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PROTECTION OF THE BUILT ENVIRONMENT: A WASHINGTON, D.C. CASE STUDY IN HISTORIC PRESERVATION

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I. INTRODUCTION

While the focal point of this conference is the protection of the natural environment, we in the United States have come to recognize as well the importance of preserving the built environment. Too often the demolition of historic structures has occurred without adequate consideration of either the values they represent or the possibility of preserving them in economically productive ways. Like the preservation of the natural environment, the preservation of structures with special historic or architectural significance enhances the quality of life for all. As Justice Brennan wrote in a pathbreaking case upholding historic preservation regulations, "[n]ot only do these buildings and their workmanship represent the lessons of the past and embody previous features of our heritage, they serve as examples of quality for today."

In the United States, we have found that historic preservation demands a multitiered approach, combining national, state, and local government and giving officials at all levels a significant role. The American model offers lessons both in its shortcomings and its successes.

II. THE FEDERAL ROLE

The first tier of historic preservation law in the United States is federal. The National Historic Preservation Act (NHPA), 16 U.S.C. §§ 470 *et seq.*, is an important part of this federal strategy and

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represents the built environment's analogue to the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 *et seq.* NHPA allows the identification and listing of resources, both buildings and entire districts, in the National Register of Historic Places, a list that the Secretary of the Interior maintains. Upon nomination by a state's Historic Preservation Officer, the agent responsible for administration at the state level, historic buildings or districts qualify for inclusion on the list by meeting criteria that measure cultural significance.

Listing in the National Register requires the consent of the private property owner. If the owner objects to listing, the Secretary of Interior must determine if the property is otherwise eligible for inclusion in the National Register. Both a listing in the National Register and a determination of eligibility for listing require that federal agencies take into account the effects of their actions on the listed or eligible property, and that the Advisory Council on Historic Preservation be given the opportunity to comment on such actions.

NHPA operates in a framework of several complementary statutes. For example, NEPA provides for the evaluation of environmental impacts and the consideration of alternatives where a proposed major federal action may significantly affect the quality of the built environment. NEPA increasingly is becoming a tool in preservation of the built, as well as the natural, environment. The combination of these laws has made historic preservation a vital element of national environmental policy.

III. STATE AND LOCAL RULES

All states have enacted laws creating state agencies with preservation responsibilities and a state register of historic places. These laws require consideration and mitigation of the adverse effects of government actions on historic resources.

An important feature of the state role in historic preservation is states' delegation of considerable authority for protecting the built environment to local authorities. Local ordinances typically establish a local review board or commission that has authority to designate individual buildings as landmarks or neighborhoods as historic districts. While the powers of such local boards and commissions range from merely advising the local legislature to actually granting or denying demolition applications, the frequent result is that a private property owner cannot demolish, modify, or otherwise alter the exterior of its building without the express approval of the local

board or commission. In the United States, this authority is one of the most powerful government restrictions that the courts have upheld on private property rights. *See Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978).

IV. HISTORIC PRESERVATION IN WASHINGTON, D.C.

A case study in preservation of the built environment in Washington, D.C., illustrates the operation of these mechanisms. In the national capital, an unusual combination of federal and local law regulates historic preservation. As a matter of federal law, construction in areas of national importance is subject to review and comment by the Commission of Fine Arts, a federal commission that evaluates plans prior to the issuance of a building permit. *See* 40 U.S.C. §§ 104 *et seq.* One of the areas under the jurisdiction of the commission is the portion of Pennsylvania Avenue between the White House and the Capitol, which also has been the subject of intensive planning and preservation efforts under the auspices of a special federal corporation, the Pennsylvania Avenue Development Corporation. *See* 40 U.S.C. §§ 871 *et seq.*

In addition to this overlay of federal law, the District of Columbia government has its own historic preservation law that serves many of the purposes of both a state and a local landmark law. The primary local law is the Historical Landmark and Historic District Protection Act, D.C. Code Ann. §§ 5-1001 *et seq.* This law requires a property owner planning any demolition, exterior alteration, or new construction involving a designated historic landmark or district to seek the advice of the District of Columbia Historic Preservation Review Board, an appointed independent local landmark commission.

The restoration of the Willard Hotel, an historic hotel that has become a cornerstone of the redevelopment of Pennsylvania Avenue, represents one of the successes of the preservation process in Washington, D.C. After World War II, the hotel lost its preeminence in the face of modern hotel competition, changes in ownership, and the decline of the surrounding downtown area. A federal commission in the 1960s proposed demolition of the Willard Hotel as part of a plan for a great National Square, which one architecture critic called "Red Square." The framework of historic preservation law in Washington, however, began to take hold, and the Willard was saved. Following meticulous restoration in the 1980s, the hotel is a widely acknowledged tribute to the great potential of protection of the built environment. The hotel's stature as a restored historic landmark helped

provide the impetus to preserve many other nearby structures as part of the Pennsylvania Avenue redevelopment.

V. CONCLUSION

The tremendous changes underway in the Soviet Union present a real danger to that nation's built environment. Market forces will place great pressures on existing structures, with increasing demands for new and efficient uses. At the same time, a period of rapid change will constitute a time of genuine opportunity for historic preservation. Possibilities abound for making the protection of the built environment compatible with a market economy.