the current analysis of the HPC is the appropriate location for the Commission and its staff. The members of the Planning Board believe that, as a matter of policy, the HPC deserves a level of independence and autonomy that it does not currently have. It is the Board's perception that the HPC has not been able to accomplish effectively its broad and diverse goals because of problems in its current administrative location and because of a lack of resources.

Although the OLO Report recommends retaining the HPC within the Department of Housing and Community Development with a greater level of autonomy, the Board supports the HPC's position (as stated in its letter to the Council of December 8, 1990) that the Commission should be configured as an independent office within the County government, reporting directly to the Executive's Office as well as the Council.

We understand that this is a complex issue and that the Executive and Council may have additional ideas about the appropriate administrative location for the HPC. In fact, some of the Executive's thinking on this matter and his concerns about the HPC's ultimate location were informally shared with the Planning Board at its January 17th meeting. The Board stands ready to work with the Council in analyzing and evaluating all potential location options and will respond promptly to any proposals as the Council reviews the OLO Report.

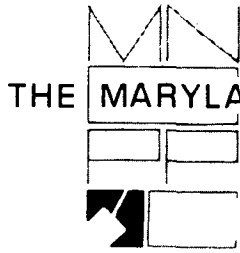
Douglas Alexander and Gwen Marcus of our staff will attend the PHED Committee worksessions on the OLO Report. The Planning Board and staff look forward to working with the Council as this project proceeds.

Sincerely,



Gus Bauman
Chairman

cc: The Honorable Neal Potter, County Executive
The Honorable Isiah Leggett, County Council President
Richard Ferrara, Director, DHCD
Leonard Taylor, Chairman, HPC
Karen Orlansky, OLO



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

AGENDA DATE: January 17, 1990

January 14, 1990

MEMORANDUM

TO: Montgomery County Planning Board

VIA: Douglas Alexander, Chief
Urban Design Division *DA*

FROM: Gwen Marcus, Historic Preservation Planner
Urban Design Division *GM*

SUBJECT: OLO Report on Historic Preservation Commission and
M-NCPPC Preservation Role

Introduction

Montgomery County has been involved in historic preservation activities since the mid-1970's. In 1976, the Maryland-National Capital Park and Planning Commission (M-NCPPC) published the Locational Atlas and Index of Historic Sites in Montgomery County. In September, 1979, the Montgomery County Council approved a functional Master Plan for Historic Preservation (which had been drafted by M-NCPPC), along with a Historic Preservation Ordinance (Chapter 24A of the Montgomery County Code).

Over the last decade, the County's historic preservation efforts have grown substantially and have been refined. Both the strengths and weaknesses of the original Master Plan and Ordinance have been brought to light. As preservation activities move into the 1990's, it has been widely acknowledged that it is important to evaluate what the County has been doing and where it is going in the future in regard to this important public interest.

To that end, the Montgomery County Council directed the Office of Legislative Oversight (OLO) to study and evaluate the structure, workload, staffing, and overall operations of the County's Historic Preservation Commission (HPC). This study took place during 1990 and a final report was presented by OLO to the Council on November 13, 1990.

Although the OLO report is primarily concerned with the functioning of the HPC, there are a number of recommendations that relate to the historic preservation planning activities of M-NCPPC. The purpose of this staff report is, therefore, to help the Planning Board analyze and understand the implications of the OLO recommendations, so that the Board can provide well-reasoned comments to the County Council as they review the OLO report. The PHED Committee will be holding its first worksession on this OLO report on Thursday, January 24th. This meeting conflicts with the Board's regularly scheduled agenda; however, staff is planning to attend this worksession and will present Board comments as needed.

Because this is a complex topic, staff divided its report into two sections. The first section deals with the relationship between the work of the HPC and the work of M-NCPPC's historic preservation planning staff. The second section specifically covers the major recommendations in the OLO report.

Section 1: Relationship Between HPC and M-NCPPC Preservation Planning Efforts

There have been a number of Board discussions concerning the functioning of the HPC and the division of responsibilities between this body and the Planning Department's historic preservation planning section. Staff feels that additional thought needs to be given to the future roles for each group and the Board's expectations for how its historic preservation planning efforts will be handled.

First and foremost, staff would like to emphasize that - by law - historic designation in Montgomery County is a planning process and M-NCPPC has a legitimate, if not essential, role in this process. Every time a site or district is designated, not only is the Master Plan for Historic Preservation amended, but also the applicable area master plan and the General Plan, as well. The County's historic preservation program has been set up to be a complementary relationship between the legislative branch (the Planning Board and County Council) through the planning process, and the executive branch (the Executive and the HPC) through the Ordinance. We see this type of complementary relationship between planning and implementation throughout the County - a good comparison may be the relationship between the Board's planning efforts in Agricultural Preservation and the functioning of the Agricultural Board and its staff in the Office of Economic Development.

Over the last decade, the wisdom of this complementary system has been demonstrated. Historic preservation issues in recent years have become more, not less, tied into larger planning issues - such as the retention of agricultural land and open space, transportation modes, and community character/quality of life concerns. Although the Historic Preservation Commission is clearly charged with taking the lead role in protecting and preserving the County's historic resources and the Planning Board

has a much broader and diverse mandate, it is appropriate and necessary that historic preservation continue to be included in M-NCPPC's work program.

Given this complementary relationship, it is important to clearly define roles so as to avoid duplications of responsibility. In practical terms, the roles that have evolved over the last few years are that the M-NCPPC staff deals primarily with issues relating to the Master Plan designation of historic sites and districts and the HPC deals with design review after sites have been placed on the Master Plan. Clearly, there is overlap - the HPC participates in the designation process and our staff looks at various design proposals (especially subdivisions) for Master Plan sites. However, the basic distinction of duties seems to be workable and, in staff's opinion, appropriate.

Staff understands that the Board recognizes that the HPC must be strengthened and supported in performing its important functions. Certainly staff has done and will continue to do everything possible to be of help to the HPC. However, it is important for the Board to acknowledge that preservation - especially designation of sites and districts - is a distinct and complex discipline that is inextricably tied into the planning process in this County. Even with a strong and vital HPC, the Board must still be involved in preservation planning activities.

Section 2: OLO Report Recommendations

Recommendation #1: "Amend the law to require that the HPC also include representation from the fields of business, real estate, and law." Staff feels that this recommendation has value and will aid in building a public perception of the HPC as a balanced and objective group. However, it is important to clarify that the intent is not to fill the HPC with businesspeople who have no background, knowledge, or interest in preservation (and, thus, throw the HPC out of balance in another direction), but rather to encourage a broad range of viewpoints. Perhaps this recommendation should be limited to a specific number (two or three) of appointed HPC members.

Recommendation #2: "Authorize the HPC to establish panels composed of three HPC members who are delegated decision-making authority." As the number of designated historic sites and districts increases (especially with Takoma Park coming on line as a historic district), the HPC's workload will increase significantly. To avoid all-night meetings, the HPC will either need to meet more often or break up into sub-committees or panels to handle the workload. It is very important that panels be created only at the discretion of the full HPC and that, if created, they are balanced and unbiased (e.g. a Kensington Historic District panel should not include all residents of Kensington). It may be a good idea to direct that all decisions recommended by HPC sub-committees or panels be confirmed by the full HPC to assure that preservation decisions are being made on consistent basis County-wide.

Recommendation #3: "Authorize the HPC to send cases to the Hearing Examiner in the Office of Zoning and Administrative Hearings for report and recommendation." As historic preservation cases become more complex, the HPC should be able to avail itself, as needed, of all County expertise. Staff feels that the ability to ask the advice of the Hearing Examiner on specific cases may be a valuable tool for the HPC in the future.

Recommendation #4: "Clarify in regulation an expanded role for the HPC chair." Staff supports this recommendation.

Recommendation #5: "Amend the law to enable HPC members to be compensated." Staff strongly supports this recommendation. The HPC members are dedicated and hard-working. The amount of time they are asked to contribute to HPC work is significant and they should be compensated in the same way as other County boards and commissions.

Recommendation #6: "Finalize executive regulations that outline HPC's routine procedures, and the role of the Local Advisory Panels; and develop executive regulations that contain standards for HPC's review of Historic Area Work Permits." This process is currently underway and staff supports its completion.

Recommendation #7: "Amend the law to clarify that all HPC decisions are appealable to the Board of Appeals; and to clarify the intent of providing HPC with authority 'to delineate the extent of appurtenances and environmental setting associated with an historic site or resource.'" These are fairly technical changes regarding issues which are not clearly addressed in the existing law. Staff supports this recommendation.

Recommendation #8: "Adopt a schedule for the review of all remaining Atlas resources, and establish a sunset date for the Atlas. At the same time, establish a process for nominating resources to be considered in the future for designation on the Master Plan." The OLO recommendations that deal with the evaluation of Locational Atlas resources are of special interest in that they will affect the Board's workload. Staff strongly supports this recommendation and feels that the five year schedule for evaluating the remaining resources which is contained in the OLO report is realistic. In addition, staff supports the language in the recommendation which recognizes the need to establish, by law, a clear process for nominating resources in the future to be considered for designation on the Master Plan for Historic Preservation.

Recommendation #9: "Delegate the responsibility for researching remaining Atlas resources to the Planning Department of M-NCPPC." As discussed above, historic designation in Montgomery County is a master planning process. Staff feels that M-NCPPC has a legitimate and essential role to play in deciding which properties should be placed on the Master Plan for Historic Preservation. Because of this significant involvement in the designation proc-

ess, staff feels that there are a number of reasons for M-NCPPC to be involved in the research that ultimately makes the case for or against designation.

Staff understands that current budget constraints make it unlikely for any new staffing at either the HPC or M-NCPPC. However, it is staff's understanding that HPC will continue to contract for research on historic resources. There are funds granted by the State to Montgomery County because of its status as a Certified Local Government and HPC will continue to utilize these funds for consultants to research historic properties. Since the need for research still exists (even though the topic of additional staffing may be moot), staff would like to outline several reasons that make it beneficial to involve M-NCPPC staff in the researching effort. There are three primary arguments: 1. to streamline the process by which research is obtained, 2. to improve the quality and consistency of the research, and 3. to link the researching effort more closely to the Master Plan designation process by having it done by staff who are familiar with and involved in the overall amendment procedure.

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Finally, if research is to be done "in house", it could conceivably be done by either HPC or M-NCPPC staff. There are pros and cons to each option. Staff would propose that, aside from the very real constraints that currently exist on the HPC's available staff time (which, in all likelihood, is why researching was contracted out to consultants in the first place), doing research on sites may be a logical extension of the M-NCPPC staff's role in the process that is utilized to designate sites on the Master Plan for Historic Preservation. Although M-NCPPC staff plays a major role in the designation of historic properties, we currently have no control over the research that is being done or over who is doing it. However, we are required to make professional judgments on difficult issues based, in large part, on that research (or we duplicate efforts by redoing research ourselves). If the Board agrees that M-NCPPC staff should be actively involved in Master Plan designations, it is important that we are able to do the necessary research that is essential to the evaluation process.

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Of course, the HPC members will need to work with their own staff to develop guidelines for which cases come to them and which are handled by their staff.

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Recommendation #14: "Authorize the Director of DEP to delegate to DHCD: the intake of HAWP applications; and the inspections of HAWPs." Staff supports this recommendation, but notes that it will increase the workload of the HPC staff and provisions for additional staffing (especially for inspections) may be needed.

Recommendation #15: "Forward copies of selected HAWP applications to the M-NCPPC Planning Department staff to provide an opportunity for review and comment; it should be clear that the discretion whether to submit comments remains with the Planning Board and M-NCPPC staff." This is one of the few recommendations that staff is somewhat concerned about. Staff is very willing to work with the HPC on cases that go beyond usual historic preservation issues and begin to raise broader planning concerns. However, we feel that it is important for the division of responsibility between the HPC and our historic preservation planning staff to remain clearly differentiated. As discussed in Section 1 of this report, the division of responsibility that has evolved over the last three years has come to mean that our historic preservation planning staff deals with designation of historic sites and the HPC deals with design review after a site has been designated. Clearly, there is overlap - the HPC participates in the designation process and our staff looks at various proposals (especially subdivisions) for Master Plan sites. However, the basic distinction of duties - if it is to be continued - is important to keep straight and to communicate to the public. Staff is concerned that directing additional responsibilities to our historic preservation planning staff for design review of Historic Area Work Permits, while also recommending the creation of an official "Historic Preservation Office" at DHCD (Recommendation #24), will continue and even exacerbate existing public confusion about who does what in terms of historic preservation in Montgomery County. Staff suggests that M-NCPPC generally continue to focus on historic preservation duties associated with designations, subdivisions, and large-scale public projects, while leaving design review of Master Plan sites up to the HPC and their staff.

Recommendations #16 through #20 These five recommendations (which are discussed in detail in the OLO report) are all technical changes to the law to clarify and improve the Historic Area Work Permit process. Staff concurs with these five recommendations.

Recommendation #21: "Develop better techniques for informing the public about the status of properties designated on the Master Plan for Historic Preservation." Staff strongly supports this recommendation and gladly work the HPC on any efforts in this

direction.

Recommendation #22: "Develop materials and programs to better educate the public about the County's historic preservation programs, to include improved publicity about the HPC, the Master plan designation process, the HAWP application process, financial incentives for historic preservation, and the division of responsibilities between Executive branch and M-NCPPC historic preservation staff." Staff strongly supports this recommendation. In addition to offering to assist the HPC on new educational programs, staff reminds the Board that approval has been given to work on a historic preservation video project and historic district "flyers" (both in this year's work program and both well underway).

Recommendation #23: "Improve the administration of existing historic preservation programs." Staff supports this recommendation.

Recommendation #24: "Establish a separate Historic Preservation Office within DHCD, and authorize an additional senior staff position to manage the County's historic preservation efforts. The respective roles of DHCD's Historic Preservation Office and M-NCPPC's historic preservation planning staff must be clearly defined and communicated to the public." Staff understands that the ultimate location of the HPC is a very sensitive topic. OLO staff presented a thorough discussion of the staffing alternatives on pages 57 to 60 of the report, including three options: 1. keeping the HPC within DHCD, 2. changing the law to move the HPC staffing responsibilities to M-NCPPC (as is done in Prince George's County), and 3. changing the law to establish HPC as an independent commission. OLO staff has recommended the first option. The HPC is in favor of the third alternative (see attached letter from Leonard Taylor to Isiah Leggett).

All of these options have pros and cons and they are well analyzed in the OLO report. Staff believes that it is possible for the HPC to function successfully under any of the three alternatives. If the HPC is to be retained within DHCD there will need to be a major effort to give the group a high level of autonomy and adequate staff support. In addition, previous disagreements will need to be laid to rest by all parties. If the HPC is to function independently, they will certainly need additional staffing - both professional and administrative - and efforts will need to be made to keep the functions of the HPC closely tied into other government departments and functions. The most radical alternative would be to merge HPC staffing responsibilities into M-NCPPC. The Planning Board would need to strongly support this option in order for it to be accomplished successfully.

Recommendation #25: "Continue to provide HPC with an enhanced level of legal assistance." Staff supports this recommendation.

Recommendation #26: "Develop an annual training seminar for all

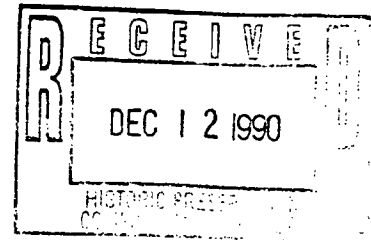
commissioners that serve on the County's adjudicatory boards and commissions, and develop ongoing training for County staff who have primary responsibility for providing support to a County-appointed board, committee, or commission." Staff supports this recommendation.

Recommendation #27: "Schedule separate annual meetings between the HPC and: a County Council committee, the County Executive, and the Planning Board." Staff supports this recommendation. As the Board knows, there have been annual dinner meetings with the HPC for the past several years (the last one was on October 25th). Staff has found them to be productive and useful opportunities to share ideas and points of view.

Leonard Taylor Jr.
Chair, Montgomery County Historic Preservation Commission
5705 Wilson Lane, Bethesda, MD 20814

December 8, 1990

Mr. Isiah Leggett, President
Montgomery County Council
100 Maryland Avenue
Rockville MD 20850



Re: Critical Concerns of the Historic Preservation Commission

Dear Mr. Leggett and Members of the County Council:

As County Council deliberations proceed in connection with the Office of Legislative Oversight's November 13, 1990 report on the Historic Preservation Commission (HPC), we respectfully request consideration of the issues highlighted below.

The OLO report masterfully reflects successful identification and analysis of many complex matters; we support many of the recommendations. Building on the report, the Commission recommends the following:

1. Create an Independent Office of Historic Preservation

The HPC is currently placed at the lowest level within the Department of Housing and Community Development (DHCD). The OLO report proposes to elevate HPC to "office" status but keep it in DHCD. We believe that placement of HPC under the jurisdiction of any executive branch department conflicts with the Commission's mandate as a quasi-judicial body charged with making impartial, professional judgments on preservation issues. By law, HPC's role impacts the work of the County Planning Board, the Department of Environmental Protection, the Department of Transportation, the County Attorney's Office, and other county agencies. Because of its lack of visibility, the Commission's service to other county agencies in fostering the preservation ethic—as mandated in the ordinance—is compromised. Currently, the HPC is very tightly controlled by DHCD. For example, the department modifies Commission decisions and policies; controls the Commission's budget and staff; and exercises approval over communications. To our knowledge no other county adjudicative body is so constrained. This organizational conflict of interest has on occasion placed DHCD in the uncomfortable position of having to choose between preservation and its other priorities. As a result, HPC's own department has failed to support preservation as the ordinance intended. While the HPC's responsibilities are mandated by law, DHCD's control of those responsibilities is not.

As professionals in government and the private sector, HPC commissioners recognize and appreciate the realities of shrinking budgets and competition for resources. The Commission believes the HPC should be positioned so that it can develop program priorities and an annual work plan with self-managed staff and budget. We want to meet the challenge of achieving a sunset date for the Atlas. We want to write design standards to help govern Historic Area Work Permits (HAWP). We want to provide competent review of more than double the number of current HAWPs as anticipated with the early addition of Takoma Park, Garrett Park, and Chevy Chase historic districts. To have any reasonable chance of accomplishing these goals—among many cited in the OLO report—the HPC's ability to exercise its mandate must be strengthened. It is not realistic to assume that our existing weaknesses, together with a growing HAWP workload, accelerated Atlas reviews, much needed public education efforts, and other work prescribed by law, can be addressed within the departmental structure. The structure hasn't worked in the past; we who live with it daily have no confidence it can ever work well.

2. Provide Resources Commensurate with Scope and Volume of Work

Nine volunteer commissioners, assisted by two DHCD staff members, devote most of their time to HAWPs. The Commission usually meets twice a month; for the past three years, the meetings have started at 7:30 pm and ended at 11:30 pm or later. Handling HAWPs is only one of the Commission's legal mandates. Individual commissioners do site reviews, evaluate grant proposals, represent the HPC before other county agencies, and perform a variety of other official tasks. The absence of adequate resources means that outreach and community

education, clearly envisioned in both the Master Plan for Historic Preservation and the Historic Preservation Ordinance, are virtually ignored. Inadequate resources also impact the Commission's ability to rigorously review Atlas sites and develop clear, comprehensive master plan recommendations. The Commission needs both the structure of an independent office and adequate resources to meet current workload; additional resources, including budget, staff, and computer capability, will be needed to administer the ordinance in a responsible manner with the expanding inventory of historic districts and sites. In brief, competent and fair stewardship of an inventory of historic resources of the magnitude anticipated requires a very different structure and process than the one currently in place.

3. Improve Enforcement

The HPC is surprised that so many structures on the 14-year-old Atlas have survived. The Department of Environmental Protection regularly approves permits for work on historic properties that by law require HAWPs. In spite of the ordinance's prohibition of "Demolition by Neglect," structures on the master plan are left by their owners to rot; the police powers of this provision are almost never used to rescue properties. No mechanism exists to ensure that work done on master plan resources comply with approved HAWPs. Even public agencies ignore the preservation ordinance when it does not jibe with their timetable or agenda. We believe vigorous and consistent enforcement of the county ordinance is vital if Montgomery County's commitment to historic preservation is to be taken seriously.

4. Increase Support for Master Plan Property Owners

In the abstract, most citizens think historic preservation is a good idea; however, when it comes to designating their personal property on the master plan they may hesitate. Many citizens do not know there is a preservation program in the county. Often they are unaware of the recognition, technical assistance, and financial incentives that come with designation. We would like to do more to insure that property owners know about and receive these benefits. That is what the county's education program in historic preservation should be addressing. We think it sad Montgomery County does not even provide plaques saying a property is on the historic register. This type of symbolic support, coupled with meaningful financial incentives such as tax credits, low-interest loans, and professional technical assistance are the tools used by many other local governments throughout the country to build a preservation constituency and insure its future.

Thank you for your consideration. The HPC is grateful for the opportunity to share its critical concerns with the Council. If the outlook for preservation in Montgomery County were not so grim, we would be more sanguine about the future. But your Commission feels strongly that the time has come to put the county's preservation house in order. Action on the OLO report provides an opportunity to do so. We look forward to participating actively in upcoming Council work sessions about the HPC.

Sincerely yours,

Leonard Taylor Jr.

cc: Mr. Neal Potter, County Executive
Montgomery County

Mr. Gus Bauman, Chair
Montgomery County Planning Board

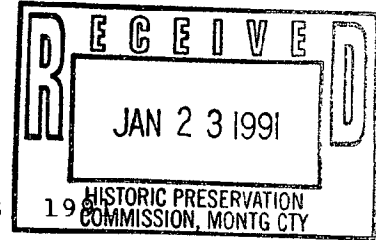
Mr. Richard Ferrara, Director
Department of Housing and Community Development

Ms. Karen Orlansky
Office of Legislative Oversight

HPC
2/14/91

MEMORANDUM

January 23



TO: William E. Hanna, Jr., Chair
PHED Committee

FROM: Richard J. Ferrara, Director *RJF*
Department of Housing & Community Development

SUBJECT: Relocation of the Historic Preservation Commission

On January 17, 1991, a meeting was held with the County Executive to discuss the Office of Legislative Oversight evaluation of the Historic Preservation Commission. At that meeting, County Executive Neal Potter decided to recommend to the County Council that the Historic Preservation Commission be administratively transferred to the Planning Board.

Mr. Potter believes that there is some duplication of services between the Planning Board and the HPC, since the Planning Board already has some 2.5 work years assigned to its historic preservation activity. This question of overlapping responsibility was discussed in the OLO report as well. In addition, the report notes that the Prince George's County Historic Preservation Commission is located at the Prince George's County Planning Board.

Mr. Potter believes that it would be appropriate to provide some additional funding to assist the Planning Board in administering the HPC activity. If the Council supports this proposal, we would make the arrangements to complete the transfer by July 1, 1991.

RJF/rap:0592C

cc: Neal Potter, County Executive
William Hussmann, CAO
Gene Lynch, Special Assistant to County Executive
Robert Kendal, OMB
Joyce Stern, County Attorney
Meg Reissett, OPP
✓Leonard Taylor, Chairman, HPC
Gus Bauman, Chair, Planning Board



AGENDA DATE: January 17, 1990

January 14, 1990

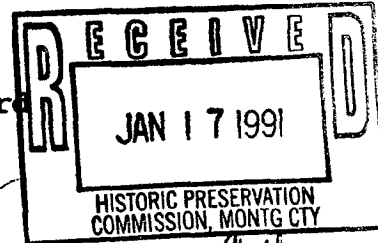
MEMORANDUM

TO: Montgomery County Planning Board

VIA: Douglas Alexander, Chief
Urban Design Division

FROM: Gwen Marcus, Historic Preservation Planner
Urban Design Division

SUBJECT: OLO Report on Historic Preservation Commission and
M-NCPPC Preservation Role

Introduction

Montgomery County has been involved in historic preservation activities since the mid-1970's. In 1976, the Maryland-National Capital Park and Planning Commission (M-NCPPC) published the Locational Atlas and Index of Historic Sites in Montgomery County. In September, 1979, the Montgomery County Council approved a functional Master Plan for Historic Preservation (which had been drafted by M-NCPPC), along with a Historic Preservation Ordinance (Chapter 24A of the Montgomery County Code).

Over the last decade, the County's historic preservation efforts have grown substantially and have been refined. Both the strengths and weaknesses of the original Master Plan and Ordinance have been brought to light. As preservation activities move into the 1990's, it has been widely acknowledged that it is important to evaluate what the County has been doing and where it is going in the future in regard to this important public interest.

To that end, the Montgomery County Council directed the Office of Legislative Oversight (OLO) to study and evaluate the structure, workload, staffing, and overall operations of the County's Historic Preservation Commission (HPC). This study took place during 1990 and a final report was presented by OLO to the Council on November 13, 1990.

Although the OLO report is primarily concerned with the functioning of the HPC, there are a number of recommendations that relate to the historic preservation planning activities of M-NCPPC. The purpose of this staff report is, therefore, to help the Planning Board analyze and understand the implications of the OLO recommendations, so that the Board can provide well-reasoned comments to the County Council as they review the OLO report. The PHED Committee will be holding its first worksession on this OLO report on Thursday, January 24th. This meeting conflicts with the Board's regularly scheduled agenda; however, staff is planning to attend this worksession and will present Board comments as needed.

Because this is a complex topic, staff divided its report into two sections. The first section deals with the relationship between the work of the HPC and the work of M-NCPPC's historic preservation planning staff. The second section specifically covers the major recommendations in the OLO report.

Section 1: Relationship Between HPC and M-NCPPC Preservation Planning Efforts

There have been a number of Board discussions concerning the functioning of the HPC and the division of responsibilities between this body and the Planning Department's historic preservation planning section. Staff feels that additional thought needs to be given to the future roles for each group and the Board's expectations for how its historic preservation planning efforts will be handled.

First and foremost, staff would like to emphasize that - by law - historic designation in Montgomery County is a planning process and M-NCPPC has a legitimate, if not essential, role in this process. Every time a site or district is designated, not only is the Master Plan for Historic Preservation amended, but also the applicable area master plan and the General Plan, as well. The County's historic preservation program has been set up to be a complementary relationship between the legislative branch (the Planning Board and County Council) through the planning process, and the executive branch (the Executive and the HPC) through the Ordinance. We see this type of complementary relationship between planning and implementation throughout the County - a good comparison may be the relationship between the Board's planning efforts in Agricultural Preservation and the functioning of the Agricultural Board and its staff in the Office of Economic Development.

Over the last decade, the wisdom of this complementary system has been demonstrated. Historic preservation issues in recent years have become more, not less, tied into larger planning issues - such as the retention of agricultural land and open space, transportation modes, and community character/quality of life concerns. Although the Historic Preservation Commission is clearly charged with taking the lead role in protecting and preserving the County's historic resources and the Planning Board

has a much broader and diverse mandate, it is appropriate and necessary that historic preservation continue to be included in M-NCPPC's work program.

Given this complementary relationship, it is important to clearly define roles so as to avoid duplications of responsibility. In practical terms, the roles that have evolved over the last few years are that the M-NCPPC staff deals primarily with issues relating to the Master Plan designation of historic sites and districts and the HPC deals with design review after sites have been placed on the Master Plan. Clearly, there is overlap - the HPC participates in the designation process and our staff looks at various design proposals (especially subdivisions) for Master Plan sites. However, the basic distinction of duties seems to be workable and, in staff's opinion, appropriate.

Staff understands that the Board recognizes that the HPC must be strengthened and supported in performing its important functions. Certainly staff has done and will continue to do everything possible to be of help to the HPC. However, it is important for the Board to acknowledge that preservation - especially designation of sites and districts - is a distinct and complex discipline that is inextricably tied into the planning process in this County. Even with a strong and vital HPC, the Board must still be involved in preservation planning activities.

Section 2: OLO Report Recommendations

Recommendation #1: "Amend the law to require that the HPC also include representation from the fields of business, real estate, and law." Staff feels that this recommendation has value and will aid in building a public perception of the HPC as a balanced and objective group. However, it is important to clarify that the intent is not to fill the HPC with businesspeople who have no background, knowledge, or interest in preservation (and, thus, throw the HPC out of balance in another direction), but rather to encourage a broad range of viewpoints. Perhaps this recommendation should be limited to a specific number (two or three) of appointed HPC members.

Recommendation #2: "Authorize the HPC to establish panels composed of three HPC members who are delegated decision-making authority." As the number of designated historic sites and districts increases (especially with Takoma Park coming on line as a historic district), the HPC's workload will increase significantly. To avoid all-night meetings, the HPC will either need to meet more often or break up into sub-committees or panels to handle the workload. It is very important that panels be created only at the discretion of the full HPC and that, if created, they are balanced and unbiased (e.g. a Kensington Historic District panel should not include all residents of Kensington). It may be a good idea to direct that all decisions recommended by HPC sub-committees or panels be confirmed by the full HPC to assure that preservation decisions are being made on consistent basis County-wide.

Recommendation #3: "Authorize the HPC to send cases to the Hearing Examiner in the Office of Zoning and Administrative Hearings for report and recommendation." As historic preservation cases become more complex, the HPC should be able to avail itself, as needed, of all County expertise. Staff feels that the ability to ask the advice of the Hearing Examiner on specific cases may be a valuable tool for the HPC in the future.

Recommendation #4: "Clarify in regulation an expanded role for the HPC chair." Staff supports this recommendation.

Recommendation #5: "Amend the law to enable HPC members to be compensated." Staff strongly supports this recommendation. The HPC members are dedicated and hard-working. The amount of time they are asked to contribute to HPC work is significant and they should be compensated in the same way as other County boards and commissions.

Recommendation #6: "Finalize executive regulations that outline HPC's routine procedures, and the role of the Local Advisory Panels; and develop executive regulations that contain standards for HPC's review of Historic Area Work Permits." This process is currently underway and staff supports its completion.

Recommendation #7: "Amend the law to clarify that all HPC decisions are appealable to the Board of Appeals; and to clarify the intent of providing HPC with authority 'to delineate the extent of appurtenances and environmental setting associated with an historic site or resource.'" These are fairly technical changes regarding issues which are not clearly addressed in the existing law. Staff supports this recommendation.

Recommendation #8: "Adopt a schedule for the review of all remaining Atlas resources, and establish a sunset date for the Atlas. At the same time, establish a process for nominating resources to be considered in the future for designation on the Master Plan." The OLO recommendations that deal with the evaluation of Locational Atlas resources are of special interest in that they will affect the Board's workload. Staff strongly supports this recommendation and feels that the five year schedule for evaluating the remaining resources which is contained in the OLO report is realistic. In addition, staff supports the language in the recommendation which recognizes the need to establish, by law, a clear process for nominating resources in the future to be considered for designation on the Master Plan for Historic Preservation.

Recommendation #9: "Delegate the responsibility for researching remaining Atlas resources to the Planning Department of M-NCPPC." As discussed above, historic designation in Montgomery County is a master planning process. Staff feels that M-NCPPC has a legitimate and essential role to play in deciding which properties should be placed on the Master Plan for Historic Preservation. Because of this significant involvement in the designation proc-

ess, staff feels that there are a number of reasons for M-NCPPC to be involved in the research that ultimately makes the case for or against designation.

Staff understands that current budget constraints make it unlikely for any new staffing at either the HPC or M-NCPPC. However, it is staff's understanding that HPC will continue to contract for research on historic resources. There are funds granted by the State to Montgomery County because of its status as a Certified Local Government and HPC will continue to utilize these funds for consultants to research historic properties. Since the need for research still exists (even though the topic of additional staffing may be moot), staff would like to outline several reasons that make it beneficial to involve M-NCPPC staff in the researching effort. There are three primary arguments: 1. to streamline the process by which research is obtained, 2. to improve the quality and consistency of the research, and 3. to link the researching effort more closely to the Master Plan designation process by having it done by staff who are familiar with and involved in the overall amendment procedure.

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Recommendation #13: "Simplify process for HPC action on relatively straightforward and non-controversial HAWP applications." Staff supports this recommendation for the reasons noted above.

Recommendation #14: "Authorize the Director of DEP to delegate to DHCD: the intake of HAWP applications; and the inspections of HAWPs." Staff supports this recommendation, but notes that it will increase the workload of the HPC staff and provisions for additional staffing (especially for inspections) may be needed.

Recommendation #15: "Forward copies of selected HAWP applications to the M-NCPPC Planning Department staff to provide an opportunity for review and comment; it should be clear that the discretion whether to submit comments remains with the Planning Board and M-NCPPC staff." This is one of the few recommendations that staff is somewhat concerned about. Staff is very willing to work with the HPC on cases that go beyond usual historic preservation issues and begin to raise broader planning concerns. However, we feel that it is important for the division of responsibility between the HPC and our historic preservation planning staff to remain clearly differentiated. As discussed in Section 1 of this report, the division of responsibility that has evolved over the last three years has come to mean that our historic preservation planning staff deals with designation of historic sites and the HPC deals with design review after a site has been designated. Clearly, there is overlap - the HPC participates in the designation process and our staff looks at various proposals (especially subdivisions) for Master Plan sites. However, the basic distinction of duties - if it is to be continued - is important to keep straight and to communicate to the public. Staff is concerned that directing additional responsibilities to our historic preservation planning staff for design review of Historic Area Work Permits, while also recommending the creation of an official "Historic Preservation Office" at DHCD (Recommendation #24), will continue and even exacerbate existing public confusion about who does what in terms of historic preservation in Montgomery County. Staff suggests that M-NCPPC generally continue to focus on historic preservation duties associated with designations, subdivisions, and large-scale public projects, while leaving design review of Master Plan sites up to the HPC and their staff.

Recommendations #16 through #20 These five recommendations (which are discussed in detail in the OLO report) are all technical changes to the law to clarify and improve the Historic Area Work Permit process. Staff concurs with these five recommendations.

Recommendation #21: "Develop better techniques for informing the public about the status of properties designated on the Master Plan for Historic Preservation." Staff strongly supports this recommendation and gladly work the HPC on any efforts in this

direction.

Recommendation #22: "Develop materials and programs to better educate the public about the County's historic preservation programs, to include improved publicity about the HPC, the Master plan designation process, the HAWP application process, financial incentives for historic preservation, and the division of responsibilities between Executive branch and M-NCPPC historic preservation staff." Staff strongly supports this recommendation. In addition to offering to assist the HPC on new educational programs, staff reminds the Board that approval has been given to work on a historic preservation video project and historic district "flyers" (both in this year's work program and both well underway).

Recommendation #23: "Improve the administration of existing historic preservation programs." Staff supports this recommendation.

Recommendation #24: "Establish a separate Historic Preservation Office within DHCD, and authorize an additional senior staff position to manage the County's historic preservation efforts. The respective roles of DHCD's Historic Preservation Office and M-NCPPC's historic preservation planning staff must be clearly defined and communicated to the public." Staff understands that the ultimate location of the HPC is a very sensitive topic. OLO staff presented a thorough discussion of the staffing alternatives on pages 57 to 60 of the report, including three options: 1. keeping the HPC within DHCD, 2. changing the law to move the HPC staffing responsibilities to M-NCPPC (as is done in Prince George's County), and 3. changing the law to establish HPC as an independent commission. OLO staff has recommended the first option. The HPC is in favor of the third alternative (see attached letter from Leonard Taylor to Isiah Leggett).

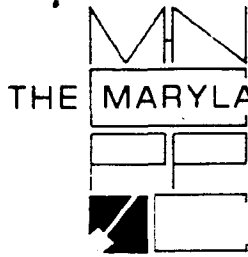
All of these options have pros and cons and they are well analyzed in the OLO report. Staff believes that it is possible for the HPC to function successfully under any of the three alternatives. If the HPC is to be retained within DHCD there will need to be a major effort to give the group a high level of autonomy and adequate staff support. In addition, previous disagreements will need to be laid to rest by all parties. If the HPC is to function independently, they will certainly need additional staffing - both professional and administrative - and efforts will need to be made to keep the functions of the HPC closely tied into other government departments and functions. The most radical alternative would be to merge HPC staffing responsibilities into M-NCPPC. The Planning Board would need to strongly support this option in order for it to be accomplished successfully.

Recommendation #25: "Continue to provide HPC with an enhanced level of legal assistance." Staff supports this recommendation.

Recommendation #26: "Develop an annual training seminar for all

commissioners that serve on the County's adjudicatory boards and commissions, and develop ongoing training for County staff who have primary responsibility for providing support to a County-appointed board, committee, or commission." Staff supports this recommendation.

Recommendation #27: "Schedule separate annual meetings between the HPC and: a County Council committee, the County Executive, and the Planning Board." Staff supports this recommendation. As the Board knows, there have been annual dinner meetings with the HPC for the past several years (the last one was on October 25th). Staff has found them to be productive and useful opportunities to share ideas and points of view.



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

8787 Georgia Avenue • Silver Spring, Maryland 20910-3760

(301) 495-4605

October 5, 1990

Montgomery County Planning Board
Office of the Chairman

Andrew Mansinne, Jr.
Director
Office of Legislative Oversight
Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, MD 20850


Dear Mr. Mansinne,

Thank you for the opportunity to comment on the draft copy of OLO Report No. 90-2 on the Montgomery County Historic Preservation Commission (HPC). I have consulted with a number of our staff members who are actively involved in historic preservation efforts - including Melissa Banach, Doug Alexander, and Gwen Marcus - on this report and the following comments reflect the staff's positions as well as my own.

First, I would like to emphasize that we have found the overall report to be very complete, thorough, and well thought out. It clearly represents a formidable analytic effort and is particularly valuable in its detailed documentation of the inception of the County's historic preservation program, its evaluation of current practices, and its comparison of the County's program to other jurisdictions in Maryland and elsewhere around the United States.

Many of the recommendations contained in the draft report deal with the structure of the HPC and procedures for dealing with Historic Area Work Permits. We feel that the majority of these recommendations are quite positive and will substantially improve the ability of the HPC to deal with an increasingly large and complex workload.

In addition, several of the major recommendations in the draft report have a direct bearing on the Board's historic preservation planning work. Our remaining comments will focus in on these specific recommendations.

First, the recommendations that deal with the evaluation of Locational Atlas resources are of special interest in that they will affect the Board's workload and staffing. We strongly support Recommendation #8 to establish a sunset date for the Atlas and feel that the five year schedule for evaluating the

remaining resources is realistic. In addition, we are pleased that the recommendation recognizes the need to establish, by law, a clear process for nominating resources in the future to be considered for designation on the Master Plan for Historic Preservation.

We also support Recommendation #9 to delegate responsibility for researching remaining Atlas resources to our historic preservation planning staff - adding one part-time researcher to our current staffing level of two positions devoted to historic preservation activities. Currently this function is distributed among a variety of consultants hired by the HPC. We feel that having the research on Atlas resources done by one staff person who is familiar with and involved in the overall designation process will make the evaluations more consistent and efficient.

It is important to note that it is our understanding that this recommendation would not require additional funding, but would rather mean that HPC funds currently utilized to hire consultants for research projects would be transferred to the Planning Board's budget to fund the recommended part-time position. There are a variety of ways that this transfer of funds could occur and a variety of ways in which the part-time research position could be structured. We support the concept of folding the researching function in with the rest of our designation activities and are open to a discussion on the details for accomplishing this.

Recommendation #10 calls for additional clarification of the procedures for removing resources from the Locational Atlas. We agree that this portion of the current ordinance needs to be considered and improved.

In the discussion of Historic Area Work Permits, Recommendation #11 suggests that standards for future regulatory action be included in the amendments to the Master Plan for Historic Preservation which designate particular sites. It also recommends that the ordinance be changed to specifically link the direction provided in Master Plan amendments with the HPC's regulatory function. We strongly support these recommendations.

The designation process currently does involve decisions and guidance in the Master Plan which ultimately affects the HPC's review of Historic Area Work Permits. Language is often included in Master Plan amendments which provides direction on the nature of environmental settings, the intent of historic designation for a particular property, and even the building elements which are of highest historical or architectural significance. The HPC has always been very diligent in referring to the appropriate Master Plan guidance when reviewing Historic Area Work Permits and we see the report's recommendation in this regard as the continuation and expansion of a positive existing relationship.

One of the few recommendations that we are concerned about is Recommendation #15, which suggests that the HPC forward copies of selected Historic Area Work Permit applications to our historic preservation planning staff for review and comment. We are very willing to work with the HPC on cases that go beyond usual historic preservation issues and begin to raise broader planning concerns. However, we feel that it is important for the division of responsibility between the HPC and our historic preservation planning staff to remain clearly differentiated.

This division of responsibility that has evolved over the last three years has come to mean that our historic preservation planning staff deals with designation of historic sites and the HPC deals with design review after a site has been designated. Clearly, there is overlap - the HPC participates in the designation process and our staff looks at various proposals (especially subdivisions) for Master Plan sites. However, the basic distinction of duties - if it is to be continued - is important to keep straight and to communicate to the public.

We are concerned that directing additional responsibilities to our historic preservation planning staff for design review of Historic Area Work Permits, while also recommending the creation of an official "Historic Preservation Office" at DHCD (Recommendation #24), will continue and even exacerbate existing public confusion about who does what in terms of historic preservation in Montgomery County.

We would suggest that our staff generally continue to focus on historic preservation duties associated with designations, subdivisions, and large-scale public projects, while leaving design review of Master Plan sites up to the HPC and their staff.

However, if it seems important for our staff to be involved in the design review process, we would suggest that this may demonstrate a need to reopen the issue of consolidating historic preservation activities in the County under "one roof". OLO staff did an excellent job of looking at the various options of where the HPC staffing function should be located and there are clearly problems and opportunities associated with each alternative. Ultimately, it is essential for historic preservation activities in this County to be conducted in the most efficient and effective way possible, with maximum clarity and accessibility for the public.

Perhaps additional consideration of the location issue is warranted at this time. In addition, it would certainly be important to assess the issue of the location of HPC staff when the OLO does a formal follow-up to the current evaluation - in FY 94 or sooner.

Finally, we are very pleased to support Recommendation #27 which calls for annual meetings between the HPC and the County

Council, Executive and Planning Board. The Board has had annual dinner meetings with the HPC for the past several years (in fact, we have one scheduled for October 25th) and we have found them to be productive and useful opportunities to share ideas and points of view.

In conclusion, the draft OLO report on the HPC will be very important and helpful in improving the effectiveness of this Commission. It should go a long way towards solving problems that have been identified in the historic preservation process over the years. The impact on the Board's historic preservation planning program will, we feel, be generally positive. It is, however, essential to clearly define duties, responsibilities and roles.

Sincerely,



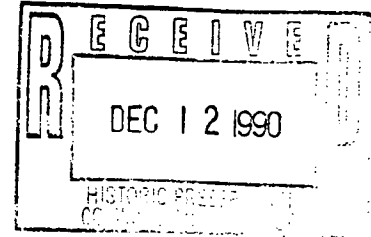
Gus Bauman
Chairman

cc: Melissa Banach, Acting Planning Director
Doug Alexander, Chief, Urban Design
Gwen Marcus, Historic Preservation Planner

Leonard Taylor Jr.
Chair, Montgomery County Historic Preservation Commission
5705 Wilson Lane, Bethesda, MD 20814

December 8, 1990

Mr. Isiah Leggett, President
Montgomery County Council
100 Maryland Avenue
Rockville MD 20850



Re: Critical Concerns of the Historic Preservation Commission

Dear Mr. Leggett and Members of the County Council:

As County Council deliberations proceed in connection with the Office of Legislative Oversight's November 13, 1990 report on the Historic Preservation Commission (HPC), we respectfully request consideration of the issues highlighted below.

The OLO report masterfully reflects successful identification and analysis of many complex matters; we support many of the recommendations. Building on the report, the Commission recommends the following:

1. Create an Independent Office of Historic Preservation

The HPC is currently placed at the lowest level within the Department of Housing and Community Development (DHCD). The OLO report proposes to elevate HPC to "office" status but keep it in DHCD. We believe that placement of HPC under the jurisdiction of any executive branch department conflicts with the Commission's mandate as a quasi-judicial body charged with making impartial, professional judgments on preservation issues. By law, HPC's role impacts the work of the County Planning Board, the Department of Environmental Protection, the Department of Transportation, the County Attorney's Office, and other county agencies. Because of its lack of visibility, the Commission's service to other county agencies in fostering the preservation ethic—as mandated in the ordinance—is compromised. Currently, the HPC is very tightly controlled by DHCD. For example, the department modifies Commission decisions and policies; controls the Commission's budget and staff; and exercises approval over communications. To our knowledge no other county adjudicative body is so constrained. This organizational conflict of interest has on occasion placed DHCD in the uncomfortable position of having to choose between preservation and its other priorities. As a result, HPC's own department has failed to support preservation as the ordinance intended. While the HPC's responsibilities are mandated by law, DHCD's control of those responsibilities is not.

As professionals in government and the private sector, HPC commissioners recognize and appreciate the realities of shrinking budgets and competition for resources. The Commission believes the HPC should be positioned so that it can develop program priorities and an annual work plan with self-managed staff and budget. We want to meet the challenge of achieving a sunset date for the Atlas. We want to write design standards to help govern Historic Area Work Permits (HAWP). We want to provide competent review of more than double the number of current HAWPs as anticipated with the early addition of Takoma Park, Garrett Park, and Chevy Chase historic districts. To have any reasonable chance of accomplishing these goals—among many cited in the OLO report—the HPC's ability to exercise its mandate must be strengthened. It is not realistic to assume that our existing weaknesses, together with a growing HAWP workload, accelerated Atlas reviews, much needed public education efforts, and other work prescribed by law, can be addressed within the departmental structure. The structure hasn't worked in the past; we who live with it daily have no confidence it can ever work well.

2. Provide Resources Commensurate with Scope and Volume of Work

Nine volunteer commissioners, assisted by two DHCD staff members, devote most of their time to HAWPs. The Commission usually meets twice a month; for the past three years, the meetings have started at 7:30 pm and ended at 11:30 pm or later. Handling HAWPs is only one of the Commission's legal mandates. Individual commissioners do site reviews, evaluate grant proposals, represent the HPC before other county agencies, and perform a variety of other official tasks. The absence of adequate resources means that outreach and community

education, clearly envisioned in both the Master Plan for Historic Preservation and the Historic Preservation Ordinance, are virtually ignored. Inadequate resources also impact the Commission's ability to rigorously review Atlas sites and develop clear, comprehensive master plan recommendations. The Commission needs both the structure of an independent office and adequate resources to meet current workload; additional resources, including budget, staff, and computer capability, will be needed to administer the ordinance in a responsible manner with the expanding inventory of historic districts and sites. In brief, competent and fair stewardship of an inventory of historic resources of the magnitude anticipated requires a very different structure and process than the one currently in place.

3. Improve Enforcement

The HPC is surprised that so many structures on the 14-year-old Atlas have survived. The Department of Environmental Protection regularly approves permits for work on historic properties that by law require HAWPs. In spite of the ordinance's prohibition of "Demolition by Neglect," structures on the master plan are left by their owners to rot; the police powers of this provision are almost never used to rescue properties. No mechanism exists to ensure that work done on master plan resources comply with approved HAWPs. Even public agencies ignore the preservation ordinance when it does not jibe with their timetable or agenda. We believe vigorous and consistent enforcement of the county ordinance is vital if Montgomery County's commitment to historic preservation is to be taken seriously.

4. Increase Support for Master Plan Property Owners

In the abstract, most citizens think historic preservation is a good idea; however, when it comes to designating their personal property on the master plan they may hesitate. Many citizens do not know there is a preservation program in the county. Often they are unaware of the recognition, technical assistance, and financial incentives that come with designation. We would like to do more to insure that property owners know about and receive these benefits. That is what the county's education program in historic preservation should be addressing. We think it sad Montgomery County does not even provide plaques saying a property is on the historic register. This type of symbolic support, coupled with meaningful financial incentives such as tax credits, low-interest loans, and professional technical assistance are the tools used by many other local governments throughout the country to build a preservation constituency and insure its future.

Thank you for your consideration. The HPC is grateful for the opportunity to share its critical concerns with the Council. If the outlook for preservation in Montgomery County were not so grim, we would be more sanguine about the future. But your Commission feels strongly that the time has come to put the county's preservation house in order. Action on the OLO report provides an opportunity to do so. We look forward to participating actively in upcoming Council work sessions about the HPC.

Sincerely yours,

Leonard Taylor Jr.

cc: Mr. Neal Potter, County Executive
Montgomery County

Mr. Gus Bauman, Chair
Montgomery County Planning Board

Mr. Richard Ferrara, Director
Department of Housing and Community Development

Ms. Karen Orlansky
Office of Legislative Oversight

ROUTING SLIP
MONTGOMERY COUNTY PLANNING BOARD
CHAIRMAN'S OFFICE

FILE NUMBER: 910402 DATE RECEIVED: 04/01/91

CORRESPONDENCE TYPE: letter DATE OF LETTER: 03/27/91

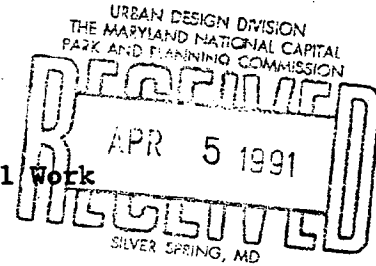
AGENDA DATE:

TO: Bauman

FROM: Andrew Mansinne, Jr.

SUBJECT:

Letter transmits copy of MCC Resolution approving CY 1991 Work
Program of the Office of Legislative Oversight.



TRANSMITTED TO: Pl. Dept. / Pks. Dept. / GB

COPIES TO: Plunkett / Marcus

DATE DUE:

[] PREPARE REPLY FOR CHAIRMAN'S SIGNATURE

[] REPLY; CC TO CHAIRMAN

REMARKS FROM CHAIRMAN'S OFFICE:

PLANNING DIRECTOR'S OFFICE

DATE RECEIVED BY PDO: DATE SENT TO DIVISION:

RESPONSIBLE STAFF:

DIVISION:

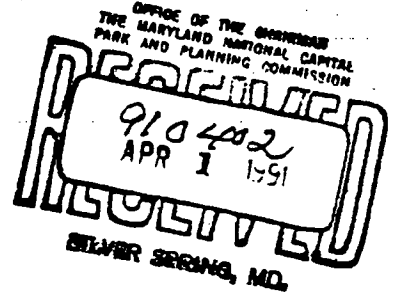
REMARKS FROM DIRECTOR'S OFFICE:



Montgomery County Government

March 27, 1991

Gus Bauman, Chairman
Maryland-National Capital Park
and Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20907



Dear Mr. Bauman:

Chapter 29A of the Montgomery County Code established the Office of Legislative Oversight with the responsibility of determining by program evaluation, audit, and investigation the effectiveness of funding and legislation, approved and enacted by the County Council, in meeting community needs. In addition, the Office assists the Council by making recommendations concerning the management and operations of public and private agencies and instrumentalities for which funds are appropriated or approved by the Council. The Office works under an annual work program.

On March 26, 1991, the Council, by Resolution No. 12-144, approved the CY 1991 Work Program of the Office of Legislative Oversight (copy attached). The work program affects County Government and other County and bi-County agencies.

I appreciate the cooperation from your agency during past years, and look forward to your continued cooperation as OLO accomplishes the CY 1991 work program.

Sincerely,

Andrew Mansinne, Jr.
Andrew Mansinne, Jr.
Director

AM/cca
392/10

Attachment

cc: John F. Downs, Jr., Executive Director, M-NCPPC
Robert Marriott, Planning Director, M-NCPPC

Office of Legislative Oversight

100 Maryland Avenue, Rockville, Maryland 20850. 301/217-7990

Resolution No. 12-144
Introduced: March 19, 1991
Adopted: March 26, 1991

COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND

By: County Council

SUBJECT: CY 1991 Work Program of the Office of Legislative Oversight

Background

1. Chapter 29A, Montgomery County Code, established the Office of Legislative Oversight (OLO) with the responsibility to determine by program evaluation, audit, and investigation the effectiveness of funding and legislation in meeting community needs; to conduct special audits, surveys and investigations at the request of the Council; and to make recommendations to the Council concerning the performance, management, and operations of public and private agencies, programs, and functions for which funds are appropriated or approved by the Council.

2. Section 29A-6 provides that the Director, Office of Legislative Oversight shall prepare an annual Work Program which shall be submitted to the Council for approval or modification.

3. The Director, Office of Legislative Oversight, submitted a proposed Work Program for CY 1991, which was reviewed by the Council's Management and Fiscal Policy (MFP) Committee on March 11, 1991.

4. The CY 1991 Work Program, as recommended by the MFP Committee, is presented below for approval by the full Council.

Action

The County Council for Montgomery County, Maryland, approves the following Work Program for CY 1991 for the Office of Legislative Oversight:

2. Project: Request For Proposals - Contract for Independent Outside Auditors

Principal agency affected: County Government

Abbreviated description: Section 315 of the Montgomery County Charter, requires the Council to contract with a certified public accountant annually to perform an independent audit of the County's financial statements and supporting documentation. Additionally, Council Resolution 10-457 assigns responsibility to OLO for providing all support to the Council during the period of audit engagements and to act as Contract Administrator. During 1991, OLO will perform two distinct activities relating to these responsibilities.

A. Activities Related to Administering Existing Contract

The current contract for independent auditing services was awarded to KPMG Peat Marwick (previously named Peat Marwick Main & Co.) for work relating to the County's financial statements for the fiscal year ending June 30, 1988, and has subsequently been amended for auditing services for fiscal years 1989 and 1990. During 1991, OLO will continue as Contract Administrator for this contract; to include negotiating an amendment of the existing contract for performance of independent auditing services for the fiscal year ending June 30, 1991, reviewing the individual auditors' reports and comments from the Executive Branch on those reports, and assisting the Council's Management and Fiscal Policy (MFP) Committee during consideration of any activities of the Council's auditors.

B. Activities Related to Awarding of New Contract for FY92 Audits

Since it has been Council policy to re-bid independent auditing services every four years, OLO will prepare a Request for Proposals (RFP) to solicit independent auditing services for the fiscal year ending June 30, 1992, with renewal options for fiscal years 1993, 1994, and 1995. In addition, OLO will coordinate and oversee evaluation of the RFP responses, recommend an independent auditing firm to the Council's M&FP committee, prepare necessary documents, resolutions, and contracts for full Council approval, and perform other contract administration duties as necessary.

3. Project: The Montgomery County Minority (MFD) Business Purchasing Program

Principal agency affected: County Government

Abbreviated description: In November 1988, the Council enacted Bill 34/35/40-88, which amended the County's minority, female and disabled-owned (MFD) business purchasing program to: increase the MFD goal from 15 to 20 percent; broaden the types of procurements subject to the program's goal; and extend the programs sunset date until December 1, 1991. The legislation also directs OLO to evaluate the program by January 1, 1992.

The County Executive's proposed FY92 operating budget recommends a reduced level of funding for the Rental Assistance Program. The \$313,310 reduction is based upon a legislative proposal to reduce the liquid asset limit to \$10,000 for all program participants, and an administrative proposal to limit the program to 1,660 participants. Recognizing that the Council will likely consider these changes before OLO's evaluation of the Rental Assistance Program is finished, OLO will be prepared to provide the Council with analyses of the Executive's proposals prior to completion of the entire OLO evaluation.

6. Project: Feasibility of Contracting or Privatizing Elements of the Department of Liquor Control Operations

Principal agency affected: County Government

Abbreviated description: Under Article 2B Alcoholic Beverages, of the Annotated Code of Maryland, the State authorizes all counties and the City of Baltimore to displace or limit economic competition in the sale and distribution of alcoholic beverages. In Montgomery County, the Department of Liquor Control (DLC) was created to exclusively control the wholesale distribution of all alcoholic beverages and the retail sale of liquor by the bottle. The DLC accomplishes its mission through direct operation of one alcoholic beverages warehouse, 24 retail outlets, and a fleet of 40 delivery trucks. The only portion of the current DLC operation which is either privatized or contracted is loading of beer onto County trucks for delivery to licensees and DLC retail outlets.

There are 18 other jurisdictions (all states) which control the distribution of alcoholic beverages at the wholesale and/or retail level. The methods by which these states accomplish control includes directly managing wholesale, delivery and/or retail operations; contracting for operation of warehouses, delivery functions, and/or retail outlets; complete privatization of one or more of these areas; and various combinations thereof.

This project would review alternate methods employed by other jurisdictions to accomplish functions similar to those currently being performed directly by the DLC. The objective of the study would be to identify those areas of the DLC operation which have potential for efficiencies through contracting or otherwise privatizing function to generate cost savings that would translate into increased revenues for transfer to the County's General Fund.

7. Project: Study of Family Independence Project

Principal agency affected: County Government

Abbreviated description: The Family Independence Project (FIP) was started in FY86 as a pilot program in the Department of Family Resources. The purpose of FIP was to promote self-sufficiency among "hard-to-employ" Aid to Families with Dependent Children (AFDC) recipients, by making available a multitude of support services to aid clients achieve increased education, stable employment, and economic independence.

- The increasing number of trees along highways and in neighborhoods that are in the public right-of-way but outside the Suburban District; and
- The potential effect on the leaf collecting functions of the Urban Maintenance Section of any future County-wide yard waste recycling program.

This project will update OLO's 1982 evaluation of the Montgomery County Suburban District and address the impact of the above changes on the District.

10. Project: Review and Analysis of Publications

Principal agencies affected: All County and Bi-County Public Agencies

Abbreviated description: According to the County's Office of Public Information, in FY90, 18 Executive Branch departments produced approximately 30 annual reports at a total cost of \$369,450. An additional 473 Executive Branch publications are available for public distribution as listed by the County's Office of Public Information. Other County and bi-County agencies also produce a number of publications each year. The total costs of producing these publications has not been compiled.

The purpose of this project is to review and analyze the production and use of publications by all County and bi-County public agencies. Publications will be reviewed and associated costs of production and mailing will be analyzed to identify potential areas of efficiency and economy, such as: reducing cost through in-house production, combining certain publications; eliminating outdated or low-demand publications; and using other public media in place of publications.

11. Project: Evaluation of the Office of the Public Advocate for Assessments and Taxation

Principal agency affected: County Government

Abbreviated description: The Office of the Public Advocate for Assessments and Taxation (OPA) was established by County law in 1974 (Section 52-40) for the stated purpose of providing the County with an independent review of the assessment process. In particular, OPA was established to determine real property assessments that affect uniformity, equity of tax burden, and/or unjustified revenue loss to the County. OPA is authorized to appear before or intervene, on behalf of the County, in proceedings before the supervisor of assessments, the Property Tax Assessment Appeal Board, the Maryland Tax Court, and the Courts of Maryland.

This project will evaluate the law that created OPA and the record of OPA's work during the past 15 years. Specific attention will be given to evaluating whether OPA is fulfilling its legislative intent, whether the goals and objectives of OPA should be modified, and whether there are ways to increase OPA's ability to prosecute cases of inequitable assessments.

As part of OLO's CY90 Work Program, OLO worked with staff of the State Department of Fiscal Services to plan for a joint State-County evaluation of the Child Care Consolidation Act. During 1991, the Department of Fiscal Services plans to conduct a State-wide survey of child care needs and resources, and to evaluate current State efforts to promote additional child care services.

This project represents OLO staff time expected to be spent continuing to work with State and County agencies to plan for an evaluation of how the Child Care Consolidation Act has been implemented at the local level. Because the State has continued to make changes in the management of the child care regulatory function, OLO recommends that the evaluation of local implementation be conducted during 1992:

15. Project: Evaluation of the Housing Information and Referral Service

Principal agencies affected: County Government and Housing Opportunities Commission

Abbreviated description: County Code Section 29-52 of the Rent Stabilization Act requires the operation of a housing information and referral service. Since 1979, the housing information and referral service function has been performed by the Housing Information Center operated by the Housing Opportunities Commission (HOC). Funds for the Housing Information Center are appropriated as part of the County's overall contract with HOC to perform certain functions.

This project will evaluate the housing information and referral service, as operated by the Housing Opportunities Commission, on contract to the Department of Housing and Community Development. Performance data contained in HOC's budget indicate a major increase in the demand for this service, the cost of which has increased from \$36,548 in FY80 to \$161,630 in FY91.

16. Project: Follow-up on CY90 OLO Projects

Principal agencies affected: All County and Bi-County Public agencies.

Abbreviated description: This project represents OLO staff time expected to be spent on follow-up work to three 1990 OLO reports:

A. Follow-up to Evaluation of Historic Preservation Commission (OLO Report No. 90-2)

On January 24, 1991, the PHED Committee directed OLO staff to convene a working group to think through the details of implementing a transfer of the Historic Preservation Commission's staffing function from the Department of Housing and Community Development (DHCD) to the Maryland-National Capital Park and Planning Commission (M-NCPPC). The working group, composed of representatives from the Historic Preservation Commission, M-NCPPC, DHCD, the Office of the County Attorney, and the Department of Environmental Protection, expects to report back to the PHED Committee before final action is taken on the FY92 budget.

A. Executive Branch Program Evaluations

The Office of Management and Budget has established a program of Executive Branch evaluation which OLO has been closely monitoring and reporting on annually to the Council. More recently, the Chief Administrative Officer in February 1991, informed the Council that he has established a Management Improvement Unit in the Office of the County Executive. OLO will monitor and report as needed on Executive Branch evaluations, and projects of the Management Improvement Unit.

B. The Special Personnel Investigator (SPI)

OLO is responsible for managing the Council's contract with the SPI. As in previous years, OLO will monitor and report as needed on the activities of the SPI.

C. Implementation of OLO Report on Contract Administration (OLO Report 88-3)

A number of recommendations contained in OLO Report 88-3 have yet to be implemented. As directed by the Council, OLO will continue to monitor and report periodically to the Council until the recommendations of this report are fully implemented.

D. Rent Stabilization Act (OLO Report 90-5)

OLO's evaluation of the Rent Stabilization Act (OLO Report 90-5) is scheduled for public release by the Council in late March 1991. The legislative changes proposed in this report are likely to be considered by the Council during 1991, and OLO staff will be available to provide whatever assistance is appropriate.

E. Montgomery Community Television (OLO Report 90-6)

During this past year, the performance evaluation of MCT was designed. During 1991, as outlined in the evaluation design, the Cable Office, assisted by MCT staff, will lay the groundwork for collecting comparative data from selected other jurisdictions. As needed, OLO will be available to assist with this next phase of planning for the evaluation. The actual evaluation of MCT is scheduled to be conducted during FY93.

F. DLC Inventory Control (OLO Report 90-7)

OLO's evaluation of inventory controls and accountability at the liquor warehouse (OLO Report 90-7) will be completed by late March 1991. Recommendations contained in the report are expected to be considered by the Council during 1991, and OLO staff will monitor implementation of the report's recommendations as appropriate.