Executive Summary

Mission Statement:

This document is a key planning device for elected officials, city staff, community residents, business owners, and anyone with an interest in preserving the history of Pierre. Adopting and following a comprehensive Historic Preservation Plan will ensure efficient use of public and private resources for local historic preservation. Action items are intended for full implementation within 3-5 years.

Historic Preservation is important for many reasons. It is an essential element of small town economic development. Identification and preservation of a unique community identity is made possible through showcasing distinctive historic resources. Downtown revitalization is essential to successfully recruiting and retaining a quality work force. Heritage tourism generates economic benefit. Community pride is instilled and enhanced through preservation and interpretation of historic properties, which leads to a better quality of life for residents of all ages.

With this in mind, the State Historic Preservation Office (SHPO) recently created a partnership with several entities to create the Central South Dakota Heritage Tourism Education Program. Working with Preserve America, the Cities of Pierre and Fort Pierre, and the Dakota, Minnesota, and Eastern Railroad, the SHPO has successfully implemented many of the program objectives, including this Historic Preservation Plan. The Midwestern Company, a local historical consulting firm, was hired to facilitate this process. Public comments were gathered from community meetings, written surveys, and many informal gatherings over several months. Numerous ideas were compiled for review and evaluation by historic preservation professionals, city staff, elected officials, and others.

The City of Pierre has a rich history that is chronicled in its historic resources. Properties identified as high priority for preservation include the Upper Pierre Street area, the downtown commercial district, the American Legion Cabin, and the State Capitol building and grounds. When local residents are asked about the history of Pierre, the vast river history of the area is commonly mentioned. Other significant elements of Pierre's history include American Indian village sites and old forts, fur trading, Lewis & Clark, steamboats, the vigorous fight for state capital designation, federal government relief projects of the 1930s, schools, St. Mary's Hospital, the DM&E Railroad Bridge, the Oahe Dam and Power Plant, public river-front parks, and the Pierre Hill Historic Residential District.

The most important issue affecting preservation of Pierre's historic properties today is education, and the second most important public concern involves funding for historic rehabilitation and maintenance. Many local residents are excited about the newly created *Downtown and Waterfront Development Master Plan*, yet downtown business and property owners are concerned about sustaining viable access to their clients and customers during construction and fearful about how major infrastructure improvements will be funded. Parking in the downtown areas is a serious concern for potential developers. Other current challenges include a common misconception that new materials are more cost effective or energy efficient than historic materials and a lack of knowledgeable contractors who enjoy working on historic properties. The need for appropriately enforced design review and special zoning for historic districts is widely accepted.

Public support for downtown as a tourist destination attraction is very strong. Fully occupied historic buildings, plentiful parking, attractive landscaping, carefully designed signage and circulation routes work together to promote downtown. Phasing out downtown offices to encourage greater mixed-use development is highly recommended. Loft apartments, a community arts center, unique shops for local artists and designers, restaurants, and other specialty retail businesses improve the local quality of life and accentuate the economic vitality and long-term stability of both Pierre and Fort Pierre.

Specific action steps of the Historic Preservation Plan are outlined in Chapter 13. There is a strong consensus among those involved in the historic preservation planning process that gradual, incremental steps are more effective than grandiose plans. The highest priority items for immediate implementation accentuate public recognition of historic resources and rehabilitation projects to strengthen public awareness about the history of the area and historic preservation in general. The Historic Preservation Plan is in alignment with and further strengthens the goals outlined in the current *Downtown and Waterfront Development Master Plan,* the City of Pierre's Comprehensive Plan, and the mission of the local Historic Preservation Commission. Of utmost priority is for Pierre to join the National Main Street Program, which will provide essential information, tools, and networking for city staff, business owners, and local officials.

Enormous public support exists for historic preservation policy in Pierre. When residents were surveyed during the course of this project, respondents unanimously said that they enjoy the qualities of historic buildings and sites in their community. Residents were also asked how important historic preservation was in their community on a scale from 1 to 10 (with 10 being highest priority), and 90% of respondents ranked historic preservation with a score of "5" or above. Fifty percent of respondents ranked historic preservation at a full "10". Seventy percent of respondents rated their personal appreciation of historic preservation as "strong," while an additional 15% rated their personal appreciation as "somewhat strong."

Many current and potential partners have been identified, including the National Trust for Historic Preservation's Main Street Program, the State Historic Preservation Office, the Governors Office of Economic Development, the Pierre Economic Development Corporation, the Small Business Development Center, the South Dakota Arts Council, the Pierre Chamber of Commerce, Pierre Young Professionals, the Downtown Business Owners Association, Pierre Public Schools, the East Pierre Women's Club, River Cities' Transit, the South Dakota Discovery Center & Aquarium, and preservation professionals, consultants, and reviewers.

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1.0

Introduction: Historic Preservation Basics

This historic preservation plan for the City of Pierre was developed to guide elected officials, city staff, and residents towards a future which sensitively balances new growth and development with protection and maintenance of the community's unique character-defining resources.

1.1 Why Practice Historic Preservation?

Each community evolves from a unique set of circumstances and events in the past. Historic preservation helps people learn about the past through tangible resources such as historic sites and structures. Historic preservation enables people to **connect with history**. Preserving historic places helps us understand how and why people and places have changed over time.

When comparing the built environment of communities, the uniqueness of their historic buildings is a primary distinguishing factor. Preserving a unique community image creates **community pride** and a **sense of place**. Residents gain a **sense of continuity** and **stability** when communities take historic resources into account as they plan for future development.

Historic preservation affects **quality-of-life** in communities. For example, historic buildings host quality-of-life activities in numerous communities. Theatres, libraries, concert halls, museums, and park lodges are often historic properties. When a community shows commitment to quality preservation and care of such historic resources, the community projects a **positive self-image**. This attracts prospective new residents and retains the current population.[1]

Preserving historic character helps attract visitors to small towns such as Pierre. It encourages tourism. Historic preservation makes economic sense. More than any other model, historic preservation has been a consistently effective tool for economic development in small towns.

> ***The basic purpose of preservation is not to arrest time, but to mediate sensitively with the forces of change. It is to understand the present as a product of the past and a modifier of the future."***
> *~ Norman Tyler, Historic Preservation Author*

1.2 What is a Historic Preservation Plan?

A preservation plan is distinct to the community for which it is written because it is tailored to the unique history and specific goals of a particular community. The Secretary of the Interior outlines the principles of preservation planning as follows:

- Important historic properties cannot be replaced if they are destroyed. Preservation planning provides for conservative use of these properties, preserving them in place and avoiding harm when possible and altering or destroying properties only when necessary.
- To make responsible decisions about historic properties, existing information must be used to the maximum extent and new information must be acquired as needed.
- Public involvement is most meaningful when it is used proactively to assist in defining values regarding significant properties and preservation planning issues, rather than when it is limited to review of decisions already made. Early and continuing public participation is essential to the broad acceptance of preservation planning decisions.[2]

[1] Donavan D. Rypkema, *The Economics of Historic Preservation: A Community Leader's Guide* (Washington, D.C.: National Trust for Historic Preservation, 2005), 25.

[2] *The Secretary of the Interior's Standards for Preservation Planning,* National Park Service.

A historic preservation plan is designed to answer the following key questions for a community:

1) *Is historic preservation important to our community? If so, why?*

2) *What elements of our heritage do we want to preserve?*

3) *What have we previously done to preserve and protect that heritage?*

4) *What are we currently doing to preserve and protect that heritage?*

5) *What could we do to preserve, enhance, and protect the unique qualities of our community?*

6) *When do we want to implement additional steps regarding historic preservation?*[3]

A preservation plan is most effective when adopted as part of an existing local comprehensive plan, though it may also stand alone, or its goals may be integrated into other comprehensive plan sub-elements. Historic preservation goals are designed to be flexible and may change as new information becomes available or new priorities emerge.

1.3 Why Have a Historic Preservation Plan?

Historic preservation planning **assures efficient use of public and private resources.** As part of a comprehensive approach to community planning, a historic preservation plan outlines possible actions to take, when, and by whom. Activities are organized into a proactive, logical sequence based upon local priorities that create a **strategic plan** for city staff and elected officials, local preservation groups, and private interests whose activities affect historic properties.[4]

[3] Bradford J. White and Richard J. Roddewig, *Preparing a Historic Preservation Plan* (Chicago: American Planning Association, Planning Advisory Service, 1994), Report No. 450.
[4] Ibid.

There are many reasons why a community may choose to adopt a historic preservation plan. According to planning experts Bradford J. White and Richard J. Roddewig in *Preparing a Historic Preservation Plan,* these reasons may include:

- To clearly *state goals* for historic preservation in a community
- To *comply* with state enabling legislation requiring local governments to have comprehensive plans and requiring that there be a mandatory (or optional) historic preservation element in that plan
- To let current and future property owners and residents know in advance how the community *intends to grow* and what the community *wants to protect*
- To help provide a *legal defense* against lawsuits alleging unfair treatment of property owners or arbitrary decisions by government … provides the power to say "no" to actions that go against the plan and do not further community historic preservation goals
- To *eliminate uncertainty* or confusion about the purpose, meaning, and content of an existing local historic preservation ordinance
- To form the *basis for adoption* of a new historic preservation ordinance *or to strengthen* the legal basis of an existing historic preservation ordinance
- To ensure *consistency*, or eliminate inconsistency, between various local government policies that affect the community's historic resources
- To *educate and inform citizens* about their heritage and its value to the community
- To create an *agenda for future preservation* activities and to create a way to *measure progress* in protecting historic resources
- To provide a *basis for interim protection* of historic resources while steps are taken to adopt a formal preservation ordinance to protect those resources
- To *comprehensively address issues* relating to tourism, zoning, traffic patterns, development patterns, and design that affect historic resources
- To encourage *economic development* through the preservation of historic resources
- To *strengthen the political understanding of and support for* historic preservation policies[5]

[5] Ibid.

1.4 Why Plan Now?

The City of Pierre has many opportunities regarding historic preservation in the 21st century. The city's new Comprehensive Plan includes recommendations and goals for identifying and protecting cultural resources, and a historic preservation plan will provide additional guidance on how to achieve these goals. Recent interest in downtown revitalization and waterfront development creates momentum and heightened awareness about historic preservation. Private investment in rehabilitation of major buildings in the Upper Pierre Street Commercial Historic District has never been more substantial.

The current McKinley School building was constructed in 1948. (Photo courtesy of the author)

1.4a "Central South Dakota Heritage Tourism Education Program"

A key factor for historic preservation planning at this time is the "Central South Dakota Heritage Tourism Education Program." The State Historic Preservation Office is undertaking this two-year initiative in cooperation with the cities of Pierre and Fort Pierre to assist the cities to fully utilize their historic resources for economic development and tourism. This project will serve as a model for other South Dakota communities in explaining the value of historic preservation and heritage tourism to elected officials, private individuals and business owners. Central South Dakota will be established as a heritage tourism attraction with a partnership between public and private interests.[6]

1.4b "Downtown and Waterfront Project Master Plan"

Pierre's recent "Downtown and Waterfront Project Master Plan" highlights the need for additional historic preservation planning. Owners of businesses and buildings in the historic downtown and upper Pierre Street business districts have consulted with architects and city planners to develop a consistent theme that is in harmony with Pierre's historic commercial character. Options for traffic flow, parking, street lighting and landscaping, storefront design, pedestrian-friendly areas, new businesses and attractions along the Missouri River are some of the issues under consideration.[7]

While each of these projects gathers momentum and interest in historic resources, they also stimulate many questions and concerns about historic preservation. An effective historic preservation plan will create a solid foundation for strategic planning that will:

1. Identify which of Pierre's historic resources merit preservation,
2. Define community historic preservation goals, and
3. Set an agenda to achieve these goals in the future.

Objectives of the Central South Dakota Heritage Tourism Education Program:

- Development and implementation of an interpretive and educational plan for historic tourism resources
- Preparation and adoption of historic preservation plans for the communities of Pierre and Fort Pierre
- "Preserve America Community" designation
- Design and production of interpretive markers, driving and walking tour brochures and information kiosks
- Development of travel itineraries
- Development of educational tools for private organizations and general public use to promote history, the value of history, and the use of history as an economic tool

[6] Funding sources for the Central South Dakota Heritage Tourism Education Program include a Preserve America Grant, state matching funds, and Railroad Corporation.

[7] "Downtown and Waterfront Master Plan, Pierre South Dakota," April 2008. Prepared by Fourfront Design Inc., and DesignWorks, Inc., in consultation with Mayor Dennis Eisnach and many city leaders. Copies are available at Pierre City Hall.

2.0

Pierre History and Context

2.1 Understanding and Identifying Historic Contexts

Historic preservation planning creates an organizational framework — known as an "historic context" – to understand which properties deserve preservation in a given community. Historic contexts create a clear understanding of what resources are important, in order to establish consistent decisions, goals and priorities regarding historic preservation. Historic contexts organize information by historic theme, geographical, and chronological limits. Broad patterns of history are identified that may be represented by surviving historic properties.

2.2 Pierre Area Historic Contexts

The following historic contexts have been identified in the Pierre area, along with examples of resources that have been identified relating to each context:

- Agriculture – Farm Island
- Architecture – Many commercial, residential, and public buildings
- Archeology – Forts*, Arikara village sites*
- Art – statue at Griffin Park
- Commerce – Grain Elevators, Fort Pierre Stockyards
- Community Development – Pierre Hill Residential Historic District, Upper Pierre Street Commercial Historic District
- Conservation – Farm Island, La Framboise Island
- Economics – Stockgrowers' Bank Building*
- Education – McKinley School, Washington School, Pierre Indian Learning Center, Pierre's First Schoolhouse
- Ethnic Heritage – Pierre Indian Learning Center, many archeological sites
- Engineering – DM&E Railroad Bridge, Oahe Dam and Power Plant*, South Dakota Discovery Center & Aquarium
- Entertainment/Recreation – Grand Opera House*, Riverside Park (now known as Griffin Park), Farm Island
- Health/Medicine – St. Mary's Hospital
- Industry – Oahe Dam and Power Plant, South Dakota Discovery Center & Aquarium
- Landscape Architecture – Riverside Park (now known as Griffin Park), State Capitol Building & Grounds*, Isaak Walton Arboretum
- Politics/Government – Hughes County Courthouse*, Federal Building, State Capitol Building & Grounds*, Fire Station #1, National Guard Armory
- Military – Archeological sites*
- Prehistory – Archeological sites*
- Religion – First United Methodist Church*, (Fort Pierre Church), other churches
- Social History – Masonic Lodge
- Transportation – DM&E Railroad Bridge*
- Tourism – Terrace Motel

Many of the above resources are eligible for historic designation on the State or National Registers of Historic Places. Further research will undoubtedly yield additional resources in alignment with one or more of the identified contexts. Properties that have not yet reached 50 years of age may become eligible for designation in the future.

**** Denotes properties currently listed in the National Register of Historic Places***

2.3 Pierre's Unique History

The City of Pierre is located at the confluence of the Missouri and Bad rivers. Pierre has served a variety of important roles in the history of the Dakotas—from an area dominated by Native Americans, to a camp for mining prospectors, to a transportation and shipping hub for cattle and other goods, to state capitol. Pierre has survived natural disasters and adapted over the years to remain a vibrant community.

The South Dakota State Capitol building celebrated the centennial of the laying of the cornerstone in June 2008.(Photo courtesy of the author)

Some of the earliest inhabitants in central South Dakota were the Arikara people—who had cultivated the rich soils along the Missouri River and lived in organized villages of earthen lodges for centuries.[8] Beginning in the mid-1700s, the Sioux people began moving into Arikara territory as they migrated out of their established homeland in Minnesota.[9] By 1794, the Sioux claimed the area of Pierre and Fort Pierre as their own. Unlike the agrarian Arikara, the Sioux were migrant hunters that relied on abundant buffalo and other wild animals for sustenance. The Sioux lived in mobile Tipis, circular structures created by bringing long support poles together at a central point, and then covering the frame with animal hide (typically buffalo). Smallpox outbreaks in 1836 and 1856 devastated the Arikara population, and by 1862 the remaining Arikara joined with the last of the Mandan and Hidatsa people in North Dakota.

The land in central South Dakota was acquired from the United States government as part of the Louisiana Purchase.[10] In 1804, President Thomas Jefferson dispatched Captains Meriwether Lewis and William Clark to explore the new territory. Lewis and Clark and their crew traveled up the Missouri River and reached the confluence of the Missouri River and the Bad River at Fort Pierre in September of 1804. The explorers estimated that up to 1000 Sioux were camped there at that time.[11]

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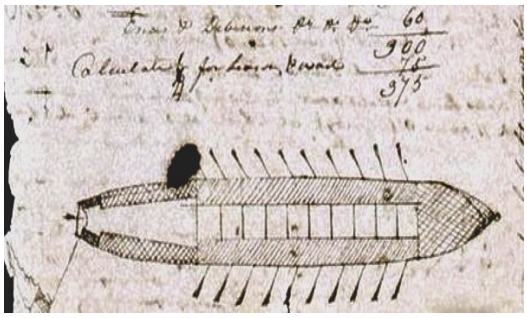
[8] Schuler, Harold H. *A Bridge Apart: History of Early Pierre and Fort Pierre*. State Publishing Company; Pierre, SD. 1987. p. 5. More information about the earliest known inhabitants in central South Dakota is available at the Mitchell Prehistoric Indian Village in Mitchell, South Dakota.

[9] Pringle, Ruane. *History of Hughes County, South Dakota*. State Publishing Company; Pierre, SD. 1964. p. 7.

[10] The Louisiana Purchase included 828,000 square miles of land that was purchased from France. Two brothers from Canada, the Verendrye Brothers, claimed the region for France in 1743 when they ventured into Central South Dakota in an attempt to find a guide who would take them to the Pacific Coast. A lead tablet (referred to as the Verendrye Plate) was uncovered in Fort Pierre in 1913. The tablet—dated March 30, 1743—established the earliest known date of white explorers in the area. Additional information on Lewis and Clark can be found at: www.nps.gov and www.nationalgeographic.com. Additional information about the Verendrye Brothers is available in Schuler, Harold H. *A Bridge Apart: History of Early Pierre and Fort Pierre*. State Publishing Company; Pierre, SD. 1987. p. 5-6.

[11] Schuler, Harold H. *A Bridge Apart: History of Early Pierre and Fort Pierre*. State Publishing Company; Pierre, SD. 1987. p. 6.

Native Americans from about 1800 to 1862.[12] The first recorded trading post in the area, Fort LaFramboise, was established in 1817. Additional posts included Fort Tecumseh (1822), Fort Teton (1828), Fort Pierre (1832—also known as Fort Pierre Choteau), Fort Pierre II (1859), Fort LaFramboise II (1862), and others. Prized furs included beaver, mink, fox, deer, elk and buffalo. A common building material during this period was cottonwood, which grew along the Missouri River and other rivers in South Dakota. While fast-growing and abundant, it deteriorates rapidly and is not durable against insect invasions and weather. Although significant archaeological sites have been documented in the area, no above-ground resources survive from this era as the trading posts were either dismantled or destroyed by flood, fire, or deterioration.



The primary method for hauling goods up the Missouri River prior to 1831 was the keelboat, which had 10-12 oars and a large sail. Sketch of a keelboat from Captain Clark's Journal, c. 1804. (Photo from Wikipedia.com)

Rivers were the highway system of the 1800s. The trip up-river to South Dakota from St. Louis, Missouri, was difficult due to the Missouri's strong flow and ever-changing current. Pierre Choteau Jr, an important early fur trader, advised his company to build a flat-bottom steamboat for the difficult up-river trips from St. Louis to central South Dakota. The first steamboat to make the journey was the "Yellowstone," a 130 feet long vessel that made the journey from St. Louis to Fort Tecumseh (in present-day Fort Pierre) in two months during 1831. Eventually, the Yellowstone reached as far as Fort Benton, Montana, over 700 miles northwest of Fort Pierre.[13]

The Oahe Chapel is currently listed in the National Register of Historic Places (NR) due to its historical and architectural significance .(Photo courtesy of the author)

In addition to fur traders, missionaries and other white settlers arrived in the Dakota Territory throughout the 1800s. In 1840, Reverend Stephen R. Riggs, a Protestant missionary to the Sioux, arrived in the Pierre/Fort Pierre area. In 1874, Riggs and his son Thomas established the Oahe Mission along the Missouri River north of Pierre, in an area that is now at the bottom of Lake Oahe.[14] The Oahe Chapel was moved to higher ground during construction of the Oahe Dam in the 1950s and is now located on the southeast shore of Lake Oahe near Highway 1804.[15]

After the 1847 discovery of gold in California, mining prospectors flooded through the Pierre and Fort Pierre area on their way west. Prospectors camped in central South Dakota before venturing through Sioux land in western South Dakota. To extend protection to prospectors and settlers

[12] Schuler, Harold H. *A Bridge Apart: History of Early Pierre and Fort Pierre*. State Publishing Company; Pierre, SD. 1987. p. 7-9.

[13] Ibid, p. 9. Pierre Chouteau, Jr. was born in St. Louis in 1789. He worked for the American Fur Company, developing the fur trade in the Dakotas. When he later purchased the western portion of the American Fur Company, the firm's name was changed to Pierre Choteau, Jr.

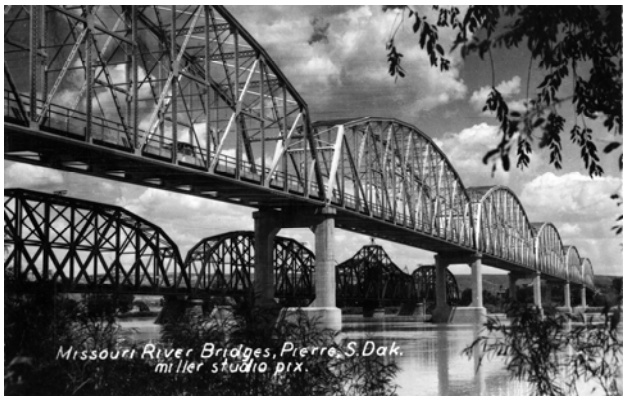
[14] Cerney, Jan. *Images of America: Pierre and Fort Pierre*. Arcadia Publishing: Charleston, SC. 2006. p. 98.

[15] The "Oahe Chapel" National Register nomination on file with South Dakota State Historic Preservation Office.

moving west, the United States military purchased the fur trading post of Fort Pierre and converted it into a military fort in 1855. Buildings at the fort were already highly deteriorated, and by 1857 the fort had been abandoned and dismantled. Fort Randall was built 150 miles downstream to replace Fort Pierre.[16]

During this time, the Dakota Territory was officially created by the United States government in 1861. The Laramie Treaty of 1868 created the Great Sioux Reservation and officially opened vast regions of eastern Dakota for white settlement. Many new military posts were built in the area, and the Pierre/Fort Pierre area served as the "military capitol of the northwest" between 1855 and 1894.[17]

As gold and other precious minerals were discovered in many areas in the western United States, mining pressures brought more and more growth to central South Dakota. Fort Pierre continued to serve as a transportation hub to prospectors, surveyors, railroad developers, and the military that protected them. The discovery of gold in Deadwood, South Dakota, in the early 1870s brought increasing pressure to develop a rail extension through western South Dakota, in spite of a prohibition on establishing new transportation routes through Sioux land.[18] The Black Hills were seized from the Sioux Nation by the United States Government in 1877. To minimize trespassing through the Great Sioux Reservation, specific wagon roads were designated from Fort Pierre to the Black Hills.[19] Many prospectors traveled by steamboat along the Missouri River to Fort Pierre, then by wagon to the Black Hills. People who arrived in central South Dakota by land camped on the east side of the river—in what is now Pierre—while they waited to cross the Missouri River on their way to the Black Hills.[20]



Ferryboats and pontoon bridges were used to transport goods and passengers across the Missouri River until 1905, when the Chicago and Northwestern Railway announced plans to build a rail bridge across the Missouri River. The first bridge for automobiles was constructed in 1926. (Photo Courtesy of South Dakota State Archives)

The Chicago and Northwestern Railroad reached Pierre in 1880, bringing a steady arrival of settlers and the many goods, supplies, and services to support them. Pierre grew from a single log cabin in the 1870s to a thriving city with more than 100 buildings and a population over 500 by the end of 1880. Fort Pierre's title of "freight hub to the Black Hills" was now shared with Pierre, as rail cars filled with supplies for the Black Hills and building materials for the new residents of Pierre arrived frequently.[21] At this time, the town was referred to by several names, including

[16] Schuler, Harold H. *A Bridge Apart: History of Early Pierre and Fort Pierre*. State Publishing Company; Pierre, SD. 1987. p. 14.
[17] Ibid., p. 20.
[18] Ibid., p. 23.
[19] The South Dakota State Historical Society has created the *Fort Pierre-Deadwood Trail Historical Atlas*, available for purchase from the State Archives at the Cultural Heritage Center.
[20] Schuler, Harold H. *A Bridge Apart: History of Early Pierre and Fort Pierre*. State Publishing Company; Pierre, SD. 1987. p. 65. A new bridge was constructed in 1962, and the 1926 bridge was dismantled in 1986.
[21] Pringle, Ruanne. *History of Hughes County-South Dakota*. State Publishing Company, Pierre, SD. 1964. p. 30. Pierre became the official county seat of Hughes County in 1873. Pierre received a charter from the Territorial Legislature to become a legal city in 1883, and it was formally incorporated in 1887.

"East Bank", "Opposite Fort Pierre", and "East Pierre". It wasn't until the railroad completed the first official plat maps in 1880 that the area became formally known as Pierre.[22]

In 1889, Pierre was named the temporary capitol of South Dakota by the Territorial Legislature in Yankton. Pierre became the permanent capitol in 1890. Confident in the growing economy, real estate prospectors built more permanent brick buildings, and brick yards opened in town along the river. Pierre's initial boom faded in 1893 due to a national economic recession—combined with a state government that was not as profitable as many had hoped. After several robust attempts by other cities to become the state capitol, by 1904 voters declared that the capitol would stay in Pierre and another wave of thriving economic activity and building construction occurred. Many buildings were constructed in the vicinity of the county courthouse at the top of Pierre Street.

Businessman Charles Hyde facilitated the construction of a dense commercial area in 1906-1909, which is now known as the Upper Pierre Street Commercial Historic District. The Hyde Buildings and the 1911 St. Charles Hotel are listed in the National Register of Historic Places. (Photo courtesy of the South Dakota State Archives)

Development also flourished east of Pierre during the 1880s. Known as "East Pierre," Wells First Addition and Wells Second Addition were located about 1.5 miles east of downtown. Economic competition between Pierre and East Pierre was fierce. The downtown section of East Pierre was along what is now known as Dakota Avenue, between Van Buren and Polk Avenues.[23] The developers of East Pierre claimed that they were not as likely to flood as Pierre and that Pierre might be "better suited as a brick yard."[24] By the end of 1883, East Pierre boasted 48 businesses, 80 houses, a Presbyterian Church, the Wells House Hotel and Pierre University.[25] The tug toward Pierre Street became victorious, however, and by 1890, the Pierre City Directory listed only 20 businesses in East Pierre. Due to financial problems, the University was moved to Huron in 1898. The building was demolished in 1910 and the materials were used to build a high school. The Wells House Hotel was demolished in 1899.[26] The exodus continued until East Pierre was eventually absorbed by Pierre.[27]

Early Sanborn-Ferris Maps show this corner-entry wood frame building at 1715 East Dakota Avenue was constructed after 1898. It may have been associated with development of the area for both commercial and industrial uses. (Photo courtesy of author)

Residential building construction mirrored commercial and economic development in many ways. The earliest permanent houses in Pierre were concentrated near the downtown area, in the neighborhood which is now known as the Pierre Hill Residential Historic District north of the county courthouse. Early houses were also built near the river and in East Pierre.

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[22] Schuler, Harold H. *A Bridge Apart: History of Early Pierre and Fort Pierre*. State Publishing Company; Pierre, SD. 1987. p. 76.
[23] Ibid, p. 95.
[24] Ibid, p. 95-96.
[25] Sandborn-Ferris Map Company, Limited. Pierre, SD. October, 1892 and November, 1898.
[26] Schuler, Harold H. *A Bridge Apart: History of Early Pierre and Fort Pierre*. State Publishing Company; Pierre, SD. 1987. p. 98.
[27] Ibid, p. 99.

The original 1890 Capitol Building is visible in the foreground, with the current Capitol Dome visible behind the structure. Much of the Old Capitol Building materials were used in the construction of a high school in 1911. (Photo courtesy of South Dakota State Archives)

The first capitol building in Pierre was a two story, wood frame structure completed in 1890. The state legislature approved plans for a substantial stone capitol building behind the original structure in 1904. Construction began in 1908 and was completed in 1910.[28] The Capitol complex now consists of several buildings constructed between 1908 and 1990. A large addition to the rear of the state capitol building was completed in 1932.[29] A new Governors' Mansion was built by the state in cooperation with the Works Progress Administration (WPA) in the 1930s.[30]

Pierre's First Schoolhouse, constructed in 1881 on Coteau Street, is now located in Steamboat Park. (Photo courtesy of author)

The growth and development of Pierre brought a demand for educational facilities. Pierre's first schools were built in 1881. A private school opened on Coteau Street in a small wood frame building, which has been relocated to Steamboat Park and now serves as a museum. The first public school was also built in 1881, where the St. Charles Hotel is currently located at 207 East Capitol. The building housed 104 desks and featured Pierre's first stone foundation.[31] East Pierre established a small school in 1883 at the corner of Dakota and Harrison Avenues.[32]

Constructed in 1890, the Pringle Apartments was the original home of Lincoln School. The Pringle Apartments are the oldest school building in Pierre that has been in continual use. (Photo courtesy of author)

Convinced that the availability of proper education would help Pierre win the title of state capitol, local officials opened several new schools in 1890. The Pierre Indian Industrial School, now called the Pierre Indian Learning Center, also opened in 1890. Public school enrollment in Pierre increased over the years, and McKinley school was built in 1910, the same year that 22 students graduated the 12th grade in Pierre. Pierre built a new high school in 1911, using many recycled building materials from the first Capitol Building and the demolished Pierre University.[33] Other early schools included Lincoln School and Capitol School in Pierre, and Washington

[28] Schuler, Harold H. *Pierre Since 1910*. Pine Hill Press, Inc: Freeman, SD. 1998. p. 7-9. The original wooden capitol was torn down in 1910, and much of the lumber combined with the recycled materials from Pierre University to build a high school across the street from the Capitol Building.

[29] Schuler, Harold H. *The South Dakota Capitol in Pierre*. State Publishing Company; Pierre, SD. 1985. p. 13, 19. Major restoration of the main building occurred between 1975 and 1989.

[30] Schuler, Harold H. *Pierre Since 1910*. Pine Hill Press, Inc: Freeman, SD. 1998. p. 27. The 1936 mansion was relocated to the Black Hills in the early 2000s when a new mansion was constructed.

[31] Schuler, Harold H. *A Bridge Apart: History of Early Pierre and Fort Pierre*. State Publishing Company; Pierre, SD. 1987. p. 119.

[32] Ibid, p. 120.

[33] Ibid, p. 120, 122-123.

School in East Pierre.[34] The only surviving example of schools from this period is the 1890 Lincoln School building at 103 West Poplar Avenue, which has been converted into apartments.

During the 1920s and 30s, many schools were rebuilt and remodeled in Pierre. Central school burned down in 1927, and a new high school was completed on the same location in 1928. Both the Lincoln and Washington schools were rebuilt as public works projects in 1935. Washington was rebuilt on the same location, while a new Lincoln was built at 316 West Prospect.

With the influx of workers who brought their families to Pierre when they came to construct the Oahe Dam, school facilities struggled to accommodate the new students. The demand was high for newer and bigger facilities. The 1948 McKinley School is not currently listed in the National Register of Historic Places. (Photo courtesy of author)

The population of Pierre escalated in the years immediately following World War II, as up to 2,000 workers arrived with their families to construct the Oahe Dam, seven miles north of Pierre.[35] This created a major impact to Pierre's economy, housing, and infrastructure as the population nearly doubled, from 5,715 in 1950 to 10,088 in 1960.[36] These newly arrived families strained the resources of local schools, and major construction projects struggled to accommodate them.[37] McKinley school was replaced in 1948, the same year that major additions were constructed at both Lincoln and Washington schools. In 1951, additional expansions to both Lincoln and Washington schools were approved and T.F. Riggs High School was built—much larger than originally planned. Jefferson Elementary School was built in 1960, with additional space added to the plan before completion. Major additions were also constructed in 1960 at both Washington and McKinley schools. Buchanan Elementary was constructed in 1963.[38]

The WPA era National Guard Armory now houses the National Guard Museum. (Photo courtesy of author)

The growth and development of Pierre over the years brought many improvements and changes to its infrastructure. The first street lights appeared downtown in the early 1880s. The Pierre Waterworks Company supplied tap water to many homes and business by the end of 1885, and the Hawkeye Electric Manufacturing Company supplied local electricity by 1889.[39] In 1898, the city dug an artesian well near the intersection of Brule Street and Sioux Avenue, which produced both water and natural gas. By this time, the city owned the waterworks, gasworks and electric plant.[40] Nearly all homes and businesses in Pierre were connected to electrical service produced by the United

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[34] Ibid, p. 120.
[35] Schuler, Harold H. *Pierre Since 1910*. Pine Hill Press, Inc: Freeman, SD. 1998. p. 159.
[36] Schuler, Harold H. *A Bridge Apart: History of Early Pierre and Fort Pierre*. State Publishing Company; Pierre, SD. 1987. p. 70.
[37] "Oahe Addition Historic District National Register Nomination," on file with the South Dakota State Historic Preservation Office. The neighborhood is not currently listed on the National Register of Historic Places.
[38] Schuler, Harold H. *Pierre Since 1910.* Pine Hill Press, Inc: Freeman, SD. 1998. p. 139-144. The original high school, built in 1911, was demolished in 1971 as well as the new junior high built that connected to the Central school building completed in 1928. The 1935 Lincoln school has also been demolished.
[39] Schuler, Harold H. *A Bridge Apart: History of Early Pierre and Fort Pierre*. State Publishing Company; Pierre, SD. 1987. p. 81-82. Throughout the 1880's, wood and coal were commonly used for heating and cooking, and kerosene and oil were commonly used for lighting.
[40] Schuler, Harold H. *Pierre Since 1910*. Pine Hill Press, Inc: Freeman, SD. 1998. p. 53.

States Army Corps of Engineers after completion of the Oahe Dam and Power Plant in the 1950s.

The city built the Pierre Light and Power Plant in 1918. It now houses the South Dakota Discovery Center and Aquarium. (Photo courtesy of author)

Pierre installed its first public sewer system in 1906, and Pierre voters passed a $35,000 bond to install a sewer system throughout the city in 1907. Major redistribution of earth was required to accommodate successful centralized sewer drainage. Fill dirt was brought in to raise some areas up to four feet, while other areas were excavated.[41]

A major fire in Pierre on September 12, 1884 led to the organization of centralized fire protection efforts. After thirty buildings were lost downtown, a fire district was created which included much of downtown. The district required that all new buildings be made of brick, with walls eight inches thick and roofs of metal or other fireproof material.[42] A second major fire four months later reaffirmed the need for substantial fire protection. The city purchased fire-fighting equipment that used a newly installed central water system, and the Pierre Fire Department was established in 1885. The first firehouse was erected in 1885 at the corner of Dakota Avenue and Central Avenue.[43] The original 1885 firehouse was razed and rebuilt in the same location in 1951. Two other fire stations were completed in 1951, and the City of Pierre added a fourth station in 1993.[44]

Constructed in 1951, the current Fire Station #1 is built on the same site as the original 1885 Firehouse. (Photo courtesy of author)

Pierre's economy has historically reflected national trends, although the presence of state government has created a vital buffer to economic crisis. While fewer buildings were constructed in Pierre during the Great Depression of the 1930s, the overall economy fared much better than the surrounding agricultural areas of rural South Dakota.[45] Several public works projects were completed in Pierre during the 1930s, including the Pierre City Auditorium at the corner of Sioux and Highland Avenues, and the National Guard Museum building at 303 East Dakota Avenue.

Natural disasters have also affected the growth and development of Pierre. Seasonal floods had affected life along the Missouri River for hundreds of years prior to the construction of major dams following the United States Flood Control Act of 1944. The winter of 1951 brought over 75 inches of snow to Pierre between October and March. An early and unusually warm spring created a deluge of swiftly melting snow, and by April 8, 1952, flood waters reached up to Sioux

[41] Schuler, Harold H. *A Bridge Apart: History of Early Pierre and Fort Pierre*. State Publishing Company; Pierre, SD. 1987. p. 85.
[42] Ibid., p. 87.
[43] Ibid., p. 88.
[44] Additional information about the Pierre Fire Department can be found at www.pierrefiredept.org
[45] Schuler, Harold H. *Pierre Since 1910*. Pine Hill Press, Inc: Freeman, SD. 1998. p. 118-20.

Extensive flooding is evident from the intersection of Pierre Street and Sioux Avenue in 1952. (Photo courtesy of South Dakota State Archives)

Avenue and damaged over 200 homes and many businesses.[46] The Oahe Dam, which was still under construction, provided little relief from seasonal floods until its completion and dedication in the early 1960s.[47]

The area south of the railroad tracks in Pierre has historically been reserved for low income families due to its presence in the flood zone. In recent years, this neighborhood has become desirable by middle and upper-income families and is experiencing a dramatic shift. The small single-family residences that historically populated this neighborhood are rapidly being replaced by new condominiums, large houses, and commercial development in the waterfront area. Very few of the original small single-family houses remain in this neighborhood.

Pierre's history is conveyed not only through its architecture and infrastructure, but also through its public green spaces. Riverside Park, now known as "Griffin Park," was created in 1887.[48] Over time, the city acquired additional river-front land and the park has grown to include paved walking and biking paths, an outdoor public swimming pool, softball field, playground equipment, horseshoe pits, disc golf, skate park, gazebo, campground, boat ramp and swimming beach. Steamboat Park, located several blocks upstream from Griffin Park, houses an amphitheater and large open spaces with towering cottonwood trees. Many small neighborhood parks are located throughout the city.

Riverside Cemetery was created in the late 1880s and is characterized by 35 acres of rolling hills and rich vegetation. The scenic landscape overlooks the Missouri River bluffs and may have been enhanced by WPA workers during the 1930s.

Farm Island is also a green space of historic significance. Crops were grown on the island during the pre-territorial era to help support fur traders and others in the area.[49] In the 1930s, the Civilian Conservation Corps (CCC) built a camp on the island and cleared underbrush, built roads, and a well. They constructed a causeway to provide access to the mainland and added many other improvements. An eleven-acre Girl Scout Camp was established in 1935, and the Isaak Walton Lodge was built in 1936. In conjunction with the United States Forest Service, CCC workers created a nursery and planted 20 acres of trees. [50]

Farm Island experienced many improvements from the CCC during the 1930s. This monument to Lewis and Clark and the causeway both survive from this era. (Photo courtesy of South Dakota State Archives)

Pierre also supported the growing industry of aeronautics. Pierre's first airfield was located on the south slope of Snake Butte north of Pierre. It was built in 1927 to accommodate the landing of Charles Lindbergh in the "Spirit of St. Louis." By 1929, the airfield was named the Walker J.

[46] Ibid, p. 146.
[47] Ibid, p. 159.
[48] Ibid., p. 55-56.
[49] Ibid., p. 126.
[50] Ibid., p. 128-130.

Smith Field and had become home to the Pierre Air Lines and a regular stop on the Rapid City Air Lines route. The air field continued to draw more flights and the first airport building was constructed in 1934.[51] To support larger planes, Pierre relocated the airport to its current location northeast of Pierre. The current airport facility was built in 1942 as a United States Army Airfield. The field was decommissioned in 1945, and purchased by the City of Pierre in 1946.[52] Modern commercial airplanes have used the airport since major runway resurfacing in 1952. The field now regularly services both commercial and private flights.

Commissioned by Governor William Janklow to commemorate South Dakota's centennial, the Cultural Heritage Center is distinctive due to its unusual modern adaptation of traditional earthen-covered prairie homes and energy saving design. (Photo courtesy of author)

The rich history of Pierre is evident in its many surviving historic resources. Though many buildings have been lost to fire, flood, demolition, and loss of integrity due to alteration, much historic fabric survives. Buildings constructed in recent years, such as the 1989 Cultural Heritage Center, and the post WWII "Hope" houses, may become significant historic resources in the future.

This c.1915 house is located south of the railroad tracks near the Missouri River. It is one of a shrinking number of small older homes in the neighborhood. (Photo courtesy of author)

Many basement houses were constructed in Pierre in the immediate post-WWII era. Sometimes called "Hope" houses, many were built with the intention of adding upper floors at a later date. Decades later, these houses survive in the original basement form. Several examples of "Hope" houses can be found east of Washington Street and south of Capitol Avenue in Pierre. (Photo courtesy of author)

[51] Ibid., p. 82-83.
[52] Additional information regarding the Pierre Airport is available at www.pierreairport.com

3.0

Historic Preservation Economics

3.1 Historic Preservation as Economic Development

Historic preservation is a proven **economic development strategy** for small towns. The presence of historic buildings and other resources bring a **competitive edge** to communities seeking an effective economic development strategy. No other community can duplicate or compete with Pierre's unique historic fabric.

> ***"More than ever, cultural and natural assets form the basis for economic development in small communities. The greatest attractions for economic growth in many towns are their quality of life, natural environment, historic legacy and cultural context."***
> *~Donovan Rypkema, Economist and Author*

Compared to new construction, rehabilitating a historic building **creates more jobs**. According to economist Donovan Rypkema, "half of new construction expenditures go for labor and half for materials. In a typical historic rehabilitation project, between 60 and 70 percent of the total cost goes toward labor."[53] The economic impact of historic rehabilitation is exponential because the dollars spent on local laborers circulate within the community.

Many economic factors favor historic preservation. Historic buildings often **outlast new construction**. The life expectancy for many contemporary buildings is between 30 to 40 years, while the life expectancy for a substantially rehabilitated historic building can range up to 100 years.[54] The degree of craft inherent in historic buildings represents **a level of quality usually unmatched** elsewhere in the community. When a historic building is reused, cost and time are saved by **reusing existing public infrastructure, which** is already supported by local taxpayers. Reuse demonstrates fiscally responsible action by local government. Examples of existing infrastructure include sidewalks, lights, streets, sewers and water lines.

Economic benefits of historic preservation reach well beyond the preserved property itself because adjacent properties are affected by rehabilitation. When communities invest in historic residential or commercial areas, it has a **positive effect on the real estate values** of surrounding properties and positive financial impact affects adjacent property owners, nearby businesses, and local government. Historic preservation and rehabilitation of residential and commercial properties **reduces vacancy** and increase property values.[55]

Downtown revitalization is an important aspect of historic preservation and an effective economic development strategy. A healthy historic downtown is vital to a community's economic well-being. Strong local government commitment to reuse of historic commercial buildings downtown **attracts private investment,** while quality downtown buildings project a **premium business image.**[56]

> ***"Buildings are again being recognized as a physical reflection of the goods and services being sold. When the image to be projected is one of quality of goods, quality of service, intimacy, reliability, stability, and personal attention, historic structures suit that image well."***
> *~Donovan Rypkema, Economist and Author*

[53] Donavan D. Rypkema, *The Economics of Historic Preservation: A Community Leader's Guide* (Washington, D.C.: National Trust for Historic Preservation, 2005), 12.

[54] Ibid, 48.

[55] Ibid, 67.

[56] Ibid, 56.

3.2 Heritage Tourism and Historic Preservation

Historic resources are a strong community asset for attracting visitors. People will travel to see historic resources for many reasons. Some appreciate the intrinsic value. Some find the architecture and decorative elements of historic buildings visually pleasing. Ultimately, there is much to learn from studying the physical reminders of history.[57]

> ***"Travel and tourism is now the third largest retail industry in the United States…of U.S. adults traveling in 2002, 81% were cultural heritage travelers. "***
> *~ National Trust for Historic Preservation, Cultural Heritage Tourism 2007 Fact Sheet*

The National Trust for Historic Preservation defines cultural heritage tourism as "traveling to experience the places, artifacts and activities that authentically represent the stories and people of the past and present."[58] The term "heritage tourism" is often used interchangeably with cultural heritage tourism. Tourists are now traveling more frequently to learn about the past and how it shaped the present. The Travel Industry Association of America reveals "The sheer volume of travelers interested in arts and history, as well as their spending habits, their travel patterns and demographics, leaves no doubt that history and culture continue to be a significant and growing part of the U.S. travel experience."[59]

Authenticity, quality and uniqueness are key factors for a sustainable heritage tourism program. Small towns can utilize tourism as part of their economic development strategy:

- Studies show that heritage tourists spend more money and stay longer in destinations than other types of visitors.
- Comparatively, heritage tourists have a greater economic impact than other types of visitors.
- Heritage tourists bring outside money to local businesses, boosting the local economy.
- They provide outside sources for state and local tax revenue.

Across the United States, "State revenues generated from tourism are many and include gasoline tax, sales tax, airport boarding fees, room tax, park admission fees, liquor and cigarette taxes, food and beverage taxes, amusement tax, and others. Depending on the state and the number of taxes levied, it is likely that somewhere between 10 and 20 percent of every dollar spent by visitors goes into the coffers of state and local governments."[60] Heritage tourism also creates jobs and new businesses and provides income.

> ***"Compared to the average trip in the U.S., historic/cultural trips are more likely to be seven nights or longer and include air travel, a rental car, and a hotel stay."***
> *~Donovan Rypkema, Economist and Author*

Practicing historic preservation and promoting heritage tourism in a community makes a place great to visit. It also creates an attractive place to live and work. Heritage tourism improves the quality of life for local residents and produces community pride. Drawing tourists to a community provides the larger opportunity to gain return visitors and even attract new residents. Increased demand to live in a tourist destination and the quality historic preservation that accompanies heritage tourism programs can generate higher property values in a community.[61]

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[57] Ibid, 77.
[58] *Cultural Heritage Tourism 2007 Fact Sheet*, National Trust for Historic Preservation. http://www.nationaltrust.org/heritage_tourism/2007_CHT_FactSheet.pdf. (Hereafter cited as "Cultural Heritage Tourism 2007 Fact Sheet"). Travel and tourism is the third largest retail industry in the U.S. behind automotive dealers and food stores.
[59] Rypkema, 77.
[60] Ibid, 79.
[61] Ibid, 83.

4.0

Main Street Program

The National Trust for Historic Preservation has developed an effective model to revitalize, sustain, and enhance the economic vitality of historic main streets in the United States. Called the "Main Street Program," it is a grass-roots, comprehensive approach that encourages economic development within the context of historic preservation.

For every $1 invested in a Main Street Program by a participating community, $31.25 of new investment occurs.

Each Main Street plan is strategically tailored to meet local needs, economic conditions, and opportunities through design, economic restructuring, promotion and organization. Success with the Main Street program since 1980 has earned a reputation as one of the most powerful economic development tools in the nation. [62]

2007 Main Street Statistics

Average reinvestment per community*:	**$11,083,273**
Net gain in businesses:	**82,909**
Net gain in jobs:	**370,514**
Number of building rehabilitations:	**199,519**

$44.9 Billion was reinvested in physical improvements from public and private sources in 2007. [63]

**The Average Reinvestment per Community reflects investment in communities that have recently begun commercial district revitalization programs as well as those that have been actively involved in Main Street for more than a decade. In addition, it includes investment of communities of a wide variety of sizes and in all parts of the country. For these reasons, communities should be cautious about using this figure as a benchmark for local performance.*

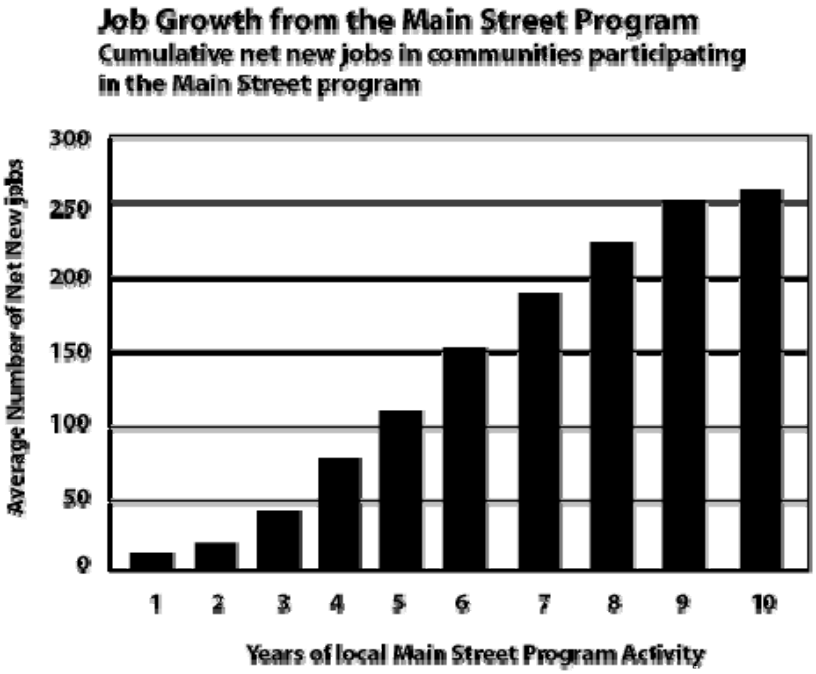
The Main Street program has been successful in communities of all sizes, in every part of the country — both rural and urban. The foundation of the program is led by eight guiding principles:

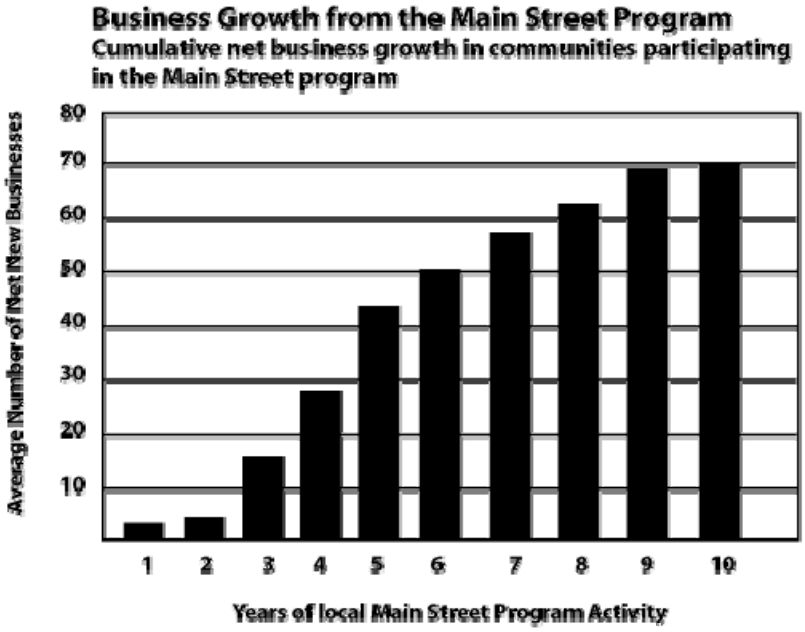
- **Comprehensive**: Effective, sustainable revitalization must incorporate involvement and activity in many areas
- **Incremental**: Success with small, simple activities builds momentum for larger projects as the revitalization effort matures and the community becomes ready for more complex and sophisticated activities.
- **Self-help:** Mobilize local resources and talent to invest in the heart of their community… only local leadership can produce long-term success by fostering and demonstrating community involvement and commitment to the revitalization effort.
- **Identifying and capitalizing on existing assets:** Every district has unique qualities that create a sense of identity and belonging.
- **Partnerships:** Cooperation between public and private sector participants brings understanding and unity. The strengths, limitations, priorities, and values of different parties can work together for a common benefit.
- **Quality:** Emphasize quality in *every aspect* of the revitalization program. Shoestring budgets and "cut and paste" efforts reinforce a negative image of the commercial district. Instead, concentrate on quality projects over quantity. This applies to all elements of the process — from storefront designs to promotional campaigns and educational programs.
- **Change:** Public support for positive change will build as the Main Street program grows and consistently meets its goals. Change may apply to engaging in better business practices, altering ways of thinking, and improving the physical appearance of the commercial district.
- **Implementation:** To succeed, Main Street must show visible results that come from completing tangible projects. Frequent, visible changes are a reminder that the revitalization effort is under-way and succeeding. Constant revitalization activity creates confidence in the Main Street program and ever-greater levels of participation.

[62] Additional information on the Main Street Program is available at www.mainstreet.org.

[63] *The National Trust Main Street Center* collects annual statistics regarding economic activity in local Main Street programs nationwide. These statistics have been tracked from 1980 to 2007. The 2007 statistics reflect activity in more than 2,212 communities throughout the United States.

4.1 Economic Impact of Main Street Programs[64]:





[64] Economic data from www.mainstreet.org

5.0

Historic Designation: National Register and State Register of Historic Places

5.1 What makes a property "historic"? Are all old buildings "historic"?

Not all old buildings and structures are considered historically significant. A resource is considered "historic" if it is eligible to be included in either the State or National Register of Historic Places. Listed properties include districts, sites, buildings, structures and objects.

The National Register of Historic Places was created in 1966 as part of a comprehensive national program to identify, evaluate and protect historic and archeological resources. At the state level, South Dakota Codified Law authorizes the State Office of History (South Dakota State Historic Preservation Office, or "SHPO") to "prepare and maintain a state register of historic places."[65]

In general, the property must be **at least 50 years old an**d retain much of its original historic fabric. The location, design, setting, materials, workmanship, feeling, and association are all evaluated to determine whether a property has **integrity** to its authenticity. Each property must also meet at least one of the following criteria:

A. Be associated with events that have made a significant contribution to the **broad patterns of history;** or
B. Be associated with **significant people** in history; or
C. Embody **distinctive architectural, engineering, or artistic characteristics** such as a particular building type, style, period, or method of construction; or
D. Yield (or be likely to yield) important **archeological information**.

The First National Bank Building at the corner of Pierre Street and Dakota is no longer standing. (Photo courtesy of South Dakota State Archives)

5.2 Relocated buildings

Once a building has been moved from its original location, it often loses its ability to convey its historic context and significance. Moving a National Register-listed building without prior authorization from the National Park Service will almost always result in the automatic removal of the building from the National Register.

5.3 Nominating a property for historic designation

Extensive documentation is submitted to the State Historic Preservation Office in order to nominate a property for the State or National Register. A detailed physical description and comprehensive statement of the property's historic context and significance are packaged according to strict guidelines for submission. If properties meet the criteria for inclusion, property owners are always notified and presented with an opportunity to object to historic designation before a final decision is made. [66]

[65] South Dakota Codified Law (SDCL) 1-19A-5.

[66] National Park Service, "Welcome to the National Register." http://www.nps.gov/nr/about.htm

Photo courtesy of South Dakota State Archives.

5.4 Effects to Property Owner's Rights

The results of listing a property on the State or National Register depend upon the local ordinances, which govern the community in which the property is located. Owners need to understand the effects of listing in order to make informed decisions regarding whether to list their property. Under federal law, owners of private property listed in the National Register are "free to maintain, manage, or dispose of their property as they choose provided that there is no Federal involvement."[67] State laws and local ordinances, however, may apply to construction activities that affect historic properties.

5.5 How is the State Register of Historic Places different from the National Register?

The State Register listing process generally takes less time than the National Register listing process. The State Historic Preservation Office will sometimes list a property on the State Register first, if a property is in immediate need of protection under state law or to allow it to take advantage of the state property tax moratorium.[68]

According to the Administrative Rules of South Dakota, any property listed in the National Register is automatically listed in the State Register of Historic Places.[69]

5.6 Locally designated properties

In addition to the State and National Registers of Historic Places, a local governing body may adopt an ordinance designating one or more historic properties at the local level. These locally designated properties may or may not be included on the State or National Registers.

Locally designated properties may not be damaged or destroyed until after a 180-day waiting period. This waiting period enables the local historic preservation commission to explore alternatives and negotiate with the property owner(s) to find ways to minimize harm to the resource. Locally designated historic districts require a Certificate of appropriateness and creation of a Historic District Commission. [70]

[67] "What are the Results of Listing?," National Park Service. http://www.nps.gov/nr/results.htm (Hereafter cited as "What are the Results of Listing?")

[68] More about the State Property Tax Moratorium is available in Chapter 9. Protection for historic properties under state law is discussed in Chapter 6.

[69] ARSD 24:52:06 State register of historic places.

[70] SDCL 1-19B-20 through SDCL 1-19B-31.

6.0

Legal Aspects of Historic Preservation

> ***"It is in the best interest of the state and its citizens to provide for the preservation of its historical, architectural, archaeological, paleontological, and cultural sites by protecting, restoring, and rehabilitating sites, buildings, structures, and antiquities of the state which are of historical significance."***
> *~ South Dakota Codified Laws 1-19A-1*

6.1 Federal Historic Preservation Law

The National Historic Preservation Act was established in 1966 as part of a comprehensive national program to identify, evaluate and protect historic and archeological resources. The Secretary of the Interior establishes guidelines and procedures for historic preservation matters in the United States. In addition to creating a consistent system to identify and acknowledge historically significant properties, the National Historic Preservation Act also includes modest provisions to protect historic properties from harm.

6.1.a Protection for Historic Properties under Federal Law

Under Section 106 of the National Historic Preservation Act, special consideration is required whenever federal actions or involvement may affect a historic property. This process applies to all properties that are eligible to be listed on the National Register – *whether or not they are formally designated*. Both archeological and architectural resources are considered.

Federal agency officials are required to consult with the State Historic Preservation Office prior to any activity that may affect historic properties. Such activities may include construction, rehabilitation, or demolition by federal agencies, issuance of federal permits, or federal funding for projects undertaken by state, local, or private entities. More information about this process is available in Appendix K.

6.2 State Historic Preservation Laws

Two chapters pertain to historic preservation in South Dakota Codified Law, both in Title 1, State Affairs and Government:

- **SDCL 1-19A,** Preservation of Historic Sites, and
- **SDCL 1-19B**, County and Municipal Historic Preservation Activities[71]

The Farmers Cooperative Grain Elevators may become eligible for the National Register of Historic Places as they approach fifty years old. (Photo courtesy of author)

[71]To review the complete chapters, please visit the Legislative Research Council website at http://legis.state.sd.us

6.2.a South Dakota Codified Law 1-19-A

South Dakota law clearly establishes the duties and responsibilities of the Office of History (also known as the "State Historic Preservation Office", or SHPO) and the State Historical Society Board of Trustees. The Board is designed to act as an advisory board for the SHPO, which has the "power and duty" to conduct a statewide survey to identify and document historic properties and to prepare and maintain a State Register of Historic Places.

Other duties and responsibilities of the SHPO include stimulating public interest in historic preservation and providing technical and financial assistance to local historical commissions and private parties involved in historic preservation activities.

The Board of Trustees approves nominations to the State and National Registers of Historic Places and determines which properties meet the criteria for the State Property Tax Moratorium program. They also review the state survey of historic properties and the content of statewide historic preservation plans. They approve removal of properties from the State Register and may recommend removal of properties from the National Register.

6.2b Protection for Historic Properties Under South Dakota Law

State law provides for **special consideration for government activities that may affect historic properties**. The State Historic Preservation Office must be granted an opportunity to "investigate and comment" on any state projects which may "encroach upon, damage, or destroy" any property listed in the State or National Register of Historic Places. It establishes conditions to proceed, should the government project affect a historic property. **Political subdivisions of the state – such as local governments – are also expected to follow these provisions.**

If a proposed project has the potential to adversely affect a registered historic property, the state or local government entity must notify the State Historic Preservation Office. Historic preservation specialists will investigate and comment on such projects while in the planning stages, in order to collaborate with other parties and minimize harm to the historic property.

Projects subject to 11.1 review include, but are not limited to, the following:

- Building permits
- Demolition permits
- Rehabilitation projects

Steps to Compliance:

1. An application comes to the state or local government entity, or the state or local government proposes to undertake a project.
2. The state or local government determines whether the project has the potential to damage, destroy, or encroach upon a historic property.
3. The state or local government sends notification of the project to the State Historic Preservation Office/State Historic Preservation Office (SHPO). Notification should include a basic project description and photographs of the property. (A sample project notification form is available in Appendix J.

4. Upon receiving notification, the SHPO has 30 days to initiate an investigation of the project and may request a Case Report.
   a. If no Case Report is requested, skip to item #5.
   b. If a Case Report is requested:
      i. The Case Report is the responsibility of the state or local government entity, but the applicant may be requested to prepare it.
      ii. Once complete, the Case Report is reviewed by the state or local government entity for preliminary approval of content and completeness.
      iii. After the state or local government entity reviews the Case Report, all required entities, including the local Historic Preservation Commission, review and comment on the Case Report within 180 days.
      iv. After allowing all required entities to review the Case Report, the state or local government entity forwards the Case Report and all entity comments to the SHPO for review.
5. The SHPO reviews the basic project information or the Case Report with comments from all entities, and submits final comments to the state or local government entity.
6. The State or local government takes the SHPO comments, other entities' comments, and Case Report into consideration, and makes the final determination regarding the project.
   a. The state or local government entity can decide not to approve the project.
   b. The state or local government entity can decide to approve the project. If the SHPO determined through its review of the project that the project would damage, destroy, or encroach upon historic property, then the state or local government cannot undertake the project or approve the application until it has made a written determination – **based upon the consideration of all relevant factors** – that there are no feasible and prudent alternatives to the project and that all possible planning to minimize harm to the historic property has been included. Ten days' notice of the State or local government's determination must be given to the SHPO by certified mail prior to the approval of the project.[72]

This ca. 1920 structure at Riverside Cemetery may have been built by a stone mason named Jacobson, who has been associated with nearby retaining walls at the cemetery. If the structure were to become listed on the State or National Register of Historic Places, City involvement with its modification would be subject to consultation with the SHPO to assure utmost consideration for its historic qualities. (Photo courtesy of author)

[72] "SDCL 1-19A-11.1 Review and Compliance Procedures," South Dakota State Office of History. http://www.sdhistory.org/HP/11.1SummaryandOutline.pdf.

6.2c South Dakota Codified Law 1-19-B

The purpose of Chapter 1-19B is to "authorize the **local governing bodies** of this state to engage in a comprehensive program of historic preservation, to promote the use and conservation of historic properties for the education, inspiration, pleasure, and enrichment of the citizens of this state."[73] SDCL 1-19B-2 authorizes the governing body of a municipality or county to **establish a historic preservation commission** for that municipality or county, whose purpose is to "preserve, promote and develop the historical resources" of that municipality or county.

Further, 1-19B-3 mandates the composition of the commission, residency requirements and terms of office. The historic preservation commission shall "consist of not less than five nor more than ten members, who shall be appointed by the governing body with due regard to proper representation of such fields as history, architecture, urban planning, archaeology, paleontology, and law. All members of the commission shall reside within the jurisdiction of the county or municipality establishing the commission and shall serve for terms not to exceed three years, being eligible for reappointment as shall be specified by the governing body."[74]

State Law grants various powers to local government and historic preservation commissions. Note that the law enables *local* designation of historic properties; designation distinct from National and State register listing.

Powers granted to the local historic preservation commission according to SDCL 1-19B:

- May employ qualified staff personnel (1-19B-4)
- Authorized to conduct survey of local historic properties (1-19B-8)
- Authorized to enter private land for examination or survey thereof with owner or occupant consent (1-19B-9)
- Authorized to participate in the conduct of land-use, urban renewal, and other planning processes undertaken by the county or municipality (1-19B-10)
- Authorized to cooperate with federal, state, and local governments to pursue objectives of historic preservation (1-19B-11)
- Authorized to contract, with local governing body approval, with state or federal government or agency thereof, or other organization (1-19B-12)
- Authorized to acquire by purchase, bequest, or donation, fee and lesser interests in historic properties and those adjacent or associated (1-19B-13)
- Authorized to maintain, preserve, restore, and operate historic properties they own (1-19B-15)
- Authorized to lease, sell and otherwise transfer or dispose of historic property (1-19B-17)
- Authorized to promote and conduct an educational and interpretive program on historic properties within its jurisdiction (1-19B-18)
- Authorized to recommend ordinances and provide information for purposes of historic preservation to governing body (1-19B-19)
- Shall investigate and report on historical, architectural, archaeological or cultural significance of historic property before an ordinance designating said property is adopted by local governing body (1-19B-21)
- Shall notify the director of equalization of the county if a property receives local historic designation or designation through the National Park Service (1-19B-25)

[73] SDCL 1-19B-1.
[74] 1-19B-3.

- Shall receive 180 days' written notice before demolition, material alteration, remodeling, relocation, or change in use of an ordinance-designated historic property (1-19B-27 and 1-19B-20)
- May negotiate with owner of ordinance-designated historic property and other parties during 180-day period (above) to find means to preserve it if slated for demolition, material alteration, remodeling, relocation, or change in use (1-19B-27)
- May preserve property by entering into negotiations with the owner for the acquisition of ordinance-designated historic property during 180-day waiting period explained above (or anytime after owner notification of designation) (1-19B-28)
- Shall have discretionary authority to waive waiting period described above in certain circumstances (1-19B-29)
- May reduce above waiting period to avoid case of extreme hardship (1-19B-30)
- Shall consider findings of historic district study committee and make recommendations (1-19B-35)
- May recommend that local government body exempt a historic property from certain standards in municipal health or building codes if hindering preservation or restoration of property (1-19B-54)

Powers granted to the governing body of a county or municipality according to SDCL 1-19B:

- May levy annual taxes to achieve purposes of this chapter with voter approval (1-19B-5)
- May issue revenue bonds to achieve purposes of this chapter (1-19B-6)
- Authorized to make appropriations to historic preservation commission for operating expenses, acquisition, restoration, preservation, operation and management of historic properties (1-19B-7)
- Authorized to approve historic preservation commission to contract with state or federal government or agency thereof, or other organization (1-19B-12)
- May acquire by purchase, donation, or condemnation "historic easements" within jurisdiction if in public interest (1-19B-16)
- May adopt an ordinance designating historic property/properties meeting certain criteria after certain procedural steps (1-19B-20 to 1-19B-24)
- Shall hold public hearing on their proposed designation of historic property and provide public notice of hearing and written notice to property owner and occupants (1-19B-22)
- Shall provide written notice to owners and occupants of designation of historic property by local ordinance (1-19B-24)
- May establish procedures authorizing owners of historic properties designated by local ordinance to transfer development rights (1-19B-26)
- May appoint a historic district study committee (1-19B-32 to 1-19B-37)
- Shall receive historic district study committee final report and recommendations and draft of proposed historic district ordinance (1-19B-37)
- May establish by ordinance one or more local historic districts within its jurisdiction, and at that time, appoint a historic district commission (see below) (1-19B-38 and 1-19B-40)

    Historic District Commission
    - Shall study and report on proposed amendments to local historic district ordinances (1-19B-39)
    - May adopt rules and regulations, may employee clerical and technical assistants or consultants and accept gifts of money to do so (1-19B-41)
    - Shall review and approve applications for a certificate of appropriateness for exterior alteration, new construction, restoration, relocation, demolition, or change in use in historic districts designated by local ordinance (1-19B-42 to 1-19B-45)

- May approve an application for a certificate of appropriateness in cases of extreme hardship (1-19B-46)
- Shall inform owners of property materially affected by approval or denial of application for certificate of appropriateness; May hold public hearing (1-19B-47)
- May approve or deny applications for certificate of appropriateness (1-19B-48 to 1-19B-50)

- The local governing body is empowered to provide by regulations, special conditions or restrictions for the protection, enhancement, preservation, and use of historic properties, including appropriate and reasonable control of use and/or appearance of adjacent or associated private property within the public view (1-19B-53)
- May exempt a historic property from certain standards in municipal health or building codes if hindering preservation or restoration of property, upon recommendation of local historic preservation commission (1-19B-54)
- May enact an ordinance making deterioration by neglect of any historic property or property within a historic district (designated as such by local ordinance) a Class 2 misdemeanor (1-19B-52)
- Shall require a historic district commission to issue a certificate of appropriateness prior to city issuance of building permit in historic district designated by local ordinance (1-19B-42)
- Shall require a historic district commission to issue a certificate of appropriateness prior to change of zoning classification within a historic district designated by local ordinance (1-19B-45)
- May enact an ordinance requiring a county or municipal historic preservation commission to review any undertaking, publicly or privately funded, which will encroach upon, damage, or destroy any historic property included in the national register of historic places or the state register of historic places. Ordinance may require issuance of permit before such undertaking (1-19B-62)

6.3 Conservation Easements

SDCL 1-19B contains enabling legislation for conservation easements in South Dakota. A conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements. State law defines a "conservation easement" as:

> *"a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forest, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, paleontological, or cultural aspects of real property.*[75]

The First National Bank building features distinctive stonework and a large mezzanine. (Photo courtesy of author)

[75] SDCL 1-19B-56 through SDCL 1-19B-60.

6.4 Local Historic Preservation Ordinances

The strongest protection for local historic resources exists at the local government level. South Dakota communities are entitled to create an entire chapter in their city ordinances for historic preservation. Each article, then, addresses the broad powers enabled by SDCL 1-19B – including creation of a historic preservation commission and local designation of historic properties and districts. The sections under the articles provide additional detail incorporating the language of SDCL 1-19B.

A definition section in expanded historic preservation ordinances provides clarity and legal soundness.

For example, as outlined above, SDCL enables cities or counties to adopt an ordinance designating one or more local historic districts and create a historic district commission after meeting certain requirements.[76] No exterior alterations to buildings or other structures, or change in use, shall be permitted in a local historic district until application for a certificate of appropriateness is submitted and approved by the historic district commission.[77] This type of review is generally best suited in rapidly developing communities, where a need to balance old and new construction is foreseen or readily apparent. It is also appropriate in communities with strong property owner or neighborhood support and advocacy for such design control. When local design regulations are in place, detailed design guidelines are frequently adopted to ensure consistent, non-arbitrary review decisions.

In 1-19B-62, state law enables a county or municipality to "enact an ordinance requiring a county or municipal historic preservation commission to review any undertaking (may also require issuance of permit based on federal standards), whether publicly or privately funded, which will encroach upon, damage, or destroy, any historic property included in the national register of historic places or the state register of historic places."[78]

6.4a Current City Ordinances in Pierre

The City of Pierre adopted Ordinance No. 1239 on April 4, 1989.[79] This ordinance established the Pierre Historic Preservation Commission. The language of Ordinance No. 1239 mirrors the language in SDCL 1-19B. It states

> "The city commission has determined that the historical, architectural, palentological, and cultural heritage of this city is among its most important assets… The purpose of the ordinance is to authorize the city commission to engage in a comprehensive program of historic preservation to promote the use and conservation of historic properties for the education, inspiration, pleasure and enrichment of the citizens of this city."[80]

The historic preservation commission's purpose, as outlined in the city ordinance, is "to preserve, promote and develop the historical resources of the municipality in accordance with the provisions of SDCL 1-19B."[81] The ordinance states the commission's composition and terms of office. (See these sections of the ordinance in Appendix I).

The Pierre ordinance does not outline the specific duties and powers of the Pierre Historic Preservation Commission. It simply says they shall be "as provided by SDCL 1-19B and all acts amendatory thereof."[82]

[76] SDCL 1-19B-38.
[77] SDCL 1-19B-42.
[78] SDCL 1-19B-62.
[79] Pierre City Ordinance, Chapter 2 "Governmental Organization and Administration," Article 4, "Boards and Commissions," Sections 120 to 123. Full text is available at http://ci.pierre.sd.us
[80] Ibid. 2-4-120.
[81] Ibid. 2-4-121.
[82] Ibid. 2-4-123.

In addition to the above ordinance, Chapter 12 "Planning and Zoning," Article 13 "Flood Hazards," also contains certain provisions for historic structures. Section 12-13-104.3 mandates, "A Development Permit shall be obtained before construction or development begins within any area of special flood hazard established in Section 12-13-103." However, "variances may be issued for the repair or rehabilitation of historic structures upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure."[83] "Historic Structure" means any structure that is:

1. Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

2. Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

3. Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of Interior; or

4. Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
    a. By an approved state program as determined by the Secretary of the Interior; or
    b. Directly by the Secretary of the Interior in states without approved programs.[84]

This ordinance also *excludes* from the definition of "substantial improvement" the "alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places, provided that the alteration will not preclude the structure's continued designation as a 'historic structure."[85]

6.4b Coordinating Preservation with Zoning, Land Use, and Growth Management

Communities wishing to take a proactive approach towards historic preservation assess how local zoning, land use, and growth management policy affects their historic resources. They consider questions such as: In what zones are the community's significant historic resources located? Do any zoning regulations have the potential to positively or negatively affect historic properties? Are any modern building or other codes ill-fit for historic structures or discouraging their rehabilitation? Do any zoning ordinances prohibit a reasonable adaptive reuse of a historic structure that would promote its continued maximum occupancy and care? Do general ordinances in zones that include historic districts conflict in any way with the historic lot sizes, setbacks, density, height, scale, massing etc. of the neighborhood? If conflicts occur between historic preservation and other ordinances, solutions such as historic overlay zones and variance and special use procedures exist to resolve the conflict.

Some cities also consider other options to keep the cost of rehabilitating a historic building competitive with new construction. These options include relaxation of building codes (when not endangering the health, safety and welfare of the public) and reductions or waivers of permit fees.

Flexible parking regulations and effective zoning for mixed uses often supports investment in historic rehabilitation.

[83] Ibid. 12-13-104.5 (9).
[84] Ibid. 12-13-102, "Historic Structure."
[85] Ibid. 12-13-102, "Substantial Improvement."

7.0

Certified Local Government Program (CLG)

The City of Pierre joined in a partnership with the South Dakota State Historic Preservation Office (SHPO) and the National Park Service (NPS) in 1989, to become a Certified Local Government (CLG). When a CLG is created, the local government agrees to establish priorities and provide leadership for historic preservation activities, while the NPS and SHPO provide technical assistance and matching grants.[86]

In South Dakota, nineteen local governments have certified historic preservation programs. These counties and cities have their own historic preservation commissions and are actively promoting historic preservation in their communities through the adoption of local historic preservation ordinances and other activities.[87]

The local government must meet certain requirements to be eligible for CLG designation. The role of the Certified Local Government in the partnership includes responsibility for review and approval of nominations to the National Register of Historic Places and eligibility to apply to the State Historic Preservation Office for funds earmarked for CLGs. These grants to local governments are awarded on a matching basis (typically 50/50) for funding of specific projects that meet the National Park Service criteria for use of Historic Preservation Funds. Activities that may be funded include, but are not limited to:

- Architectural, historical, and archeological surveys
- Oral histories
- Nominations to the National Register of Historic Places
- Staff work for historic preservation commissions
- Design guidelines and preservation plans
- Public outreach materials such as publications, videos, exhibits, and brochures
- Training for commission members and staff
- Rehabilitation or restoration of National Register listed properties. [88]

To become a CLG, the local government must meet five minimum requirements:

1) Enforce state or local legislation for the designation and protection of historic properties;
2) Have established an adequate and qualified historic preservation commission by state or local legislation;
3) Maintain a system for the survey and inventory of historic properties;
4) Provide for adequate public participation in the local historic preservation programs, including the process for recommending properties for nomination to the National Register and
5) Satisfactorily perform other responsibilities delegated to it by the State Historic Preservation Officer by a mutual written agreement.

More information is available about CLGs in Appendix E, "*South Dakota: Certified Local Government Procedures"*

[86] Tyler, 56. In federal law, 16 U.S.C. 470 creates legal authority for a federal-state-local preservation partnership to best accomplish historic preservation objectives. As amended in 1980, the National Historic Preservation Act expanded local involvement by allowing "local communities to request their state government give them the status of Certified Local Government (CLG).

[87] Jay D. Vogt, "South Dakota: Certified Local Government Procedures" (Pierre, SD: South Dakota State Historic Preservation Office, revised Oct. 10, 2000), 2, 13. (Hereafter cited as "SD: CLG Procedures")

[88] National Park Service, "Certified Local Government Program: CLG Funding." www.nps.gov/history/hps/clg/clg_fu.htm

8.0

Property Rights and Historic Preservation

8.1 Introduction

To Americans, property rights are among our most important rights. Our property rights entail responsibility, and as such, the U.S. Constitution does not grant citizens *absolute* property rights. An owner's use of his or her land must not harm others. Thus, government has various powers in relation to land.

Using the power of eminent domain, government may take land under justification of public benefit or public use. This comes from a phrase in the Fifth Amendment of the U.S. Constitution, " […] nor shall private property be taken for public use, without just compensation." Take this scenario into consideration. It might be time consuming or impossible to get individual property owners to concur to the building of a road across their property. If a road could only be constructed where property owners allowed it, the transportation system could become less efficient. Thus, the power of eminent domain enables the road, a public necessity, to be effectively and efficiently created. Private entities may also use eminent domain when state eminent domain power is delegated to them. For example, a private railroad or power company can use eminent domain because they are public utilities that serve the public interest, and they *must* be continuous to do any good. Government has the power to regulate land (police power). It may exert power over property through zoning. "Zoning-based restrictions on land use were first created to *protect* the property rights and values of property owners against the potentially harmful actions of other property owners."[89]

> ***"Measures to protect historic property such as design standards, curbs on sprawl, zoning restriction and other policies intended to protect a [city's] appearance and economic vitality are constitutional … American courts, including the U.S. Supreme Court, have repeatedly upheld these laws when properly enacted and enforced. To be sure, land-use restrictions must advance a public purpose, be fairly and reasonably applied, and leave property owners with an economically viable use of their land. When these standards are met, however, land use regulations will pass legal muster."***
> *~ National Trust for Historic Preservation*

8.2 Public use clause in the Fifth Amendment: 1954 – *Berman v. Parker*

When zoning laws were established in the early twentieth century, they regulated nuisances and protected land uses. Zoning had little impact on historic preservation. This changed in 1954 with the U.S. Supreme Court decision in *Berman v. Parker.* This case dealt with the District of Columbia's plan to remove buildings in what the city deemed a blighted area. Berman challenged the District of Columbia for taking his property within the "blighted" area, for the city's planned purpose of creating a "better balanced, more attractive community."[90]

This case established important precedents for historic preservationists. It expanded the public use clause in the Fifth Amendment to include "public purpose." It also determined that it is within the power of the legislature to determine aesthetics as legitimate public

[89] Constance E. Beaumont, "Understanding Property Rights: Smart Growth Tools for Main Street" (Washington, D.C.: National Trust for Historic Preservation, 2002).

[90] Daniel R. Mandelker et al. *Planning and Control of Land Development: Cases and Materials*, 6th ed. (Newark: LexisNexis, 2005), 290.

purpose. The Supreme Court stated: "The concept of the public welfare is broad and inclusive […]. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."[91]

Berman v. Parker became the "backbone of historic preservation regulation."[92] As the case justified regulation for aesthetic purposes (cleaning unattractive buildings for community benefit), it could be used to regulate for keeping "beautiful" buildings.[93]

Historic images of downtown Pierre.
(Photos courtesy of South Dakota State Archives)

[91] *Berman v. Parker*, 348 U.S. 26 (1954).
[92] Tyler, 84.
[93] Ibid, 83-84.

8.3 Local government authority to review privately funded projects: 1978 - *Penn Central*

The 1978 *Penn Central Transportation Company v. The City of New York* U.S. Supreme Court decision was a landmark legal precedent for historic preservation. This Supreme Court case specifically addressed historic preservation law and created the legal justification for nearly all historic preservation ordinances. The case dealt with the "right of an owner to develop a property, versus the right of a city to review and regulate the development of a designated historic property."[94]

The Pennsylvania Railroad built Pennsylvania Station in New York City in 1910. It was demolished in 1964. The station was privately owned. At the time, there was nothing historic preservationists could do to prevent the action. In the wake of this demolition, New York City put a preservation ordinance in place. The City designated a series of historic districts and individual landmarks.

In the late 1970s, Penn Central applied to the New York Landmarks Commission for "permission to construct a fifty-five story addition over the Grand Central Terminal building (constructed in 1913), which was designated as an individual landmark. The proposed addition was designed by Marcel Breuer and included a new structure cantilevering above the Terminal's existing façade. An alternative plan, submitted at the same time, included the removal of the building's features on the 42nd street façade."[95]

The Landmarks Commission denied approval and offered transferable development rights. They concluded the planned addition was higher than zoning allowed elsewhere and would destroy aesthetic and historic character.

[94] Ibid, 84-85.
[95] Ibid, 85.

Penn Central challenged the law in trial court as a "taking." (This comes from the portion of the Fifth Amendment "…nor shall private property be taken for public use without just compensation.") The trial court granted Penn Central relief, but the New York Appeals Court reversed the trial court decision.

A key argument in this case was whether the city's Landmark law (protecting scattered designated landmarks, not a district) discriminated against the property owner by singling him out. Thus, it questioned whether the law was arbitrary, failing to offer equal protection to the property owner for the benefit of the people of New York (The Fourteenth Amendment of the U.S. Constitution entitles U.S. citizens to equal protection of the law).

After the court examined the nature of the public action (regulatory vs. physical invasion), the economic impact on the landowner, and the extent of the owner's reasonable *investment backed* expectations, the New York Appeals Court ruled that this was not a "taking."

The case went to the U.S. Supreme Court. The Court upheld the validity of NYC's preservation law 6 to 3. As *Historic Preservation* author Norman Tyler explains,

> This landmark decision upheld the legitimacy of historic ordinances by recognizing that preserving historic resources is a permissible governmental goal and that the city's preservation ordinance was an appropriate means for accomplishing that goal. As such, the *Penn Central* decision formed the legal basis for legislatures to grant cities the right to establish controls to which the owners of historic properties would be subject.[96]

Houses along Euclid Avenue, Pierre.

View from Capitol Dome, ca 1911.

View to the northwest from the Capitol Dome, c. 1911. (Photos courtesy of South Dakota State Archives)

[96] Ibid, 87.

8.4 The "Takings" Issue

If a government uses regulation to achieve historic preservation goals, to avoid legal controversy it is helpful to understand the takings issue. The following summarizes key cases that helped define modern takings tests. A property owner's use of his or her land has the potential to affect his or her neighbors and impact the health and welfare of the community. Thus, *the U.S. Constitution has never protected absolute use of one's property*.

To determine if a taking has occurred courts focus on the following three broad factors:

- Regulation's **economic impact** on the property owner:
  - In general, courts have required total loss of value before finding a taking. It is not a taking if the owner has reasonable economic use.

- Whether or not regulation serves a **valid public purpose**:
  - Courts have established preservation design control as a valid public purpose.

- **Character** of the government action:
  - Courts have been sensitive to property owners if the *intent* of a government regulation seems to be acquiring public access (physical invasion) of private property.[97]

Christopher J. Duerksen and Richard J. Roddewig, attorneys and experts on takings law, explain the application of takings law to regulatory measures:

> By judicial decision in the early 1920s, the U.S. Supreme Court expanded the scope of the Fifth Amendment *property clause* from addressing the narrow circumstance of the actual seizure or physical taking of land into a more far-reaching provision that confines the **permissible reach of land-use and environmental regulations**.[98]

8.4a Summary of "Takings" Law

<u>*Hadacheck v. Sebastian*, 239 U.S. 394 (1915):</u>

The Supreme Court determines if a city's logic is solid (it has public welfare in mind), the city may t**reat or regulate different areas in town differently.** This action is not arbitrary. Local government is allowed to control a reasonable and legal land use if it serves to **benefit the greater community**. An activity on a property that is not inherently a nuisance may become one if the city deems it harmful for the community in its particular location. It is sometimes in the best interest of the public for intervention of police power on a private property owner's land use. (Zoning derived from nuisance law).

<u>*Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922):</u>

This established that if property regulation goes too far and the owner has **NO USE, a taking** has occurred.

<u>*Village of Euclid v. Ambler Realty Co.*, 272 U.S. 356 (1926):</u>

This validated separation of residential and commercial uses, as well as separation of sub-categories of residential uses, into different areas (zones) of the community. This case upheld the overall **constitutionality of zoning** ordinances.

<u>*Nectow v. Cambridge*, 277 U.S. 183 (1928):</u>

This established that zoning could be **over-turned** if not appropriate for the area.

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[97] Christopher J. Duerksen and Richard J. Roddewig, *Takings Law in Plain English*, 4th ed., Preservation Books (Washington, D.C.: National Trust for Historic Preservation, 2002), 3.

[98] Ibid, 2.

Following the 1928 Nectow case, the Supreme Court did not make any takings-related decisions for about fifty years. Takings issues were worked out on a case-by-case basis in lower federal and state courts until the late 1970s.

Penn Central Transportation Company v. The City of New York, 438 U.S. 104 (1978):

When determining if a taking has occurred, the court must consider the ***parcel as a whole***. The Supreme Court opinion stated:

> "taking jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated…"

In the Penn Central Case, the U.S. Supreme Court proposed **new TESTS** for determining a taking, rather than going on a case-by-case basis as before:

1) **Character** (nature) of the governmental action (i.e. Is it physical invasion or regulation?)
2) Regulation's **economic impact** on the property owner (claimant)
3) The extent of reasonable "**investment backed expectations**" (What effect did the government action have on the property owner's "distinct investment-backed expectations?")[99]

As Duerksen and Roddewig point out, "A close examination of the Supreme Court's takings decisions over the past 25 years shows that the general principles of takings law, as reflected in *Penn Central*, remain unchanged. However, the Court defined some important rules on the fringes of the takings issue – most notably related to remedies."[100]

Nemmers v. City of Dubuque, 764 F. 2d 502 (8th Cir. 1985):

The principles set out in this case were subsequently used to determine how much is due if a **temporary taking** has occurred. (If it were a permanent taking, the full value of the property would be owed. Full takings are rare, as government usually lifts or amends the regulation after it is found a taking).

The amount due equals the temporary **value decrease** caused by regulation, **multiplied** by an appropriate annual **rate of return** on lost value (a percent) set by the court.[101]

Keystone Bituminous Coal Association v. DeBenedictis, 480 U.S. 470 (1987):

The State of Pennsylvania required a subsurface mining operation to leave support coal pillars in place (beneath public buildings, homes, and cemeteries) amounting to 50% of the coal (for the safety of the public above). Coal companies claimed a taking. Supreme Court reaffirmed it was NOT a taking because the coal company did not loose **all economically viable use** and that they must examine the **"parcel as a whole"** not just the sections the company *could not* mine.

First English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304 (1987):

The Supreme Court held – A **temporary taking is like a permanent taking** if it is 100%. If there is a taking, then **money is an appropriate remedy**. For a temporary taking, only **temporary damages** would be due. Temporary takings do not apply to normal delays such as obtaining building permits, variances, change in zoning etc.

[99] Ibid, 6.
[100] Ibid, 6-7.
[101] Ibid, 22.

Nollan v. California Coastal Commission, 483 U.S. 825 (1987):

When the Coastal Commission demanded public access across Nollan's beach property (physical invasion) for granting Nollan a permit to enlarge his beach residence (which would then block public view of the water), courts found a taking. There was not a strong connection between Nollan's proposed larger house blocking public view of the water and the Coastal Commission demanding that he give public access across his property.

The **exaction** imposed by government on a developer must have a "rational relationship" or **"nexus"** to the **need** for public facilities **created by the action** of the developer. (The Supreme Court derived this from state court cases of "subdivision exactions" on subdivision developers).[102]

Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992): (Compensation for temporary takings)

The state coastal council denied Lucas all use of his beach property during a temporary period. (The Court recognized it is rare that a regulation denies *all* economic use and that this case centered on very narrow circumstances). The **100% denial went too far** and the state **must compensate** Lucas for his loss. Courts would not expand *Lucas* as a measure in other takings cases. They were examined, rather, on a case-by-case basis.

Dolan v. City of Tigard, 512 U.S. 374 (1994):

The City requested Dolan dedicate a floodplain corridor (and open it to public access for a bike and pedestrian trail) in return for issuing the plaintiff (Dolan) a permit to increase the physical size of her hardware store (store's size increase would double traffic impact on the street).

The Court found there was a **conceivable link** between Dolan's expansion and floodplain dedication. However, the exaction requiring public access to her property was **not proportional** to the impact of her business expansion.

The *Dolan* decision "placed a greater **burden on local governments to justify** land dedication requirements – imposed on an ad hoc basis and not as part of a comprehensive legislative program – especially those requiring public access."[103]

In subsequent years, property rights advocates pressed to increase the burden of proof for local government in permit issuing cases. The U.S Supreme Court rejected this idea.

Lower profile "modern takings" Supreme Court cases between 1980 and 2001 established additional standards that must be met "before an aggrieved party can pursue a takings claim in court"[104]:

1) "If a restriction on a development is being challenged, an actual development plan must first be filed." Unless there are unusual circumstances, there are no theoretical challenges.

2) If local government initially rejects a development plan, a developer must seek all avenues of administrative relief (variance etc.) before entering a takings claim. (Unless the initial denial voids the other avenues as well, or permissible uses are known with a reasonable degree of certainty).[105]

As part of a comprehensive historic preservation plan, singling out and regulating a historic property for public purpose is not arbitrary.

[102] Mandelker, 124.

[103] Duerksen and Roddewig, 10.

[104] Ibid, 12.

[105] Ibid, 10.

8.4b Takings Summary

Supreme court rulings over the past century have laid out a way to **balance public need and private economic interest**:

1. **No Absolute Right of Use**
   No one has the absolute right to use their property in a manner that might harm the public health or welfare, or damnage the interests of neighboring landowners or the community as a whole.

2. **Reasonable Return or Use**
   Property owners have a right to a reasonable use of their property, but the U.S. Constitution does not guarantee that the most profitable use will be allowed.

3. **Furthering the Public Interest**
   Natural resource protection, historic preservation, design controls, and protection of environmentally sensitive areas are valid purposes for land use regulation.

4. **Consider the Parcel as a Whole**
   A severe adverse impact of a regulation on one portion of a property or ownership interest is not enough to constitute a taking, if the property as a whole continues to have reasonable use.

5. **No Speculative Plans**
   A takings claim cannot be asserted over a speculative development plan.

6. **Ordinary Delays**
   Temporary moratoriums and normal delays in the review of applications for permits do not create temporary takings.

7. **Having Development Pay its Way**
   Local communities can insist that development pay for its own way.

8. **How Much is Due?**
   If a government entity does over-regulate, it will not have to buy the entire property.

9. **Protection from Serious Harm**
   A total use may be prohibited under principles of nuisance and other provisions of property law. [106]

[106]Christopher J. Duerksen and Richard J. Roddewig, *Takings Law in Plain English*, 4th ed., Preservation Books (Washington, D.C.: National Trust for Historic Preservation, 2002).

9.0

Tax Benefits for Historic Properties

9.1 South Dakota Property Tax Moratorium

Under South Dakota Law, a certified rehabilitation project is exempt from increased property tax assessment due to expenses related to the rehabilitation for a period of eight years. This program delays an increase in property tax assessment to assist with the financial viability of rehabilitation projects.

If a historic building qualifies for the tax benefit, an eight-year moratorium is placed on the property tax assessment of certified improvements. Property tax assessments may not be increased due to certified rehabilitation of the building.

The owner of any certified historic structure, including private residences, may utilize the state property tax benefit. To be eligible, the property must be:

- Listed in the State or National Register of Historic Places;
- Restored or rehabilitated according to the Secretary of the Interior's *"Standards for Rehabilitation of Historic Properties";* (see Appendix ?)
- Certified for tax exemption by the South Dakota State Historical Board of Trustees;
- Encumbered with a covenant attached to the deed of the property for the life of the moratorium guaranteeing the continued maintenance and protection of the building's historic features for the life of the moratorium. [107]

Historic properties that are rehabilitated in a historically sensitive manner may be eligible for certain tax advantages.

The property owner makes application for certification by submitting a completed application form and supporting documentation to the South Dakota State Historic Preservation Office for review.

A staff recommendation is made to the Board of Trustees, who makes the final determination of certification based on whether the work meets the Secretary of the Interior's "Standards for Rehabilitation." If the Board issues a certificate of eligibility for the moratorium, the owner must present the certificate to the local tax assessor to activate the moratorium.

Although formal application for certification is made after work on the building is completed, it is strongly recommended that the owner/developer/contractor/consultant submit plans and specifications for a proposed project to the SHPO prior to beginning work. SHPO staff will review the proposed rehabilitation and assist owners in designing a project that meets the requirements for approval. It can be costly and difficult (sometimes impossible) to correct work that is not in conformance with the "Standards" after work has begun.

9.1a Important Points:

Certification is granted or denied by the Board of Trustees based on the Secretary of the Interior's "Standards for Rehabilitation," which have been adopted by the Board.

[107] "State Historic Preservation Property Tax Moratorium," South Dakota State Historical Society. http://www.sdhistory.org/HP/hp_txmor.html; SDCL 1-19A-20 to 1-19A-24.

Any rehabilitation work on the building that is completed after the Board of Trustees grants official certification will not receive the moratorium unless new application is made for the additional work. If rehabilitation cannot be completed in single year, the owner should develop a plan that divides the work into separate and distinct phases that can be certified as they are completed.

The state property tax moratorium cannot be retroactively awarded. Applications must be submitted for approval in the year that rehabilitation work is completed.

All tax certification applications submitted to the SDSHPO during any calendar year will be formally reviewed in December of the year they are received. Applications should be submitted to the SDSHPO no later than November 1 to allow sufficient time for the application to be reviewed prior to the Board meeting. Late applications will not be accepted.

The property must be listed on the State or National Register of Historic Places no later than the meeting at which the application for the moratorium is submitted.

The state property tax benefit is independent of and separate from any Federal tax benefits.

Fee Schedule:

$25 fee for rehabilitation / restoration work under $4,000.

$50 fee for rehabilitation / restoration work over $4,000.

Owner's Responsibilities for Properties that receive the South Dakota State Property Tax Moratorium:

In order for the property to retain its tax benefits, the owner must guarantee the public some benefit for the loss in tax revenue. The owner has the responsibility to:

1. Maintain the property in good order and make alterations in a manner that retains the historic qualities of the building for eight years.

2. Allow the public to view those portions of the project approved as tax-exempt work for at least twelve hours each year for eight years.

3. Adequately insure the building against fire, and, if necessary, flood.

9.2 Federal Rehabilitation Tax Credits[108]

Financial incentives for historic preservation are designed to make projects involving a community's significant historic built-environment a financially feasible endeavor. Historic preservation incentives reward those who chose to utilize and protect the architecturally and historically significant features of the built-environment, as the benefits of this action ultimately extend beyond the preservation project itself. Incentives for historic preservation also serve to make reuse of an historic building cost competitive with the option of new construction.

[108] Find Department of the Interior regulations related to rehabilitation tax credit procedures in CFR (Code of Federal Regulations) Title 36, Part 67 Historic Preservation Certifications. IRS (Dept. of Treasury) regulations governing the same are at CFR Title 26, 1.48-12 Qualified rehabilitated building; expenditures incurred after Dec. 31, 1981. These regulations must be followed. They take precedent over this document and should be referred to for additional detail and clarification.

The Tax Reform Act of 1986 established current tax incentives for historic preservation. These tax incentives apply to federal income tax and include:

- A **20% rehabilitation tax credit** for the *certified rehabilitation* of *certified historic structures*
- A **10% rehabilitation tax credit** for the rehabilitation of *non-historic*, *non-residential* buildings built before 1936

Rehabilitation brings a building back to a functional state for contemporary use through repair and alteration, while preserving portions and features of the building that are significant to its historical, architectural, and cultural values.

The *tax credit* (not a tax deduction) is a dollar for dollar write-off of federal income taxes owed. In general, "a dollar of tax credit reduces the amount of income tax owed by one dollar."[109] The federal rehabilitation tax credit is based on a percentage of specified rehabilitation costs. The purchase price, for example, is not included as part of this incentive. The tax credit applies to the building owner's federal income tax for the year in which the project is completed and approved. If it is not all needed in that year, the tax credit may be carried back one year or forward up to 20 years.

9.2a 20% Federal Rehabilitation Tax Credit

The 20% rehabilitation tax credit is available for properties rehabilitated for commercial, office, industrial, agricultural enterprise, or rental residential purposes. "It must be used in a trade or business or held for the production of income."[110] To qualify, the building *must* be placed in service. The tax credit is not available for private owner-occupied residences. The National Park Service (NPS) will collect processing fees varying with the cost of rehabilitation.

Certified Historic Structure

The 20% rehabilitation tax credit is only available for *certified historic structures.* A *certified historic structure* is a building listed individually in the National Register of Historic Places, or certified as a contributing building within a National Register-listed historic district. "A State or local historic district may also qualify as a registered historic district if the district and the enabling statute are certified by the Secretary of the Interior."[111] Property owners unsure of their building's status should contact the South Dakota State Historic Preservation Office. If unlisted, an owner may use Part 1 of the Historic Preservation Certification Application – Evaluation of Significance to request *preliminary determination of significance.*

Certified Rehabilitation

For the 20% rehabilitation tax credit, the certified historic structure must undergo *certified rehabilitation*: The National Park Service must approve that the rehabilitation of the certified historic structure is "consistent with the historic character of the property and, where applicable, the district in which it is located."[112] The rehabilitation work must conform to the *Secretary of the Interior's Standards for Rehabilitation* (A copy of these standards is available in Appendix D. Though some alteration or repair may be needed to make the building usable, the rehabilitation project "must not damage, destroy, or cover materials or features whether interior or exterior, that help define the building's historic character."[113] The National Park Service certification is conducted through owner submission of an application along with review of work area photographs. NPS compares photos of the *completed* work with "before" photos submitted in application

[109] Michael J. Auer, *Preservation Tax Incentives for Historic Buildings* (Washington, D.C.: U.S. Department of the Interior, National Park Service, Heritage Preservation Services, 2007, 3.
[110] Ibid, 8.
[111] Ibid, 5.
[112] Ibid, 6.
[113] Ibid.

Part 2 to the SHPO for technical assistance on appropriate rehabilitation treatments.

Substantial Rehabilitation
In order to qualify for the 20% rehabilitation tax credit, the project must be a *substantial* rehabilitation, meaning a certain amount of money must be spent. As generally explained, Rehabilitation expenditures **must exceed the greater of $5,000 or the adjusted basis** of the building and its structural components. "Adjusted basis" is the purchase price, minus the value of the land, minus any depreciation already taken by the current owner, plus any capital improvements. A simplified formula is as follows:

Adjusted basis = (purchase price + capital improvements) – (land value + depreciation)

If you are the recent purchaser of an historic property you may not have taken any depreciation or made capital improvements. In this case:

Adjusted basis = purchase price – land value

Qualified Expenditures
Certain expenditures qualify toward the total cost that the 20% is figured from. Other costs do not qualify towards the rehabilitation tax credit. *Qualified expenditures* include:

- Costs associated with the work undertaken on the historic building (exterior or interior)
- Architectural and engineering fees
- Site survey fees
- Legal expenses
- Development fees
- Construction-related costs

Expenditures that do not qualify include:

- Purchase cost of the building
- Furnishing costs
- New additions that expand the building
- New building construction
- Parking lots
- Sidewalks
- Landscaping
- Other facilities related to the building

The National Park Service (NPS) must certify the work on a historic building. This is done by completing an application and submitting it to NPS along with "before" and "after" photographs showing all work areas (interior and exterior).

Recapture
The building owner must hold the rehabilitated building for five full years in order to avoid recapture of the tax credit. If the owner disposes of the rehabilitated building within a year after it is placed in use, the owner must pay back 100% of the tax credit. If the owner disposes of the property in the second through fifth year after the building is placed in use, he or she must pay back 20% of the tax credit. The property is subject to inspection by NPS or the State Historic Preservation Office during the 5-year period. If work was not completed as described in the tax credit application, or if the owner made unapproved alteration during the 5-year period, NPS may also revoke tax credit certification.[114]

9.2b 10% Federal Rehabilitation Tax Credit

The 10% federal rehabilitation tax credit is available for "the rehabilitation of *non-historic buildings* placed in service before 1936."[115] These are pre-1936 buildings being used for commercial, but *not* residential rental purposes. A building moved after 1935 is ineligible for this tax credit.

Buildings listed in the National Register of Historic Places or contributing buildings within a National Register district *are not eligible* for the 10% credit. Buildings contributing to a State or local historic

[114] Ibid, 9-11.
[115] Ibid, 14.

district are also *not eligible* for the credit. If in a district, the owner files Part 1 of the Historic Preservation Certification Application with the NPS. NPS must determine it is a non-contributing building within the district and thus is *not* a certified historic structure.[116]

Substantial Rehabilitation
As with the 20% rehabilitation tax credit, the rehabilitation must be *substantial*, exceeding the greater of $5,000 or the "adjusted basis" of the property. (See formula above).

Meeting the physical test
As outlined in the NPS brochure *Preservation Tax Incentives for Historic Buildings,* "Projects undertaken for the 10% credit must meet a specific physical test for retention of external walls and internal structural framework:

- At least 50% of the building's walls existing at the time the rehabilitation began must remain in place as external walls at the work's conclusion, and
- At least 75% of the building's existing external walls must remain in place as either external or internal walls, and
- At least 75% of the building's internal structural framework must remain in place."[117]

The project work does not have to be reviewed for the 10% credit. The tax credit is claimed on IRS form 3468 for the year the rehabilitated building is placed in service.

[116] Ibid, 15.
[117] Ibid, 14; See also Office of Historic Preservation, *Statewide Historic Preservation Plan, 2006-2010* (Pierre: South Dakota State Historical Society, n.d.), 5-6; See also Office of Historic Preservation, "Summary of Federal 20% Rehabilitation Tax Credits," South Dakota State Historical Society, http://www.sdhistory.org/HP/hp_Fedtx.html.

The National Park Service approved 1,045 projects for the 20% Federal Rehabilitation Tax Credit nationwide in 2007.

9.2c Tax Incentives for Charitable Contributions for Historic Preservation

When a property owner donates a *qualified conservation contribution* to a *qualified organization* consisting of

- the entire interest of the donor (other than a qualified mineral interest)
- a remainder interest
- or a restriction on the use (granted in perpetuity)

which may be made of his/her real property to protect it for *conservation purposes*, they may be eligible for certain tax incentives.

Owners of one or more historic properties considering property donation to ensure future protection should be aware of laws governing qualified conservation contributions. (**See Internal Revenue Code 26 U.S.C. 170 (h) and Department of Treasury Regulations, 26 CFR 1.170A-14**.) Major reforms related to tax deduction for historic preservation easements occurred in 2006 when President Bush signed **Public Law 109-280** (as part of a pension reform bill).[118]

The most commonly contributed qualified real property interest is the restriction on use. Property owners may utilize tax credits for using preservation easements to protect a historic property against future inappropriate changes.

[118] "Pension Protection Act of 2006," Pub. L. No. 109-280, 120 Stat. 780 (2006).

KEYS to getting your project approved or "certified" for the 20% rehabilitation tax credit:

- Consider hiring an expert consultant to assist with the planning and application process
- **Coordinate** with the State Historic Preservation Office *before* beginning work (You will negate your chance to qualify for a rehabilitation tax credit if you complete inappropriate work to the interior or exterior of a historic building before applying for the tax credit).
- Diligently **document** the interior and exterior of your building before you begin the project and after you complete the approved building changes. The NPS must examine this documentation to ensure work is completed conforming to the *Secretary of the Interior's Standards for Rehabilitation.* (See Appendix ?)
- Familiarize yourself with the ***Secretary of the Interior's Standards for Rehabilitation*** and ***Guidelines for Rehabilitating Historic Buildings***. Consult the SHPO or NPS on how they apply to your project.
- If any project plans change during the tax credit application process, **notify** the SHPO and NPS.
- **Be informed** of legal and financial aspects for the federal rehabilitation tax credit program. Ask a tax professional about Internal Revenue Code provisions such as the *"at-risk" rules,* the *passive activity limitation*, and the *alternative minimum tax* and how they may affect a taxpayer's ability to claim a certified rehabilitation tax credit. Also be familiar with rules for rehabilitation involving government and other tax-exempt entities. For these details, contact the Internal Revenue Service.

9.3 Preservation Easements

A **preservation easement** is a type of conservation easement tailored to protect a property with historic, architectural, or archaeological significance. It may protect natural land areas as part of a property's historic setting. Preservation easements offer protection against negative impacts such as encroaching development, subdivision of land, demolition, inappropriate alteration, or deterioration (by imposing maintenance obligations). A preservation easement is a preservation tool that "furthers a sense of private responsibility for preservation."[119]

Important economic incentives exist to encourage this private responsibility. "Property owners who donate qualified preservation easements to qualified easement-holding organizations may be eligible for a charitable contribution deduction from their federal income taxes for the value of the historic preservation easement – provided that the contribution meets the standards of the Internal Revenue Service (IRS)."[120]

State law defines easements. If a property owner is seeking the federal tax incentive, the easement is also affected by federal law. (See South Dakota Codified Law 1-19B-16, 1-19B-56 to 1-19B-60; Internal Revenue Code 26 U.S.C. 170 (h) and Department of Treasury Regulations, 26 CFR 1.170A-14; Pub. L. No. 109-280, 120 Stat. 780 [2006] Sections 1206, 1213 and 1219). Together these laws define the conservation easement, its duration, qualified properties, who can hold the easement, and responsibilities of the easement holder. If pursuing this option, it is best to consult a lawyer, tax advisor, or other professional well-trained in the legalities of preservation easements. [121]

[119] Elizabeth Watson and Stefan Nagel, *Establishing an Easement Program to Protect Historic, Scenic, and Natural Resources,* Preservation Information (Washington, D.C.: National Trust for Historic Preservation, 1995), 3.

[120] The National Trust for Historic Preservation, "Preservation Easements." http://www.nationaltrust.org/legal/easements/index.html#3. (Hereafter cited as "Preservation Easements")

[121] Auer, 19. The 2006 reform imposes a new $500 filing fee for all donations valued over $10,000.

How does an easement work?

Owners of real property, the ground and everything attached to it, hold basic title to the land known as the fee simple title. The owner has government-recognized legal title to the land, as the title is recorded in the county office in which the property is located. Property owners have a bundle of rights that come with title to the land. For example, they may occupy or live on it, operate facilities for a business, physically manipulate or remove property (mining etc.) or exclude others from their property. "A property owner is freely allowed to give away, lease, or sell any of those [bundle of] rights, subject only to legal agreements that previous owners may have made, to state saws, and to local government regulations such as zoning."[122] Their property rights may also be subject to eminent domain.

One way of dividing real property is for one entity to hold less than fee simple interest in the property, while the property owner still holds the fee simple title. An easement is a form of agreed less than fee simple interest. A negative easement is a voluntary *restriction* on an aspect of the fee simple owner's rights. A preservation easement is a type of negative easement. Preservation easement deeds generally record restrictions, which then "run with the land." Subsequent property owners are subject to the same agreed-upon easement terms. The easement restriction is only as effective as its enforcement by the grantee. Many easement-holding organizations require the easement donor to help offset the organization's cost for enforcing the easement restrictions by providing a cash endowment. Fees for lawyers, appraisers, banks, or consultants may also apply.[123]

Financial Incentives

By donating a preservation easement, a property owner voluntarily limits his or her property development and potentially reduces property value. Preservation easements further a sense of private responsibility to protect historic resources for public benefit.

As such, if certain criteria are met, a property owner donating a preservation easement "can receive a Federal income tax deduction equivalent to the value of the rights given away to a charitable or governmental organization." In addition, "Federal estate taxes for property heirs also may be reduced because the fair market value of the property was reduced during the donor's lifetime by the easement restrictions."[124] The Internal Revenue Service (IRS) governs rules for charitable contribution deductions for easements.

9.4 Definitions: Keys to Conservation Easements and Tax incentives

According to federal tax code, only a donor of a *qualified conservation contribution* is entitled to a charitable contribution deduction. A *qualified conservation contribution* is the contribution of a *qualified real property interest* to a *qualified organization* exclusively for *conservation purposes*.[125]

Conservation purpose is defined as the preservation of land areas for outdoor recreation by, or the education of, the general public; the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem; the preservation of open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public, or pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant benefit; or the preservation of a *historically important land area* or a *certified historic structure*.[126] The

[122] Watson and Nagel, 3.
[123] Ibid, 1; "Preservation Easements."
[124] Technical Preservation Services, "Historic Preservation Easements: A Historic Preservation Tool with Federal Tax Benefits." http://www.nps.gov/history/hps/tps/tax/easement.htm
[125] 26 U.S.C. 170(h)(1)
[126] 26 U.S.C. 170(h)(4)

conservation purpose must be protected in perpetuity.

Qualified real property interest means any of the following: The entire interest of the donor other than a qualified mineral interest; a remainder interest; and a restriction (granted in perpetuity) on the use which may be made of the real property.[127] The later pertains to preservation easements.

A *qualified organization* as recognized by the IRS, is described in 1.170A-14(c)(1). In addition to these terms, a qualified organization must "have a commitment to protect the conservation purposes of the donation, and have the resources to enforce the restrictions. A conservation group organized or operated primarily or substantially for one of the *conservation purposes* will be considered to have the commitment required by the preceding sentence."[128] The easement holding organization has authority to enforce the agreed upon restrictions and must inspect the property once a year, providing written record, to make sure the easement terms are followed.

An *historically important land area* "includes land that is either independently significant (such as a Civil War battlefield) and substantially meets National Register criteria for evaluation or is adjacent to (and contributes to the integrity of) a property listed on the National Register of Historic Places."[129]

The President signed *easement reform legislation* into law August 17, 2006 (Public Law 109-280). It changed the definition of *certified historic structure.* Reflecting the legislative change, a *certified historic structure* is any building structure or land area, which is individually listed in the National Register of Historic Places, or any building (NOT a structure or land area) in a registered historic district certified by the Secretary of the Interior as being of historic significance to the district.[130]

The recent easement reform legislation also includes "Special Rules" for easements on contributing buildings in historic districts. For example, buildings in registered historic districts are not considered for conservation purposes unless:

- The conservation contribution preserves the entire building (front, sides, rear, and height);
- The conservation contribution prohibits any change to a building exterior which is inconsistent with the historic character of the building exterior;
- The donor and donee enter into a written agreement certifying, under perjury, that the donee is a qualified organization (with a purpose of environmental protection, open space preservation, or historic preservation) and that the donee has the resources to manage and enforce the restriction and a commitment to do so;
- The taxpayer includes a qualified appraisal (by qualified appraiser), photographs of the entire building exterior and description of all restrictions the easement makes on the development of the building with his/her tax return for the taxable year of the contribution. (This applies to any contribution made in a taxable year after the date the easement reform legislation was enacted).[131]

Typically, the value of the donated preservation easement is determined by "establishing the difference between the fair

[127] 26 U.S.C. 170 (h)(2)
[128] 1.170A-14(c)(1)
[129] "Preservation Easements."

[130] 26 U.S.C. 170(h)(4) as amended by Public Law109-280, Section 1213; "Registered historic district" is defined under 26 U.S.C. 47(c)(3)(B).
[131] 170(h)(4)(B) as amended by Public Law 109-280, Section 1213; Law Department, National Trust for Historic Preservation, "Summary of Changes Relating to Preservation Easements in the Pension Protection Act of 2006," (Washington, D.C.: National Trust for Historic Preservation, 2006), (Hereafter cited as "Changes Relating to Preservation Easements")

market value of the property before conveyance of an easement and its value with the easement in place."[132] Under Section 170 (h) of federal tax code: In the year of the contribution, the tax deduction cannot be over 30% of the donor's adjusted gross income. Any excess of the easement valuation is deducted over the next five years (maximum) until the valuation is used up.[133]

As the National Trust for Historic Preservation emphasizes, Section 1213 of Public Law 109-280 requires an owner to "provide the IRS more detailed substantiation to prove the value of the donation."[134] This section also requires a $500.00 filing fee for easement deductions for qualified conservation restriction on a building in a registered historic district over $10,000. Also affecting new preservation easement donations, Public Law 109-280, Section 1213(d), lessens allowable deductions for properties, which recently (within previous five years) benefited from the federal rehabilitation tax credit. "The percentage-based reduction is to be equivalent to the proportion of tax credits allowed to the taxpayer over the previous five years compared to the fair market value of the building at the time of the easement contribution."[135]

To avoid extinguishment of the easement deed, the rights of mortgages must be subrogated or made secondary. The easement may be extinguished if property such as a building is destroyed (by fire for example) and not rebuilt. Judicial action can accomplish extinguishment. The IRS requires a preservation easement provide "reasonable" visual access to a historic property.

Easement donors claiming federal tax **incentives must meet IRS regulations** even though they are usually created under state law. South Dakota Codified Law defines a conservation easement as "a non-posessory interest of a holder in real property imposing limitations or affirmative obligations." The purposes for which conservation easements may be granted in South Dakota are:

> "To retain or protect natural or open-space values of real property; assure its availability for agricultural, forest, recreational, or open-space use; protect natural resources; maintain or enhance air or water quality; or preserve the historical, architectural, archaeological, paleontological, or cultural aspects of real property."[136]

Preservation easements may be used to protect historically significant land areas and building facades.

[132] Clair Schofield, *Historic Preservation Easements: A Directory of Historic Preservation Easement Holding Organizations* (Washington, D.C.: U.S. Department of the Interior, National Park Service, Heritage Preservation Services, 2003), 5.
[133] Ibid; "Preservation Easements." President Bush signed Public Law 109-280 in 2006. The law "extended these allowances [see above] for donations made in tax years beginning in 2006 and 2007 to 50 percent of a taxpayer's contribution base for the year of the donation, with a 15-year carryover. (Different deduction limitations apply to taxpayers who use a cost basis for determining property value, most commonly for those who donate an easement within a year after purchasing a property, and may also apply in the case of farmers or ranchers)."
[134] National Trust for Historic Preservation, "Easement Reforms Enacted by Congress in 2006." http://www.preservationnation.org/resources/legal-resources/easements/easement-reforms.html
[135] Ibid.

[136] For additional information on conservation easements in South Dakota, including "third-party right of enforcement;" conservation easement creation, modification, transfer, and termination, actions affecting conservation easements, validity and application, please see the SDCL 1-19B-56 to 1-19B-60 (also note 1-19B-16).

10.0

Community Development Block Grant Program (CDBG)

Historic preservation and heritage tourism can be part of a community's economic development strategy. This improves the local economy, revitalizes local neighborhoods and enhances quality of life. Community Development Block Grant (CDBG) funds can be used to promote local historic preservation and heritage tourism.

Activities eligible to receive CDBG funds must meet a national objective. "The activity must benefit low and moderate-income persons; prevent or eliminate slums or blight; or be designed to meet a community development need having an urgent need." Project examples include:

- The preservation of a commercial building that results in the creation of jobs where at least 51 percent are held by low and moderate-income persons.
- The preservation of a building used for a community center that serves residents in an area that is 51 percent low and moderate income.
- An entitlement community (city with population of 50,000+) that has used historic preservation activities in a designated slum and blighted area or in a non-designated slum and blighted area that shows signs of decay (on a spot basis). [137]

Other eligible CDBG activities in areas of planning, survey, acquisition, rehabilitation, preservation, restoration, adaptive re-use, design and engineering studies, consultant services technical assistance, marketing analysis, documentation, feasibility studies, condition assessment (to name a few) may contribute to historic preservation.

There are two CDBG programs. One is the **Entitlement Grants Program**. It is only for communities with a population of 50,000 or more. The **CDBG State's Program** is for cities with populations of 50,000 or less and counties with populations of less than 200,000. Its objective is the development of viable communities by providing decent housing and a suitable living environment and by expanding economic opportunities, principally for persons of low and moderate income. Each year, states develop funding priorities and criteria for selecting projects to receive the funds, and applications are evaluated to determine whether proposed projects are in alignment with the current goals. The program may fund activities such as acquisition of property for public purposes, rehabilitation of public and private buildings, and planning activities. [138]

The 1910 St. Charles Building was built under the direction of local businessman Charles Hyde. It is listed on the National Register of Historic Places. (Photo courtesy of author)

[137] U.S. Department of Housing and Urban Development (HUD), "Community Development Block Grant Program: Preserving America." http://www.hud.gov/offices/cpd/communitydevelopment/library/historicpreservation/historicpreservationlow.pdf .

[138] For a comprehensive explanation of the CDBG program and its requirements see the U.S. Department of Housing and Urban Development website at www.hud.gov

11.0

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)

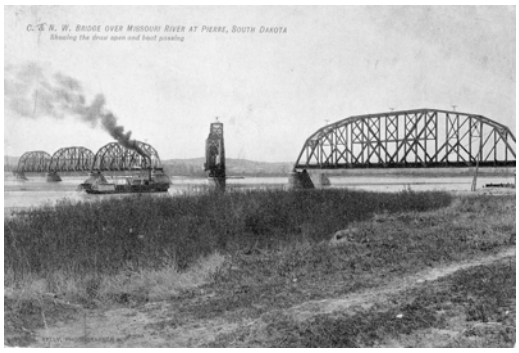
The President signed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) into law on August 10, 2005. SAFETEA-LU "represents the largest surface transportation investment in our Nation's history" with guaranteed funding for highways, highway safety, and public transportation amounting to $244.1 billion.[139]

A **Transportation Enhancement** program was created under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) and continued under the Transportation Equity Act for the 21st Century (TEA-21). SAFETEA-LU continues this Transportation Enhancement program whose purpose is "to strengthen the cultural, aesthetic, and environmental aspects of the Nation's intermodal transportation system."[140]

Changes in the 2005 Act affecting the transportation enhancement program include funding, eligible use of funds (see below), and a provision for a pilot program "for States to assume the responsibilities of the Secretary relating to environmental review and decision making, including activities related to transportation enhancements."[141]

SAFETEA-LU mandates that the greater of 10% of South Dakota's Surface Transportation Program apportionment *or* the amount set aside for Transportation Enhancement in South Dakota in 2005 be dedicated to qualifying transportation enhancement activities.[142] (See list of qualifying activities below.)

Federal *matching funds* are available to *reimburse* eligible project expenses. The maximum amount of eligible project costs that the project sponsor may be reimbursed for using federal funds is 81.05% (remaining 18.95% match is paid by the project sponsor). Project sponsors able to supply funds above the minimum match increase their chance of receiving the federal enhancement funds.[143]



Chicago and Northwestern Railroad Bridge, draw open. (Photo courtesy of South Dakota State Archives)

[139] Program Analysis Team, Office of Legislation and Intergovernmental Affairs, FHA "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users; A Summary of Highway Provisions," Federal Highway Administration (August 25, 2005). http://www.fhwa.dot.gov/safetealu/safetea-lu_summary.pdf , p,2. (Hereafter cited as "SAFETEA-LU: Summary of Highway Provisions")

[140] Program Analysis Team, Office of Legislation and Intergovernmental Affairs, FHA "Fact Sheets for Highway Provisions in the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU)," Federal Highway Administration (Oct. 25, 2007) http://www.fhwa.dot.gov/safetealu/factsheets/factsheets-safetea-lu.pdf , p. 87. (Hereafter cited as "Fact Sheet for Highway Provisions")

[141] Ibid.

[142] Ibid.

[143] South Dakota Department of Transportation, Local Government Assistance, "South Dakota Department of Transportation: Transportation Enhancement Program." http://www.sddot.com/fpa/lga/enhance.asp . (Hereafter cited as "SD Transportation Enhancement")

11.1 Eligible Use of Funds

To qualify for Transportation Enhancement funds, a project must show direct relation to the transportation system and fall under one of twelve qualifying enhancement activities listed below. Note several tourism and historic preservation related activities qualify.

1) Provision of facilities for pedestrians and bicycles.
2) Provision of safety and educational activities for pedestrians and bicyclists.
3) **Acquisition of scenic easements and scenic or historic sites.**
4) **Scenic or historic highway programs (including the provision of tourist and welcome center facilities).**
5) Landscaping and other scenic beautification.
6) **Historic preservation.**
7) **Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals).**
8) **Preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails).**
9) Control and removal of outdoor advertising.
10) **Archaeological planning and research.**
11) Environmental mitigation to address water pollution due to highway runoff or reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.
12) **Establishment of transportation museums.**

In 2005 SAFETEA-LU provided clarification that acquisition of historic battlefields is a qualifying enhancement activity under number three above. It also clarified inventory of outdoor advertising as eligible under number nine above. [144]

The South Dakota Department of Transportation outlines key points of the South Dakota Transportation Enhancement program as follows:

- Projects must have a link to the transportation system.
- Projects must qualify as one of twelve specified activities.
- Projects shall not exceed $500,000 in enhancement funds.
- 20% of available funding will be reserved for small projects with estimated costs of less than $100,000.
- Projects must be sponsored by a local government, state agency, or federal agency.
- This is a reimbursable program, which requires an interagency/joint funding agreement that details the project scope of work and cost participation.
- Project sponsors must provide the matching funds, follow the appropriate federal and state guidelines, administer the project, and maintain the project after completion.

"We shape our buildings, thereafter our buildings shape us.'
~Winston Churchill

[144] Ibid. See also "Fact Sheet for Highway Provisions", 87.

11.2 Program Administration

Transportation Enhancement funds must be approved by both the Federal Highway Administration (FHWA) and the South Dakota Department of Transportation (SDDOT) before any project expenses are incurred."[145]

For additional information contact the South Dakota Department of Transportation's Office of Local Government Assistance at (605) 773-4831.

11.3 Scenic Byways

The **Scenic Byways** and **National Historic Covered Bridge Preservation** programs also fall under under SAFETEA-LU's *Environmental Stewardship* investment target. According to the Federal Highway Administration:

> SAFETEA-LU authorized a total of $175 million through 2009 for technical assistance and grants to States and Indian tribes to develop **scenic byways programs**, and to implement projects on highways of outstanding scenic, historic, cultural, natural, recreational, and archaeological qualities designated as National Scenic Byways, All-American Roads, America's Byways, State scenic or Indian tribe scenic byways. Additional authority totaling $13.5 million is provided to fund technical support and educational activities provided by the America's Byways Resource Center.[146]

A total of $40 million in discretionary funds is authorized through 2009."[147]

The capitol power plant was built in 1910 and remodeled in 1997 to become a visitor's center. Natural gas from an artesian well was used to heat steam boilers, produce hot water, and fill Capitol Lake. A second well and gas separator were put into operation in 1944 and the 1910 well was capped and dismantled in 1958. The 1944 artesian well was ignited in 1964 and has been known as the "flaming fountain" ever since. (Photo courtesy of author)

[145] "SD Transportation Enhancement."
[146] "SAFETEA-LU: Summary of Highway Provisions," 17.
[147] Ibid.

12.0

South Dakota State Historical Society's Deadwood Fund Program

The purpose of the Deadwood Fund is to make loans and grants to purchase, restore, and/or develop historic South Dakota properties for residential, commercial, or public purposes. It is funded through gaming proceeds from the City of Deadwood.

Individuals, organizations, and public agencies are eligible to apply for funding to assist with restoration or rehabilitation of historic buildings. Projects that retain the essential historic qualities of a building while making changes that enhance the viable usefulness will be considered for funding.

This is a highly competitive grant. Professional guidance by someone skilled in historic preservation is highly encouraged.

Each proposed project is evaluated based on criteria that is used to rank each project. A project meeting all eligibility criteria will not necessarily receive funding.

Projects must demonstrate substantial historic preservation benefit to the public to be considered for funding. Administrative or operating costs are not eligible for funding. The following categories will generally not be awarded Deadwood Funds: security systems, general decorative arts and furnishings, general building or site maintenance, new construction or non-historic site improvements, and work performed only to meet the Americans with Disabilities Act and/or building codes.

Grants will generally be awarded in amounts ranging from $1,000 to $25,000. Unless a project is funded through a nonprofit organization, a dollar-for-dollar match is required. Payment of the **grant award is made on a reimbursement basis** upon receipt of a paid invoice at the completion of the work.

Buildings in the Upper Pierre Street Commercial Historic District. (Photo courtesy of author)

Deadwood Fund Schedule

Spring Cycle:
Application deadline February 1
Projects usually begin after May 1

Winter Cycle:
Application deadline October 1
Projects usually begin after January 1

12.1 Evaluation Criteria

The Deadwood Fund is highly competitive. Projects will be ranked for priority based on the following criteria:

1. The property is significant to South Dakota history and the project substantially benefits historic preservation and serves as a major public demonstration of historic preservation.

2. The historic building, structure or site is of public prominence or importance and endangered or threatened.

3. The entire project meets the Secretary of the Interior's *Standards for the Treatment of Historic Properties*.

4. The property is associated with minority or ethnic groups, particularly American Indians.

5. The property is currently listed on the National Register of Historic Places.

6. The project has a preservation plan in place and documented community support.

7. The property receives appropriate on-going maintenance, or its present state of disrepair is not the result of neglect by the current owner.

8. The applicant documents more than the required dollar-for-dollar match; nonprofit organizations providing match.

9. The application is clear, concise, complete, and includes a detailed budget.

10. A historic preservation professional assisted in developing or reviewed the project, the general contractor and subcontractors are professionally qualified and preservation sensitive, and if the work is being completed by someone other than a licensed contractor, the individual or company is capable of performing the prescribed work.

11. The project has not previously received funding through this program.

12.2 Eligibility Criteria

1. The property must be listed on or eligible for listing on the National Register of Historic Places.

2. The project must meet The Secretary of the Interior's *Standards for the Treatment of Historic Properties* (36 CFR 68)

3. The applicant must demonstrate that funds are available to match the grant, and the property will have on-going use at the completion of the project for residential, commercial, or public purposes.

4. The applicant must provide assurances of the ability to maintain the property well into the future.

5. The applicant **must sign an eight-year restrictive covenant** running with the property, which states that the property shall be maintained in a manner that preserves the property's historic integrity. All work performed on the property within the covenant period must meet The Secretary of the Interior's *Standards for the Treatment of Historic Properties.*

6. A sign provided by the South Dakota State Historical Society must be posted at the project site. The sign will state that the project has been funded in part by the State Historical Society through the Deadwood Fund and must remain posted for the duration of the project. All publicity material should include similar recognition.

The applicant is encouraged to be a member of the South Dakota State Historical Society and Preserve South Dakota, a statewide non-profit historic preservation organization.

13.0

Goals and Objectives

13.1 Summary of Past Preservation Efforts

The City of Pierre operates as a Certified Local Government under a partnership agreement with the State Historic Preservation Office and the National Park Service.

Recent activities of the Historic Preservation Commission include an excellent website featuring historic homes and self-guided driving tour brochures. Property owners are recognized with routine preservation awards from the Historic Preservation Commission, and local newspapers provide excellent media coverage of these awards.

Frequent articles about historic properties appear in local newspapers, with diverse representation of both high style and vernacular buildings. Many residents fondly recall a popular newspaper game several years ago in which readers were asked to identify a mystery building based on photographs of small architectural elements.

In 2008, the City of Pierre cooperated with members of the East Pierre Women's Club to complete major repairs to Pierre's First School Building at Steamboat Park. Many hours of volunteer labor were donated and extensive press coverage provided heightened community awareness about the property and historic preservation in Pierre.

Historic preservation efforts have been part of the community long before the Historic Preservation Commission was officially established in 1989.

Rehabilitation of the Pierre Light and Power Plant into the South Dakota Discovery Center was made possible when local residents insisted that city officials consult with historic preservation specialists to design an adaptive reuse of the building that successfully retained its historic qualities.

The loss of important historic resources over the years, however, has left emotional wounds that are still healing among preservationists in the community. The Carnegie Library, the WPA Governors Mansion, Central School, and major downtown buildings such as the Kehr Building (AKA "World of Doughnuts") are still deeply missed by residents who remember them.

13.2 Threats Facing Historic Resources

Current threats to historic resources in Pierre stem from lack of understanding about how to effectively meet current needs while preserving historically significant buildings and features. Vacant upper levels in downtown commercial buildings are vulnerable to damage from leaky roofs, vandalism, and animals. A desire to upgrade or replace aging school buildings will threaten both McKinley and Washington Elementary Schools in the coming years.

To mitigate these threats and enhance historic preservation opportunities in Pierre, extensive historic preservation goals and objectives have been identified in the following Preservation Action Table.

13.3 Preservation Action Table

Action Steps	Priority	Timing	Partners
Public Education and Outreach:			
Establish a Mayor's award for Historic Preservation of both commercial and residential properties: Accept nominations from the community at large Promote Mayor's award through local media and internet sites	High	6 mos	HPC, CS, EO, Mayor
Submit regular press releases to local media outlets highlighting history of the area	High	6 mos	HPC, CS
Send notes of acknowledgement and encouragement to owners who are currently rehabilitating historic properties	Med	6 mos	HPC, EO, CS
Request additional city funding for historic preservation programs and staff	High	1-2 yrs	HPC, EO, CS
Create a user-friendly guide to procedures for building permit review	High	1-2 yrs	CS, SHPO
Highlight historic properties on the city's current website	High	1-2 yrs	HPC, CS, SHPO
Update and publish new driving tour brochure	Med	1-2 yrs	HPC, SHPO
Install professionally designed interpretive signage about Missouri River steamboating history	Med	1-2 yrs	HPC, SHPO
Collect case studies of local and regional historic rehabilitation projects and post on website	Med	1-2 yrs	HPC, CS
Host an annual event at Pierre's First Schoolhouse	Med	1-2 yrs	HPC, EPWC
Establish a regular newspaper column to promote historic preservation	High	2-4 yrs	HPC, CS
Develop annual historic property open house tours; include property tax moratorium properties to assist owners to comply with the 12 hours of public access each year	High	2-4 yrs	HPC, CS
Develop a Historic Preservation Commission website, arrange for regular updates, link to other relevant sites, feature active historic preservation projects & businesses located in historic properties	High	2-4 yrs	HPC, CS, PP
Host a workshop for realtors	Med	2-4 yrs	HPC, PP, SHPO
Develop and adopt a sign ordinance for the community as a whole, especially the historic downtown areas	Med	2-4 yrs	HPC, PC, DBG
Host one or more workshops based on case studies of successful local and regional historic rehabilitation projects	Low	2-4 yrs	HPC, CS, PP
Further develop historic preservation website with links to additional relevant sites	Low	2-4 yrs	HPC, CS, PP
Create audio tour of historic properties and post on website for free download	Low	2-4 yrs	HPC, PP
Partner with special events to include historic tours and other celebration activities	High	5+ yrs	HPC, Chamber, DBG
Develop a brochure for new property owners in historic districts, welcoming them to Pierre, providing maps of historic districts, describing what to expect for building/demo permit review, other helpful info	High	5+ yrs	HPC, PPS, Chamber, DBG
Arrange for a historical architect to speak to local high school students	Med	5+ yrs	HPC, PPS, PP
Establish a marker program for historic properties	Med	5+ yrs	HPC, SHPO
Consider tax increment financing to fund preservation activities and historic preservation staff	Low	5+ yrs	HPC, PEDCO, CS, DBG
Work with local schools for preservation opportunities and field trips	Med	ongoing	HPC, PPS, SHPO

Action Steps	Priority	Timing	Partners
Local Ordinances:			
Examine and amend current ordinances so they are legally sound	High	1-2 yrs	HPC, CS, PP
Formally adopt the Historic Preservation Plan	High	1-2 yrs	HPC, EO
Amend the current historic preservation ordinance to include an expanded purpose section to help define the preservation plan	Med	1-2 yrs	HPC, CS, EO
Joint Planning:			
Actively participate in all planning processes so historic preservation is incorporated in the master plan	High	ongoing	HPC, EO, PC
Meet informally with property owners in existing historic districts to promote historic preservation	Med	ongoing	HPC, CS, EO
Historic Overlay Zones:			
Discuss what types of changes to historic buildings are considered appropriate	High	1-2 yrs	HPC, CS, PC, EO, DBG
Hire a consultant to design landscaping and historically appropriate infrastructure for Upper Pierre Street area	High	1-2 yrs	HPC, PC, EO, PP
Develop and adopt design guidelines for the downtown commercial business district, including: Orientation, setback, spacing, and site coverage of buildings Height, width, and overall proportion of buildings Size, shape, and placement of window & door openings Materials, textures, colors, and details Roof form and cornice lines Awnings, signs, canopies, kiosks Open spaces	High	2-4 yrs	HPC, CS, PP, EO, PC, DBG
Develop and adopt design guidelines for the Pierre Hill Residential Historic District: Orientation, setback, spacing, and site coverage of buildings Height, width, and overall proportion of buildings Size, shape, and placement of window & door openings Materials, textures, colors, and details Roof form and dormers Porches, driveways, garages Open spaces and vegetation	Med	2-4 yrs	HPC, CS, PP, EO, PC, DBG
Preservation Opportunities:			
Consult with Historical Architect or other Historic Preservation regarding maintenance and repairs at the SD Discovery Center	High	1-2 yrs	HPC, CS, PP, SDDC
Examine zoning, parking, and other land-use management tools that affect historic resources; consider relaxation of variance and special use procedures to encourage rehabilitation and reuse	High	1-2 yrs	PC, HPC, EO, PP

Action Steps		Timing	Partners
Preservation Opportunities, continued:			
Use existing authority to relax parking codes to encourage maximum occupancy of historic structures	High	1-2 yrs	PC, CS
Examine zoning, parking, and other land-use management tools to encourage mixed use in historic downtown areas	High	1-2 yrs	PC, HPC, EO, PP
Examine ordinances and amend if necessary to allow for sidewalk cafes	Med	1-2 yrs	PC, CS, EO
Implement recommendations of Historic Preservation Architect regarding maintenance and repairs at the SD Discovery Center	High	2-4 yrs	HPC, CS, PP, SDDC
Reduce or waive permit fees to provide a rehabilitation incentive for historic properties	Med	2-4 yrs	CS, EO
Encourage flexibility for historic structures in the application of building codes where life/safety endangerment is not a threat; consider adopting the Uniform Code for Building Conservation (UCBC) in addition to other building codes	Med	2-4 yrs	HPC, CS, EO
Develop a process for additional designation as quality resources reach 50 years of age	Low	2-4 yrs	HPC, SHPO
Conduct a comprehensive reconnaissance level survey of the entire city	Med	5+ yrs	HPC, SHPO, PP
Create transfer development rights for properties of less density than allowed by zoning; this enables an owner of a historic building to receive value for under-developed property while retaining a historic building	Low	5+ yrs	HPC, PC, EO, CS, PP
Integrate bike paths into downtown area to reduce demand for parking	Low	5+ yrs	PC, PW
Exercise responsibility for historic resources under the city's direct control	High	ongoing	HPC, CS, EO
Allow flexibility in types of uses that occur in historic structures	High	ongoing	HPC, CS, EO
Nominate additional properties to the National and State Register of Historic Places	Med	ongoing	HPC, SHPO, PP
Acknowledge and promote the significance and value of properties that may not currently meet NR criteria but are still important locally: American Legion Cabin Girl Scout Cabin Pierre's First Schoolhouse Others	Med	ongoing	HPC, EO, CS
Downtown Revitalization:			
Join the National Main Street Center's Network, to provide downtown revitalization information	High	6 mos	CS
Explore funding for downtown improvements with SAFETEA-LU	High	6 mos	HPC, CS
Explore funding for downtown improvements with CDBG	High	6 mos	HPC, CS
Develop and implement a directory/brochure and/or kiosk highlighting downtown businesses and amenities	Med	1-2 yrs	HPC, Chamber, DBG, PEDCO,
Take a fact-finding trip to one or more Main Street communities with Historic Preservation Commissioners, Downtown Property and Business Owners, and a City Council Delegate	Med	1-2 yrs	HPC, CS, DBG, EO
Conduct design training workshops for retail businesses addressing effective window displays, historically sensitive signage, and the economic value of quality graphic design	Low	1-2 yrs	HPC, Chamber, DBG, PP

Action Steps	Priority	Timing	Partners
Downtown Revitalization, continued:			
Send delegates to the National Town Meeting on Main Street	High	2-4 yrs	HPC, CS, EO, DBG
Collaborate with delegates to develop presentations for local service clubs, schools, and other city groups	High	2-4 yrs	HPC, CS, EO, DBG
Provide workshops to retain, cultivate, and nurture existing businesses	High	2-4 yrs	HPC, CS, SBDC, DBG, PEDCO, Chamber
Contract with a design professional to create a graphic image for downtown Pierre	High	2-4 yrs	HPC, DBG, PEDCO, CS
Create a multi-year, many tiered marketing plan to promote Pierre to both targeted and new markets	Med	2-4 yrs	CS, Chamber, DBG, PEDCO, GOED
Create a welcome packet and/or procedure for new businesses	Med	2-4 yrs	HPC, Chamber, DBG, SBDC
Add street furniture, historically sensitive street lighting, and historical markers where feasible downtown	Med	2-4 yrs	HPC, PC, PW, DBG
Develop utility incentives for new businesses	Low	2-4 yrs	EO, CS, PEDCO
Establish an art center downtown	High	5+ yrs	HPC, DBG, EO, SDAC
Conduct an annual "Bloom & Broom" downtown clean-up day	Med	5+ yrs	HPC, DBG
Establish a Farmer's Market downtown, perhaps indoors	Low	5+ yrs	DBG
Build consensus for opportunities and priorities regarding historic resources	High	ongoing	HPC, CS, EO
Enhance mixed use of downtown by encouraging upper floor residential use	High	ongoing	HPC, CS, EO, PC
Encourage joint advertising between downtown merchants	Low	ongoing	HPC, CS, DBG
Collaborate with SHPO to create statewide Main Street Program	Low	ongoing	HPC, CS, EO, SHPO, PEDCO, Chamber, DBG
Open Spaces and Landscape issues:			
Contract with and fund a landscape design specialist to create appealing gateways into Pierre and/or downtown areas and other historic neighborhoods	High	5+ yrs	CS, P&R, PW, PEDCO
Develop partnerships in local, regional, state, and national groups	High	ongoing	HPC, CS, EO
Protect open spaces in waterfront area	High	ongoing	HPC, EO, P&R
Protect and maintain trees in historic areas, including the waterfront parks, downtown, and residential areas	High	ongoing	P&R
Encourage preservation of privately owned historic retaining walls in residential areas	Med	ongoing	HPC, CS, EO
Heritage Tourism:			
Utilize the River Cities' Trolley service for guided historic driving tours	High	1-2 yrs	HPC, RCT
Design and install directional signage to historic neighborhoods and buildings at intersections and community access points	High	2-4 yrs	HPC, P&R, PW
Install unique and highly visible street signs in all historic districts so visitors and residents will know they are in historic areas	High	2-4 yrs	HPC, PW

Action Steps	Priority	Timing	Partners
Heritage Tourism, continued:			
Install prominent signage to available downtown restrooms	Med	2-4 yrs	DBG
Hire a professional to conduct a Heritage Tourism Assessment to examine attractions, visitor services, organizational capabilities, and marketing opportunities. Set priorities and measurable goals.	Med	2-4 yrs	HPC, CS, GOED
Create self-guided walking tours of upper and lower downtown, Griffin Park, SD State Capitol Grounds, and historic residential areas	Med	2-4 yrs	HPC, SHPO, PP
Install professionally designed interpretive signage every 20-30 feet in a linear pattern through strategic pathways	High	5+ yrs	HPC, P&R, PW, PP
Host tours with knowledgeable guides in historic areas during special events	Med	5+ yrs	HPC, SHPO, RCT
Provide a public restroom downtown	Low	5+ yrs	PW
Create links on the historic preservation website to visitor-oriented sites such as SD Tourism, state parks, local lodging, etc	Low	5+ yrs	HPC, CS
Facilitate Designation of Additional Historic Properties:			
Conduct Intensive Level Survey of potentially significant resources: Pierre Indian Learning Center, select downtown buildings, Federal Building, St. Mary's Hospital, Isaak Walton Arboretum, United Congregational Church, select older homes south of railroad tracks, National Guard Museum, Riverside Cemetery, Oahe Dam and Power Plant, Lincoln School, the First National Bank Building, Terrace Motel, and others	Med	ongoing	HPC, SHPO, PP
Prepare National Register Nominations for significant properties: South Dakota Discovery Center and Aquarium Masonic Lodge Other properties	Med	ongoing	HPC, SHPO, PP
Monitor younger properties for possible future significance and designation: Cultural Heritage Center Federal Post Office Building Grain Elevators Post WWII housing Other properties	Med	onoging	HPC, SHPO
Other:			
Collaborate with River Cities Transit to expand and enhance regular Trolley Service in the downtown areas			CS, DBG, RCT
Establish local revolving loan fund for historic rehabilitation and maintenance	Low	5+ yrs	HPC, PEDCO, CS, DBG, SBDC

Action Steps	Priority	Timing	Partners
Implementing the preservation plan:			
Establish a policy for notifying each city department and agency to give attention to the needs of any historic resource within its jurisdiction	High	6 mos	HPC, CS, Mayor
Solicit legal assistance to draft a resolution for adoption of the Preservation Plan by the City Commission	High	1-2 yrs	HPC, CS, EO, PP
Host a staff training event to build consensus and rapport regarding historic preservation and ensure that staff understands the Preservation Plan	Med	1-2 yrs	HPC, CS
Include maintenance appropriations in the annual budget for significant public resources such as street paving in historic districts and deferred maintenance for city-owned historic properties	Med	2-4 yrs	CS, EO
Budget funds for public purchase of significant historic resources that cannot be saved by private efforts alone	Low	5+ yrs	HPC, EO
Ensure that city officials and staff understand that all government projects that may adversely affect historic resources will be subject to consultation with the Historic Preservation Commission & SHPO	High	ongoing	HPC, CS, EO, SHPO
Encourage future officials to follow the direction given in the preservation plan	High	ongoing	HPC, CS, EO
In the event that a conflict is identified between the Preservation Plan and other elements or ordinances, urge that the Preservation Plan take precedence	High	ongoing	HPC, CS, PC, EO
Encourage decisions regarding zoning, health and sanitation, building construction and maintenance, maintenance of vacant lots, care and maintenance of trees, land uses, earth moving and disturbance, and other activities affecting quality of life be considered in the context of the historic preservation plan	High	ongoing	HPC, CS, EO
Ensure that the Planning Office staff is aware of possible adverse impacts to historic resources of all privately funded projects that are reviewed for zoning approvals and/or building permits	High	ongoing	HPC, PC, SHPO
Expand appropriations in the city budget for preservation programs and staff for long-term capital stability	High	ongoing	HPC, EO

Key to Preservation Partners:

HPC – City of Pierre Historic Preservation Commission
CS – City of Pierre Staff
EO – Elected Officials
PC – City of Pierre Planning Commission
P&R – City of Pierre Parks & Recreation Department
PW – City of Pierre Public Works Department
SHPO – State Historic Preservation Office
Chamber – Pierre Chamber of Commerce
DBG – Downtown Business Group
PEDCO – Pierre Economic Development Corporation
SBDC – Small Business Development Center
GOED – Governors Office of Economic Development
PPS – Pierre Public Schools
EPWC - East Pierre Women's Club
RCT – River Cities' Transit
SDDC – South Dakota Discovery Center & Aquarium
SDAC – South Dakota Arts Council
PP – Preservation Professionals, Consultants, & Reviewers

14.0

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Appendix A:

Hughes County Properties Listed in the National Register of Historic Places as of 7/14/08:[148]

Historic Districts:

Pierre Hill Residential Historic District	Huron Ave., Elizabeth St., Euclid Ave. and Broadway Area
Upper Pierre Street Commercial Historic District (also known as "Hyde Buildings")	E. Capitol Ave. and S. Pierre St. Area

Individually Listed Properties:

Blackburn, Dr. William and Elizabeth, House	219 S. Tyler Ave.
Brink-Wagner House	110 E. 4th St.
Central Block	321--325 S. Pierre St.
Chicago and North Western Railroad Bridge	N of US 14/83
Crawford-Pettyjohn House	129 S. Washington St.
Farr House	106 E. Wynoka St.
Goodner, I. W., House	216 E. Prospect Ave.
Hansen, Peter, House	1123 E. Capitol St.
Hilger Block	361 S. Pierre
Hipple, John E. and Ruth, House	219 N. Highland
Horner-Hyde House	100 W. Capitol Ave.
Hughes County Courthouse	Capitol Ave.
Karcher Block	366 S. Pierre St.
Karcher-Sahr House	222 E. Prospect St.
McDonald, Henry M., House	1906 E. Erskine
McMillen, George, House	111 E. Broadway
Meade, Judge C. D., House	106 W. Prospect St.
Methodist Episcopal Church	117 Central Ave., N.
Oahe Chapel	NW of Pierre
Rowe House	1118 E. Capitol
Scurr, Kenneth R., House	121 S. Washington Ave.
Soldiers & Sailors World War Memorial	Capitol Ave.
South Dakota State Capitol	Broadway, Washington, and Capitol Aves.
St. Charles Hotel	207 E. Capitol Ave.
Stephens-Lucas House	123 N. Nicollette

Hughes County Properties Outside of City Limits:

Graham, Mentor, House	U.S. Highway 14, Blunt
Harrold School	206 S. Nixon Ave., Harrold

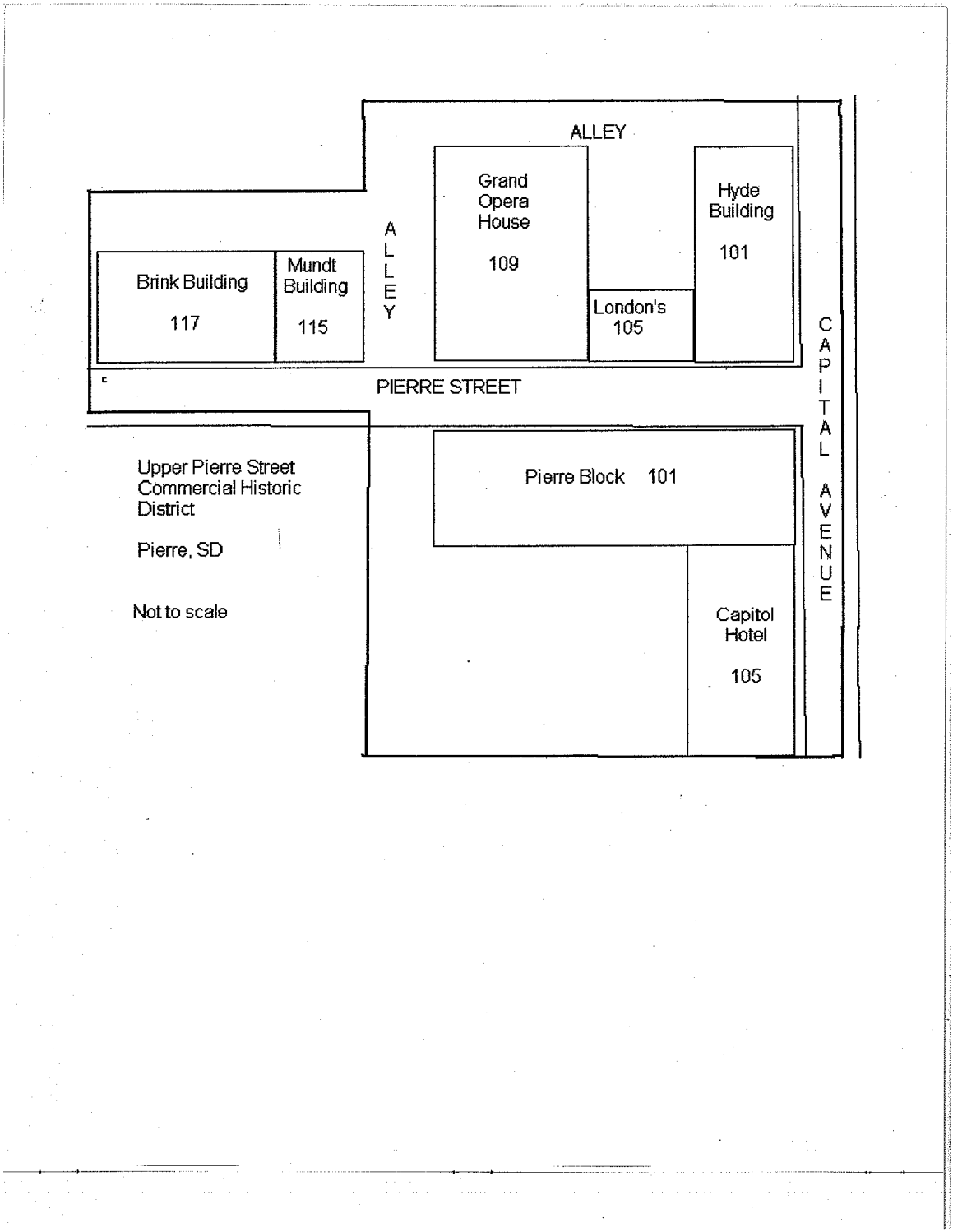
Archeological Properties:

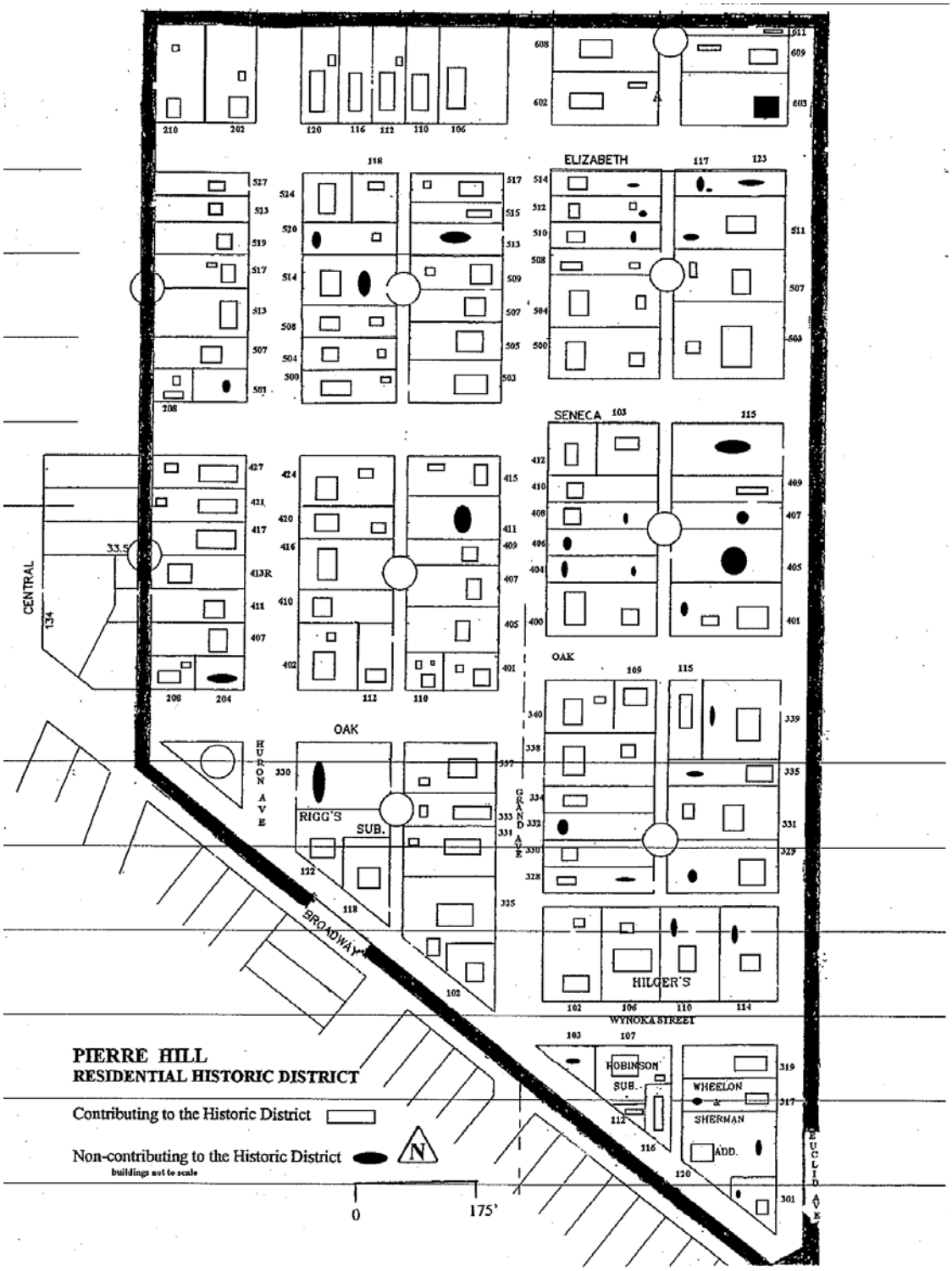
Archeological Site 39HU189	Address Restricted, Macs Corner Vicinity
Archeological Site 39HU201	Address Restricted, Pierre Vicinity
Archeological Site 39HU66	Address Restricted, Canning Vicinity
Arzberger Site	Address Restricted, Pierre Vicinity
Cedar Islands Archeological District	Address Restricted, Pierre Vicinity
Fort George Creek Archeological District	Address Restricted, Pierre Vicinity
McClure Site (39HU7)	Address Restricted, Pierre Vicinity
Medicine Creek Archeological District	Address Restricted, Lower Brule Vicinity
Old Fort Sully Site (39HU52)	Address Restricted, Pierre Vicinity

[148] Additional information regarding National Register properties can be found at www.nr.nps.gov.

Appendix B:

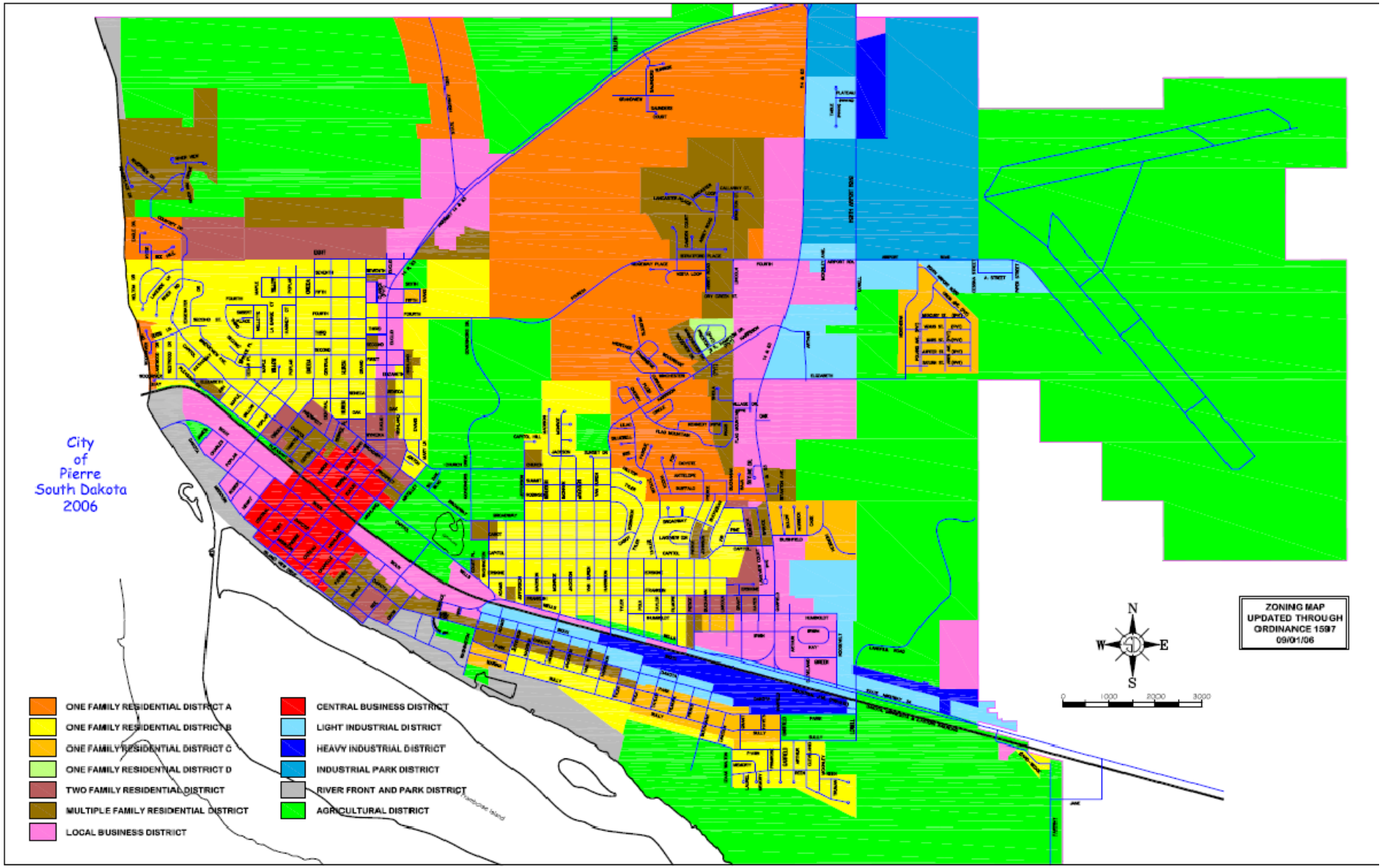
National Register Historic District Maps




ELIZABETH
SENECA
OAK
OAK
CENTRAL
HURON AVE
GRAND AVE
RIGG'S SUB.
BROADWAY
HILGER'S
WYNOKA STREET
ROBINSON SUB.
WHEELON & SHERMAN ADD.
EUCLID AVE
PIERRE HILL
RESIDENTIAL HISTORIC DISTRICT
Contributing to the Historic District
Non-contributing to the Historic District
buildings not to scale
N
0
175'

Appendix C:

Pierre Zoning Map



Appendix D:

The Secretary of the Interior's
Standards for the Treatment of Historic Properties

The Secretary of the Interior has laid out four treatment approaches when dealing with historic properties: Preservation, Rehabilitation, Restoration, and Reconstruction:

Preservation:
Strive to retain all historic fabric through conservation, maintenance and repair. Preservation reflects a building's continued use over time, through successive occupancies, and the respectful changes and alterations that are made.

Rehabilitation:
Emphasize the retention and repair of historic materials, while making appropriate repairs and changes to accommodate a new use.

Restoration:
Retain materials from the most significant time in a property's history, while permitting the removal of materials from other periods.

Reconstruction:
Re-creation of a missing site, landscape, building, structure, or object in all new materials.

Choosing the most appropriate treatment for a building requires careful analysis of a building's historical significance and planning for its continued viability.[149]

[149] Further information on The Secretary's Standards can be found at: www.nps.gov.

The Secretary of the Interiors' *Standards for Rehabilitation*:

1. A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

2. The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

9. New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work will be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

10. New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

The Secretary of the Interiors' *Standards for Preservation*:

1. A property will be used as it was historically, or be given a new use that maximizes the retention of distinctive materials, features, spaces, and spatial relationships. Where a treatment and use have not been identified, a property will be protected and, if necessary, stabilized until additional work may be undertaken.

2. The historic character of a property will be retained and preserved. The replacement of intact or repairable historic materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate, and conserve existing historic materials and features will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

4. Changes to a property that have acquired historic significance in their own right will be retained and preserved.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

6. The existing condition of historic features will be evaluated to determine the appropriate level of intervention needed. Where the severity of deterioration requires repair or limited replacement of a distinctive feature, the new material will match the old in composition, design, color, and texture.

7. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

8. Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

The Secretary of the Interiors' *Standards for Restoration*:

1. A property will be used as it was historically or be given a new use which reflects the property's restoration period.

2. Materials and features from the restoration period will be retained and preserved. The removal of materials or alteration of features, spaces, and spatial relationships that characterize the period will not be undertaken.

3. Each property will be recognized as a physical record of its time, place, and use. Work needed to stabilize, consolidate and conserve materials and features from the restoration period will be physically and visually compatible, identifiable upon close inspection, and properly documented for future research.

4. Materials, features, spaces, and finishes that characterize other historical periods will be documented prior to their alteration or removal.

5. Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize the restoration period will be preserved.

6. Deteriorated features from the restoration period will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials.

7. Replacement of missing features from the restoration period will be substantiated by documentary and physical evidence. A false sense of history will not be created by adding conjectural features, features from other properties, or by combining features that never existed together historically.

8. Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

9. Archeological resources affected by a project will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

10. Designs that were never executed historically will not be constructed.

The Secretary of the Interiors' *Standards for Reconstruction*:

1. Reconstruction will be used to depict vanished or non-surviving portions of a property when documentary and physical evidence is available to permit accurate reconstruction with minimal conjecture, and such reconstruction is essential to the public understanding of the property.

2. Reconstruction of a landscape, building, structure, or object in its historic location will be preceded by a thorough archeological investigation to identify and evaluate those features and artifacts which are essential to an accurate reconstruction. If such resources must be disturbed, mitigation measures will be undertaken.

3. Reconstruction will include measures to preserve any remaining historic materials, features, and spatial relationships.

4. Reconstruction will be based on the accurate duplication of historic features and elements substantiated by documentary or physical evidence rather than on conjectural designs or the availability of different features from other historic properties. A reconstructed property will re-create the appearance of the non-surviving historic property in materials, design, color, and texture.

5. A reconstruction will be clearly identified as a contemporary re-creation.

6. Designs that were never executed historically will not be constructed.

Appendix E:

SOUTH DAKOTA:
CERTIFIED LOCAL GOVERNMENT PROCEDURES

Prepared by:

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Pierre, South Dakota 57501

Jay D. Vogt, State Historic Preservation Officer

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Fax (605)773-6041

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SECTION 1
INTRODUCTION

Since 1966, when Congress established a preservation program for the United States, the National Park Service has operated as a decentralized partnership between the federal government and the states. The federal government established a program of identification, evaluation, and protection of historic properties which the states, primarily, carry out. The success of that working relationship prompted Congress to expand the partnership to provide for participation by local governments. The National Historic Preservation Act as amended (16 U.S.C. 470 et seq.) contain the legal basis for the federal-state-local preservation partnership. The role of the "certified local governments" (CLGs) in the partnership includes responsibility for review and approval of nominations to the National Register of Historic Places and eligibility to apply to the state historic preservation office for funds earmarked for CLGs. The CLG Program is designed to promote the identification, documentation, and preservation of prehistoric and historic sites, structures, objects, buildings, and historic districts by expanded local involvement in historic preservation. The National Historic Preservation Act includes provisions for the State Historic Preservation Officer and the Secretary of the Interior to certify local governments to participate in the partnership. The purpose of this document is to outline how the CLG Program will be implemented in South Dakota.

SECTION 2
REQUIREMENTS FOR CERTIFICATION OF LOCAL GOVERNMENT PROGRAMS

Section Overview
Section 2 outlines in detail the five broad requirements, which must be met by the local government to become certified. These five requirements are that the local government must (1) enforce state or local legislation for the designation and protection of historic properties; (2) have established an adequate and qualified historic preservation commission by state or local legislation; (3) maintain a system for the survey and inventory of historic properties; (4) provide for adequate public participation in the local historic preservation programs, including the process for recommending properties for nomination to the National Register and (5) satisfactorily perform other responsibilities delegated to it by the State Historic Preservation Officer by a mutual written agreement. Section 2 also reviews state historic preservation law and the CLG role in its enforcement. It also outlines the requirements for the local review commission-five to ten members appointed for terms of not less than one year and, when available in the community, two of the five to ten are to be professionals from the disciplines of history, architectural history, architecture, archeology, planning, urban planning, American studies, American civilization, cultural geography, or cultural anthropology. It describes the options for obtaining professional help when a necessary discipline is not represented on the committee and provides methods for securing public input to the committee.

The five federal standards are further defined and amplified below (A-E) to indicate the specific requirements a local government must fulfill to be certified.

A. "Local governments must enforce state or local legislation for the designation and protection of historic properties."

1. Minimum requirements for enforcement of state legislation for the designation and protection of historic properties include incorporation of the following law in the local historic preservation ordinance:

   SDCL 1-19B

2. In addition to enforcement of these state laws the minimum requirements for local legislation for the designation and protection of historic properties are:

   a. Statement of purpose;
   b. Establishment of a Historic Preservation Commission including membership, duties, and terms of appointment, the city is required to maintain memberships with the South Dakota State Historical Society and the Historic South Dakota Foundation;
   c. Procedures for commenting on nominations to the National Register of Historic Places;
   c. Provide for public hearings and public notification; and if the local government elects to include provisions for the review of and/or decisions regarding alterations, change of use, demolition of buildings, or new construction they must:

      (1) be binding on buildings and properties only because they are listed on a locally designated register and
      (2) be compatible with the current Secretary of the Interior's
      (3) Standards for Rehabilitation and guidelines for rehabilitating Historic Buildings.

B. "Local governments shall have established an adequate and qualified historic preservation review commission by State or local legislation."

1. Each certified local jurisdiction (incorporated town or county) is required to have a historic preservation commission with at least two (2) professional members, from the disciplines of history, architectural history, architecture, archeology, planning, urban planning, American studies, American civilization, cultural geography, or cultural anthropology (see Appendix 2) to the extent that such professionals are available in the community and have a demonstrated interest, experience or knowledge in historic preservation. <u>The State recognizes that it will be difficult for some communities to meet this requirement</u>. Therefore, each certified jurisdiction making a good-faith effort to locate and appoint such professionals, and providing documentation to the State Historic Preservation Office as to how this effort was accomplished will be assisted by the State in receiving a waiver for this stipulation from the National Park Service.
2. Each commission's total membership must also include at least three (3) but not more than eight (8) other non-professional members, who represent a demonstrated interest, experience, or knowledge in historic preservation.

3. Terms of office of commission members shall be not less than one year of duration.

4. The appointing authority shall act within 75 working days to fill any vacancy which may occur.

5. <u>An annual report</u> of the activities of the commission shall be submitted to the state historic preservation office. **<u>Annual reports are due at the end of February and report on the previous calendar year.</u>** New CLGs certified for less than six months are

exempt from submitting an annual report in the end of February after their certification. Such reports shall include, but are not limited to, such items as number of nominations/cases reviewed, new designations made, revised resumes of commission members, appointments to the commission, attendance records and all minutes.

6. The primary activity of a certified local commission is to educate the citizens within the CLG's jurisdiction regarding historic preservation. Each CLG must sponsor a minimum of one historic preservation workshop for the general public and undertake an annual public education program, which disseminates information to the broadest possible audience within the county or municipality. Such a program shall be outlined in the CLG's annual application for funding.

7. At least one representative of each commission shall attend at least one informational or educational meeting each year sponsored by the state historic preservation office and/or its subgrantees pertaining to the work and functions of the commission or to historic preservation. In addition, the state historic preservation office will make provision for technical assistance and information through staff visits, training and procedural manuals, newspaper articles and other appropriate means to disseminate information of use to CLGs both directly and through other subgrantees.

8. Conduct, or cause to be conducted, a survey of cultural resources in the community which in form and content will be compatible to the historic and prehistoric inventory conducted by the State. This survey will be updated periodically.

9. Act in an advisory role to other officials and departments of local government regarding the protection of local cultural resources.

10. Act as a liaison on behalf of the local government to individuals and organizations within its jurisdiction concerned with historic preservation.

11. Should a CLG be qualified to do so (see below) it will review all proposed National Register nominations for properties within the boundaries of the county or municipality. When a historic preservation commission considers a National Register nomination (e.g., archeological site) which is normally evaluated by a professional in a specific discipline (e.g., archeologist), and that discipline is not represented on the commission, the commission must seek expertise in this area before rendering its decision. Local governments are required to adopt professional standards for each discipline as general guidelines for National Register review. These standards are set by the National Park Service, U.S. Department of the Interior, and are found in Appendix 2. This requirement holds for National Register nomination evaluations and other actions that will impact properties, which are normally evaluated by a professional in such discipline.

    This can be accomplished through: (1) hiring an adequately qualified consultant; (2) using commission staff which meet requirements in Appendix 2; or (3) using a representative of the State Historic Preservation Office (SHPO). It shall be noted that representatives of the State Historic Preservation Office will not participate in the State Historic Preservation Office comment on the nomination or action after assisting the Commission with its decision.

C. "The local governments shall maintain a system for the survey and inventory of historic properties."

1. The CLG shall initiate or continue an approved process to identify historic properties within the CLG boundaries.

2. A detailed inventory of the designated districts, sites and/or structures under the specific jurisdiction of the commission will be maintained.

3. All inventory material shall be:

    a. Compatible with current and published state survey guidelines for historic and prehistoric inventories and the state's comprehensive historic preservation planning process;

    b. Accessible to the public, except for material that must be kept confidential under the provision of section 304 of the National Preservation Act;

    c. Updated periodically; and

    d. Available through duplicates at the State Historic Preservation Office.

4. Commission members shall be encouraged to participate in the survey process.

D. "Local governments shall provide for adequate public participation in the local historic preservation programs, including the process of recommending properties to the National Register."

1. All meetings of historic preservation commissions must be publicly announced, be open to the public and have a previously advertised agenda. Commission meetings must occur at regular intervals at least four times a year. Public notice must be provided prior to any special meetings.

2. Careful minutes of all decisions and actions of the commission including the reasons for making these decisions must be kept on file and available for public inspection. The Commission will submit copies of the minutes to the State Historic Preservation Office no more than thirty (30) calendar days after a meeting.

3. All decisions by a commission shall be made in a public forum and applicants shall be given written notification of decisions of the commission.

4. The rules of procedure adopted by the commission shall be available for public inspection.

5. All reports submitted by the CLG to the State Historic Preservation Office regarding the eligibility of properties shall include assurances of public input. The CLG shall retain a list of all persons contacted during the evaluation period and note comments, which they received. If a public meeting were held, a list of those attending shall be included in the report.

E. "Satisfactorily perform the responsibilities delegated to it under this Act."

The State Historic Preservation Officer may, at his discretion and by mutual written agreement with the local governing body, delegate further responsibilities to the certified local government historic preservation commission.

SECTION 3
CLG PARTICIPATION IN THE NATIONAL REGISTER NOMINATION PROCESS

The general procedures for nomination of properties to the National Register of Historic Places are detailed in 36 CFR 60. The CLG Program established a partnership between the State Historic Preservation Officer (SHPO), the State Historic Society Board of Trustees and CLGs as nominating authorities for National Register functions; it does not delegate to CLGs the sole authority to nominate properties directly to the Register. The following procedures make clear the shared role of CLGs and the SHPO in the nomination process.

a. Notification of Nomination. Before a property within the jurisdiction of a CLG may be nominated to the National Register by the State, the SHPO will notify the chief elected local official and the commission in accordance with 36 CFR 61, 36 CFR 60, and State procedures and/or guidelines. The SHPO will notify the chief elected local official and the commission at least 60, but no more than 120 calendar days prior to State Review Board consideration (but see Section J.1.d.2), below). These notification procedures must be implemented as soon as a local government is certified, and apply to all nominations within the jurisdiction of the CLG, for which the State has not begun official owner notification procedures as of the date of certification, except as noted below.

b. Exceptions.

   1) The CLG notification procedures do not apply when a nomination is processed by or through a CLG which provides its recommendation and report to the SHPO with the nomination package.

   2) CLG notification procedures do not apply where a Federal agency nominates a property under its ownership or control. Federal agencies should, however, be encouraged by the SHPO to coordinate their nominations with CLGs.

c. The CLG Recommendation and Report. After providing a reasonable opportunity for public comment, the commission shall prepare a report as to whether or not, in its opinion, the property meets the National Register criteria. Within 60 calendar days of notice from the SHPO, the chief elected local official shall transmit the report of the commission, along with his/her recommendation, to the SHPO. Joint transmittal by the CLG of the nomination and the CLG report and recommendation will facilitate SHPO review and eliminate the need for separate notification and 60-day review by the CLG.

   1) If the SHPO does not receive the report and recommendation within 60 calendar days, they shall continue the nomination process.

      Consistency with the purposes of the Act, and ensuring that National Register decisions take into account local concerns, require that CLGs participate in the

National Register nomination process to the maximum extent feasible. A commission should report, and the chief elected local official should transmit the report with his/her recommendations to the SHPO, as often as possible, or in accordance with State CLG performance standards. If a CLG consistently does not provide nomination reports, the SHPO should seek to determine if appropriate technical assistance would encourage greater participation.

2) The SHPO may define the format of commission reports.

3) When a relevant historic preservation discipline is not represented in the commission membership, the commission shall be encouraged to seek expertise in this area when considering National Register nominations requiring the application of such expertise. Requisite expertise may be provided through consultation with the SHPO or with persons meeting the Secretary of the Interior's Professional Qualifications Standards. For example, if the commission must review the nomination of a prehistoric archeological site, and no commission member is a prehistoric archeologist, the commission is required to obtain the advice of an archeologist meeting the Secretary's Professional Qualifications Standards for purposes of reviewing the nomination. If it cannot, it should notify the SHPO.

d. State Action Following CLG Recommendation. If both the commission and the chief elected local official recommend that the property not be nominated, the SHPO may not nominate the property unless an appeal is filed in accordance with Section 101(c)(2) of the Act and 36 CFR 60. If either or both the commission and the local chief elected official recommend that the property is eligible for nomination, the SHPO will present the nomination to the State Review Board in accordance with the procedures in 36 CFR 60, and 36 CFR 61.

1) Any report and recommendation made by the CLG shall be included with any nomination submitted by the State to the Keeper of the National Register.

2) The State may expedite the CLG's participation in the nomination process, including shortening the 60-day commenting period, with the concurrence of the CLG as long as owner notification procedures, 36 CFR 60, and 36 CFR 61 have been met.

a) Where the State and the CLG agree to expedite CLG participation with respect to a particular nomination, the State must keep records that contain the following information:

(1) Name of the CLG; (2) Name of the property; (3) A statement from the CLG declaring that the CLG agrees with the State to expedite the process; (4) Date of concurrence; (5) Signatures of the chief elected local official and the chairperson of the commission; and, (6) Description of the public participation opportunities that have been provided.

b) Where the State and the CLG agree programmatically to expedite concurrence on all nominations, or in nominations of particular types or groups of properties, the State must obtain and keep records that contain the following information:

(1) Name of the CLG; (2) A statement of applicability to all nominations or nominations of specified types or groups of properties; (3) A statement from the CLG declaring that the CLG agrees with the SHPO to expedite the process; (4) Date of agreement; (5) Description of the public participation opportunities that will be provided; and (6) Signatures of the chief elected local official, the chairperson of the commission, and the SHPO or designee.

(2) If the State Does Not Have an Approved Program. CLGs will assume the nomination responsibilities of the State for properties under their jurisdiction if the State does not have an Approved State Program. The chief elected local official shall perform the nomination responsibilities of the SHPO as outlined in 36 CFR 60. The commission shall perform the responsibilities of the State Review Board as outlined in 36 CFR 60.

SECTION 4
PROCESS FOR CERTIFICATION OF LOCAL GOVERNMENTS

A. The chief elected official of the appropriate local governing body shall request certification from the State Historic Preservation Office. The request shall include:

1. A written assurance by the chief elected official that the local government will fulfill all the standards for certification outlined above;

2. A copy of the local historic preservation ordinance; and

3. The legal instrument(s) creating the commission; and

4. Resumes for each member of the historic preservation commission including, where appropriate, credentials of member expertise in fields related to historic preservation; and

5. The written certification agreement, signed by the chief elected official. It lists the four specific responsibilities of the local government under the CLG Program and any other responsibilities delegated to the local government by the State Historic Preservation Officer. The four specific responsibilities included in the written certification agreement are:

   a. Enforce appropriate state or local legislation for the designation and protection of historic properties;

   b. Establish by local law an adequate and qualified historic preservation commission;

   c. Maintain a system for the survey and inventory of historic properties; and

   d. Provide for adequate public participation in the historic preservation program, including the process of recommending properties to the National Register of Historic Places.

6. Any laws that provide for the designation and/or protection of historic properties within the jurisdiction of the applicant;

B. The State Historic Preservation Office will respond to the chief elected official within sixty (60) working days of the receipt of an adequately documented written request indicating if the local government is approved for certification.

C. After having determined that a CLG application meets all the requirements in State Procedures, the SHPO will foward a request for approval to the National Park Service along with a signed certification agreement and a signed review checklist. The effective date of certification is the date of NPS concurrence.

D. When a local government is certified it shall have jurisdiction in regards to these procedures. Should a city be a CLG in a county that is also a CLG, the city shall have jurisdiction in its boundaries.

SECTION 5
PROCESS FOR MONITORING AND DECERTIFICATION

Each CLG must perform the responsibilities delegated to it under the National Historic Preservation Act, as amended, in conformance with these procedures as minimum. The CLG procedures shall be in conformance with federal and/or state standards including the comprehensive historic preservation planning process. These standards will be provided by the State Historic Preservation Office. The State Historic Preservation Office will conduct an annual review and monitoring of CLGs to assure that each government is fulfilling the required standards. The State Historic Preservation Office shall also review the annual reports, records of the administration of funds allocated from the State Historic Preservation Office to the CLG and other documents as necessary.

If the State Historic Preservation Office evaluation indicates that the performance of a CLG is inadequate, the State Historic Preservation Office shall document that assessment and provides written results to the CLG. It will delineate for the local government ways to improve its performance. Inadequate performance may relate to such things as failure to enforce local and state legislation, failure to keep the commission adequately staffed, improper use of funds, failure to follow through on projects, failure of projects to result in a measurable product or failure to submit reports on nominations.

The CLG shall have a period of not less than thirty (30) or more than one hundred eighty (180) calendar days, depending on the corrective measures required to implement improvements. If the State Historic Preservation Office determines that sufficient improvements have not occurred, the State Historic Preservation Office will recommend decertification of the local government to the Secretary of the Interior, citing specific reasons for the recommendation. The SHPO will notify the CLG of the NPS concurrence with the decertification.

Decertified Local Governments with Subgrants Awarded Prior to Decertification.

a. Decertification, by itself, may not constitute grounds for termination of a CLG subgrant unless the terms of the subgrant cannot continue to be met after decertification.

b. The SHPO may conclude normal subgrant closeout procedures (not termination), unless the terms of the subgrant agreement can no longer be met, in which case the SHPO shall terminate the subgrant.

c. The SHPO may continue to administer the subgrant awarded to the local government if the local government can otherwise meet the work terms and conditions of the subgrant agreement.

d. As a consequence of decertification, the local government is no longer eligible for CLG subgrants unless recertified. The local government may, however, be eligible for HPF assistance other than the 10 percent minimum pass-through, if available.

The SHPO may also recommend decertification if a CLG requests to be decertified in writing. The SHPO must forward a copy of the CLG's letter as an enclosure to the SHPO's request to decertify the CLG. Compliance with the conditions stipulated above are not required, if the CLG has requested its own decertification.

The NPS will notify the SHPO in writing prior to 30 working days after receipt of the recommendation, if there are problems with the recommendation or if the NPS needs more time to review the recommendation.

SECTION 6
TRANSFER OF HISTORIC PRESERVATION FUNDS TO CLGS

The State will ensure that at least ten percent of its share of the Historic Preservation Fund will be transferred annually to CLGs meeting minimum requirements. These minimum requirements appear in Section 2 and below. At such time as the Congress may appropriate more than $65 million for grants to the states from the Historic Preservation Fund, one half of the excess will be transferred to CLGs according to procedures to be provided by the Secretary of the Interior.

Grants will be awarded in South Dakota on a matching basis for funding of specific projects, which meet the National Park Service criteria for use of HPF funds. Match requirements are determined yearly by the State but will typically be 50% (federal)-50%(local).

CLGs receiving Historic Preservation Fund grants from the State Historic Preservation Office from the CLG share shall be considered subgrantees of the State. Such CLGs receiving grants shall ensure that such transferred monies will not be applied as matching share for any other federal grant. The intent is to use Historic Preservation Fund assistance to augment rather than replace existing local commitment to historic preservation activities. CLGs may participate in the review and approval of National Register nominations whether or not they elect to receive a Historic Preservation Fund pass-through grant.

Once a local government is certified, it remains certified without further action, unless officially decertified. All CLGs are eligible to receive funds from the State's ten percent CLG share of the State's total annual Historic Preservation Fund grant award. However, the State Historic Preservation Office is not required to award funds to all governments that are eligible to receive funds. In order to be eligible to receive a portion of the local share of the Historic Preservation Fund allocation to the State, the Department of the Interior requires that each CLG:

A. Shall have an adequate financial management system which

1. Meets federal standards of Office of Management and Budget Circular A-102, ***Uniform Administrative Requirements for Grants-in Aid to State and Local Governments,***

2. Is auditable in accordance with Office of Management and Budget Circular A-133, ***Single Audits of State and Local Governments*** and

3. Is periodically evaluated by the State Historic Preservation Office.

B. Adheres to all required administrative procedures and policies for HPF subgrants established by the SHPO, including those set forth in the Historic Preservation Fund Grants Manual. All costs claimed or applied as matching share must be reasonable, and necessary for proper and efficient conduct of subgrant-supported activities in keeping with OMB Circular A-87. Records must evidence compliance with the competitive procurement requirements of 43 CFR 12.76, including small purchase procedures, or competitive negotiation for professional services.

C. Adheres to requirements mandated by Congress regarding the use of HPF funds. NPS will advise SHPOs of directives contained in annual appropriation laws regarding the use of HPF funds that must be applied to CLGs receiving pass-through funds.

D. Audit of CLG share shall adhere to Office of Management and Budget Circular A-133, "Audit Requirements." Audits will be performed of records by the State Historic Preservation Office. The State is prepared to assist all local governments in developing and implementing financial management systems which address the requirements listed above.

E. Meets the eligibility requirements described in this Historic Preservation Fund Grants Manual, particularly in Chapter 6, Sections D and E, and Chapter 13, Sections B and C. All CLG activities that are assisted with HPF funds, including the matching share, must meet the Secretary of the Interior's "Standards for Archeology and Historic Preservation."

The State Historic Preservation Office will also ensure that the conditions noted above will be clearly stated and included in the State Historic Preservation Office's written agreement with a local government. This contract will also stipulate that CLG funds will be used for activities eligible for Historic Preservation Fund assistance, and that the uses of such funds are consistent with the state comprehensive historic preservation planning process.

The CLG funds will be assigned for distribution to CLGs which meet requirements for matching funds, which insure that money will be spent for approved historic preservation program expenditures, and which have demonstrated successful completion of prior CLG grants.

SECTION 7
APPLICATION FOR PASS THROUGH FUNDS

The chief elected official of a CLG shall submit an annual application to the State Historic Preservation Officer which outlines the proposed activity and the budget, including the source of match for the project/activity which will be funded. **See Section 7, item 3 for more information.**

The CLG portion of the State Historic Preservation Office's annual Historic Preservation Fund grant award will be divided into two groups: the Program Allocation fund and the Supplemental Project fund.

CLG grants will be awarded according to the following procedures and guidelines.

1) As soon as possible before the CLG grant application deadline, the State Historic Preservation Office shall draft a list of priority historic preservation activities. This list is one of three areas that will be considered concerning project eligibility for Supplemental Project funds. See ITEM 5 below.

2) As soon as possible after receiving notice from the Secretary of the Interior indicating the amount of its annual Historic Preservation Fund allocation, the State Historic Preservation Office will notify the CLGs that applications for the Basic Program Allocation fund and the Supplemental Project fund can be submitted.

Example

State's Historic Preservation Fund Allocation	$460,000
Total Available for CLG Grants (10% of $460,000)	$ 46,000
Basic Program Allocation for Each CLG	$ 2,000

3) Application packets listing the amount available from each fund will be distributed by the State within 30 working days after it receives notification of its Historic Preservation Fund allocation. CLGs may apply for Basic Program Allocation and Supplemental Project funds using the same application. No CLG submitting an acceptable application will receive a grant of less than $500 as long as federal funds are available. If CLGs request less than their Basic Program Allocation, the remaining money will be added to the Supplemental Fund pool.

4) Any CLG may apply for Supplemental Project funds. Activities eligible to be funded from this grant pool MUST be from the list of priority projects referred to in number 1 above OR be a planning activity related to generating all or parts of a community based comprehensive historic preservation plan OR be listed in such a plan as being necessary to protect local cultural resources. The State realizes that few CLGs have a comprehensive historic preservation plan in place. The State is prepared to assist all CLGs in developing an acceptable plan that meets community needs.

5) Supplemental Project funds will be awarded as follows.

A. Each application will be rated in six categories.

1) Has the CLG met the minimum requirements listed in Section 2?

- Maintained the correct number of commission members that meet at least four times a year and submitted their minutes to the State Historic Preservation Office no more than 30 calendar days after a meeting. Review meeting option for adequate times to conduct project. (5 points)

- Submitted an Annual Report by the deadline (5 points)
- Conducted at least one annual public education project and workshop (5 points)
- Sent at least one commission member to a statewide workshop or annual meeting (5 points)

2) Did the CLG meet grant deadlines in the past three years? (5 points)

- Projects produced in the past three years met the relevant Secretary of the Interior's Standards. (5 points)
- Projects produced in the past three years benefited historic resources throughout the CLG's jurisdiction? (5 points)
- Projects produced in the past three years improved access to and increased the use of previously gathered historic preservation information by the general public. (5 points)
- CLGs less than three years old will be evaluated on their past projects. New CLG's will be evaluated on their potential to complete a quality product and their application narrative describing how the project will be completed.

3) Are the proposed project deadlines realistic? (5 points)

- The proposed project meets the Secretary of the Interior's Standards. (5 points)
- The proposed project benefits historic resources throughout the CLG's jurisdiction. (5 points)
- The project improves access to and increases the use of previously gathered historic preservation information by the general public. (5 points)

4) The CLG has closed out all previously awarded Historic Preservation Fund CLG grants. (20 points)

5) The CLG is able to provide at least dollar for dollar cash match. Examples include a city employee donating time doing preservation work and being paid by the city for that time, cash directly spent by the local government for preservation and direct appropriations to the preservation commission by the local government. Cash match exceeding the amount of the grant amount requested by the CLG from the SHPO is encouraged. (20 points)

6) The project can serve as a model for other CLGs or is innovative in some way. (20 points)

Each proposed project will receive a score out of 120 possible points.

B. The total number of points awarded to all projects will then be calculated.

C. It will be determined what percentage of the total points awarded in the current round are represented by each individual score.

D. Each CLG will receive this percentage of the total amount available in the Supplemental Project fund.

E. Any remaining funds will be distributed by following the process through from Step B to Step D until all the money is awarded. The scores awarded to applications in Step A will be used in these subsequent rounds.

An example of the Supplemental Project fund disbursement appears below.

Supplemental Project Fund Total $15,000
Three CLGs Apply for Funding
CLG #1 Application for $5,500 Receives 104 points in Step A
CLG #2 Application for $4,500 Receives 78 points in Step A
CLG #3 Application for $5,000 Receives 78 points in Step A

260 Total Points (104+78+78) Were Awarded to the Projects

CLG #1 received 40% of the total points awarded. Their first round award is 40% of $15,000 or $6,000. They receive the $5,500 they requested and $500 is returned to the pool for round two.

CLG #2 received 30% of the total points awarded. Their first round award is 30% of $15,000 or $4,500. They receive the $4,500 they requested.

CLG #3 received 30% of the total points awarded. Their first round award is 30% of $15,000 or $4,500. This is $500 short of their request. Their application goes to the second round and is awarded $500 since it is the only application left.

6) No CLG will receive more than 30% of the **total** CLG grant pool in any given year.

SECTION 8
APPLICATION AND GRANT SCHEDULE

A. Department of the Interior notifies the State Historic Preservation Officer of the annual allocation.

B. The State Historic Preservation Office notifies the CLGs that applications are available for the Basic Program Allocation and the Supplemental Project group.

C. Within thirty (30) working days of the Department of the Interior's notification of its HPF appropriation, the State Historic Preservation Office distributes application packets to the CLGs.

D. CLG returns application by the designated date.

E. Within sixty (60) working days the State Historic Preservation Officer awards annual grants to CLGs and will make funding rationale available to the public on request.

SECTION 9
PROCESS FOR CERTIFICATION OF CLG PROCEDURES

A. Pursuant to 36 CFR 61, the SHPO shall submit its proposed local certification process to the Secretary of the Interior for review and approval. In developing the submission, the SHPO will consult with local governments, local historic preservation commissions and other parties expressing interest; consider local preservation needs and capabilities; and invite comments on the proposed process from local governments, commissions and interested parties. The SHPO proposal submitted to the Secretary of the Interior will review the result of this consultation process.

B. The SHPO shall establish a method, including circulation of the state's CLG procedures for review by all the certified local governments. A comment is required within a sixty-day period before submission to the Secretary of the Interior. Interested parties will be allowed to comment. Records of all comments received during the sixty day period will be retained by the SHPO and will be available to the Secretary of the Interior upon request.

C. The Secretary of the Interior will review the proposal and within forty-five (45) calendar days issue an approval or disapproval. This review will be based on compliance with the requirements set forth in 36 CFR 61.

D. If the proposal is disapproved, the Secretary of the Interior will recommend changes that would make the proposed process acceptable and, in conjunction with the State Historic Preservation Officer, will designate a date by which the revision will be submitted.

E. If the National Park Service approves the amendment(s), the SHPO must: notify all CLGs in writing; and send amended certification agreements to NPS for each CLG affected by the amendment of the State procedures within 120 calendar days.

Appendix 1- SOUTH DAKOTA STATE HISTORIC PRESERVATION OFFICE CERTIFIED LOCAL GOVERNMENT PROGRAM

LOCAL GOVERNMENT CERTIFICATION AGREEMENT

Pursuant to the provisions of the National Historic Preservation Act as amended (16 U.S.C. 470 et seq.) to applicable federal regulation (36 CFR 61), and to the State of South Dakota procedures, the City/County of _____, South Dakota, has agreed to:

(1) Enforce appropriate state or local legislation for the designation and protection of historic properties.

(2) Maintain an adequate and qualified historic preservation review commission composed of professional and lay members, and memberships with SDSHS and HSDF.

(3) Maintain a system for the survey and inventory of historic properties.

(4) Provide for adequate public participation in the historic preservation program, including the process of recommending properties to the National Register.

(5) Maintain adequate financial management systems.

(6) Adhere to all requirements of the HPF Grants Manual.

(7) Adhere to any requirements mandated by Congress regarding use of federal historic preservation funds.

(8) Adhere to requirements outlined in the State of South Dakota Certified Local Government Procedures issued by the State Historic Preservation Office.

(9) Include a provision in its ordinance at the next opportunity for revision, stating that the Certified Local Commission members must have "a positive interest, competence, and knowledge of historic preservation."

Upon its designation as a Certified Local Government, the municipality shall be eligible to apply for available CLG allocation funds in competition only with other certified local governments.

_____	_____
Jay D. Vogt, SHPO	City/County Official Signature
_____	_____
Attest: Name and Title	Date

Appendix 2- DEFINITION OF TERMS

The following terms are taken from 36 CFR 61, "Procedures for Approved State and Local Government Historic Preservation Programs."

Certified local government means a local government that has been certified to carry out the purposes of the National Historic Preservation Act in accordance with Section 101(c) of the Act.

Chief elected local official means the elected head of a local government.

CLG share means the funding authorized for transfer to local governments in accordance with Section 103(c) of the National Historic Preservation Act.

Comprehensive historic preservation planning means an ongoing process for resource management that is consistent with technical standards issued by the Department of the Interior and which produces reliable, understandable, and up-to-date information for decision making related to the identification, evaluation, and protection/treatment of historic resources.

Historic Preservation Fund means the program of matching grants-in-aid to the States for historic preservation programs, as authorized by Section 101(d)(1) of the National Historic Preservation Act.

Historic preservation review commission means a board, council, commission or other similar collegial body which is established in accordance with SDCL 1-19B.

Local government means a city, count, township or municipality or any other general-purpose political subdivision of any State.

National Park Service means the bureau of the Department of the Interior to which the Secretary of the Interior has delegated the authority and responsibility for administering the National Historic Preservation Program.

Historic Preservation Grant Manual means the manual that sets forth NPS administrative policies, procedures, and guidelines for Historic Preservation Fund grant-in-aid and which serves as a basic reference for those who are engaged in the administrative and financial management of Historic Preservation Fund grants.

National Register of Historic Places means the national list of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, and engineering 101(a)(1)(A) of the National Historic Preservation Act.

State Historic Preservation Officer is the official within each State who has been designated and appointed by the Governor to administer the state historic preservation program in the State.

Subgrantee means the agency, institution, organization or individual to which a subgrant is made by the State and which is accountable to the State for use of funds provided.

Appendix 3- QUALIFICATIONS FOR CLG HISTORIC PRESERVATION COMMISSION PROFESSIONAL MEMBERS PARTICIPATING IN NATIONAL REGISTER REVIEW PROCESS

In the following definitions, a year of full-time professional experience need not consist of a continuous year of full-time work but may be made up of discontinuous periods of full-time of part-time work adding up to the equivalent of a year of full-time experience.

History. The minimum professional qualifications in history are a graduate degree in history of closely related field; or a bachelor's degree in history of closely related field plus one of the following:

1. At least two years of full-time experience in research, writing, teaching, interpretation or other demonstrable professional activity with an academic institution, historic organization or agency, museum, or other professional institution; or

2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of history.

Archeology. The minimum professional qualifications in archeology are a graduate degree in archeology, anthropology, or closely related field plus:

1. At least one year of full-time professional experience or equivalent specialized training in archeological research, or administration or management;

2. At least four months of supervised field analytic experience in general North American archeology; and

3. Demonstrated ability to carry research to completion.

In addition to these minimum qualifications, a professional in prehistory archeology shall have at least one year of full-time experience at a supervisory level in the study of archeological resources of the prehistoric period. A professional in historic archeology shall have at least one year of full-time professional experience at a supervisory level in the study of archeological resources of this historic period.

Architectural History. The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history; or a bachelor's degree in architectural history, art history, historic preservation, or closely related field plus one of the following:

1. At least two years full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or

2. Substantial contributions through research and publication to the body of scholarly knowledge in the field of American architectural history.

Architecture. The minimum professional qualifications I architecture are a professional degree in architecture plus at least two years of full-time professional experience in architecture; or a state license to practice architecture.

Historic Architecture. The minimum professional qualifications in historic architecture are a professional degree in architecture or state license to practice architecture, plus one of the following:

1. At least one year of graduate study in architectural preservation, American architectural history, preservation planning, or closely related field; or

2. At least one year of full-time professional experience on historic preservation projects.

Such graduate study or experience shall include detailed investigations of historic structures, preparation of plans and specifications for preservation projects.

Appendix 4- CLG CERTIFICATION APPLICATION CHECKLIST

State: South Dakota Jurisdiction: _____

Date submitted to State: _____Date approved by State:_____

(1) Applicant meets the Federal definition of local government and has authority to enforce acceptable legislation for the designation and protection of historic properties.

(2)Applicant has established a historic preservation review commission consisting of ____ members. This meets State procedure requirements for number of members.

There are _____ lay members.
There are _____ professional members qualified in the field of:

_____

_____

_____

This meets State procedure requirements for professional membership.

(3)All commission members have a demonstrated, positive interest, competence, or knowledge in historic preservation.

(4)Professional members of the commission have been appointed to the extent available in the community, and we have reviewed resumes that document professional qualifications acceptable under the Secretary of the Interior's Historic Preservation Professional Qualification Standards. If not, the applicant satisfactorily documented an adequate search for the requisite professional members **and** how it will obtain access to expertise when needed.

(5)The role and responsibilities of the local government have been specified in detail in the enclosed agreement, including:

A. The four basic responsibilities:

1. Enforcing State or local legislation for the designation and protection of historic resources.

2. Maintaining a system for survey and inventory of history properties.

3. Providing for adequate public participation in the historic preservation program.

4. Reviewing National Register nominations through a qualified local commission.

B. Additional responsibilities.

1. Required of CLGs that receive grants from SHPO.
   a. Maintain adequate financial management systems.

   b. Adhere to all requirements of the Historic Preservation Fund Grants Manual.

   c. Adhere to any requirements mandated by Congress regarding use of federal historic Preservation funds.

   d. Adhere to requirements outlined in the State of South Dakota Local Government Participation Procedures issued by the SHPO.

2. Requirements specific to the CLG (if any stipulated).

(6) The CLG contact person, including title/position, mailing address, and telephone number.

(7) The Certification Agreement has been signed by SHPO and Chief Elected Local Official.

(8) Any other information relevant to this application:

STATE REVIEWER

_____

Signature

_____

Name and Title

_____

Date

Appendix F:

List of Internet Resources

City of Pierre:
http://ci.pierre.sd.us

South Dakota State Historic Preservation Office:
www.sdhistory.org
(Includes current list of qualified historic preservation consultants)

National Main Street Alliance:
http://www.mainstreet.org/

National Trust for Historic Preservation:
http://www.preservationnation.org/

Preserve South Dakota:
http://www.preservesd.org/

South Dakota Governor's Office of Economic Development:
http://www.sdreadytowork.com/fi/MicroLoan.asp

Community Development Block Grants:
www.hud.gov/offices/cpd/communitydevelopment/programs

National Park Service Preservation Briefs:
www.nps.gov/history/hps/tps/briefs/presbhom.htm

NRIS database:
http://www.nr.nps.gov
(Includes searchable database of properties listed on the National Register of Historic Places)

Rawlins Municipal Library:
http://rpllib.sdln.net
(Includes links to historic Sanborn-Ferris Fire Insurance Maps)

Appendix G:

Preservation Partners and Contact Information

South Dakota State Historic Preservation Office:

Jay D. Vogt - Administers the historic preservation office and also serves as director for the South Dakota State Historical Society. E-mail: Jay.Vogt@state.sd.us

Jason Haug - Coordinates activities within the historic preservation office and serves as liaison to the City of Deadwood. E-mail: Jason.Haug@state.sd.us and telephone: (605) 773-6296.

Jennifer Brosz, Chris Nelson, & Mike Vogel - Work with the State and National Registers of Historic Places**,** certified local governments**,** and grant assistance. They each coordinate historic preservation matters in specific geographic areas of South Dakota.

Kate Nelson - Administers federal and state tax incentive programs, and handles review and compliance issues concerning architecture under Section 106 of the NHPA (federal) and SDCL 1-19A-11.1 (state). E-mail: Kate.Nelson@state.sd.us and telephone: (605) 773-6005

Paige Olson - Coordinates review and compliance under Section 106 of NHPA (federal) and SDCL 1-19A-11.1 (state) and manages archaeological matters. Acts as initial point of contact for all review and compliance. E-mail: Paige.HoskinsonOlson@state.sd.us and telephone: (605) 773-6004

Amy Rubingh - Reviews projects under Section 106 of the NHPA (federal) and SDCL 1-19A-11.1 (state) and serves as liaison to SDDOT regarding highway projects. E-mail: Amy.Rubingh@state.sd.us and telephone: (605) 773-8370

National Trust for Histoirc Preservation:

Barbara Pahl, Director, Mountains/Plains Region
535 16th Street, Suite 750
Denver, Colorado 80202
Phone: 303-623-1504
Fax: 303-623-1508
Email: mpro@nthp.org

Preserve South Dakota:

Linda Kluthe, Executive Director
351 4th Street
Scotland, SD 57059
Phone: (605) 583-4509
Email: preservesd@gwtc.net

Other Partners:

Pierre Area Chamber of Commerce
Laura Schoen Carbonneau
Chief Executive Officer
800 West Dakota Avenue
PO Box 548
Pierre SD 57501
(605) 224-7361
email: contactchamber@pierre.org

Downtown Business Owners Association
Karen Palmer
President
342 S Pierre St
Pierre SD 57501
(605) 224-2551

Pierre Economic Development Corporation
Jim Protexter
Exective Director
800 West Dakota Avenue
PO Box 548
Pierre SD 57501
(605) 224-6610
email: info@pedco.biz

Small Business Development Center
Marcella Hurley
Regional Director
110 West Missouri
Pierre SD 57501
(605) 773-2783
email: Marcella.hurley@usd.edu

Governors Office of Economic Development
711 East Wells Ave
Pierre SD 57501
(605) 773-3301
email: goedinfo@state.sd.us

Pierre Public Schools
Dr. Kelly Glodt
Superintendent of Schools
211 South Poplar Ave
Pierre SD 57501
(605) 773-7300
email: pierre.school@k12.sd.us

East Pierre Women's Club
Daisy Mernaugh
627 North Jackson Ave
Pierre SD 57501
(605) 224-7284

River Cities' Transit
1600 East Dakota
Pierre SD 57501
(605) 945-2360

South Dakota Discovery Center & Aquarium
Kristie Maher
Executive Director
805 West Sioux
Pierre SD 57501
(605) 224-8295
email: kristiemaher@sd-discovery.com

South Dakota Arts Council
Dennis Holub, Executive Director
Capitol Lake Plaza, Ste. 200
711 E. Wells Ave.
Pierre SD 57501
sdac@state.sd.us

Appendix H:

Local Ordinances Pertaining to Historic Preservation[150]

Section 2-4-120. Historic Preservation Commission - Creation.

Whereas the city commission has determined that the historical, architectural, archaeological, paleontological, and cultural heritage of this city is among its most important assets, it is hereby declared to be the purpose of this ordinance to authorize the city commission to engage in a comprehensive program of historic preservation to promote the use and conservation of historic properties for the education, inspiration, pleasure and enrichment of the citizens of this city.

Source: Ord. No. 1239, 1989.

Section 2-4-121. Historic Preservation Commission--Purpose.

The city commission hereby establishes an historic preservation commission, to preserve, promote and develop the historical resources of the municipality in accordance with the provisions of SDCL 1-19B.

Source: Ord. No. 1239, 1989.

Section 2-4-122. Composition of Preservation Commission-Residence-Terms of Office.

The historic preservation commission shall consist of not less than five nor more than ten members, who shall be appointed by the city commission with due regard to proper representation of such fields as history, architecture, urban planning, archaeology, paleontology, and law. All members of the historic preservation commission shall serve terms not to exceed three years, except that when the commission is first appointed the lengths of the terms shall be varied in such a fashion as to assure that no more than one-third each member shall be for a full three year term, unless the appointment is made to fill a vacancy.

Source: Ord. No. 1239, 1989.

Section 2-4-123. Duties of the Historic Preservation Commission.

The duties and powers of the historic preservation commission hereby established shall be as provided by SDCL 1-19B and all acts amendatory thereof.

Source: Ord. No. 1239, 1989.

[150] Further City of Pierre Ordinances can be found at http://ci.pierre.sd.us/Ordinance.aspx?oid=9.

Appendix I:

South Dakota Codified Laws Pertaining to Historic Preservation.[151]

1-19A-1. Legislative findings and declaration. The South Dakota Legislature finds and declares that it is in the best interest of the state and its citizens to provide for the preservation of its historical, architectural, archaeological, paleontological, and cultural sites by protecting, restoring, and rehabilitating sites, buildings, structures, and antiquities of the state which are of historical significance.

1-19A-2. Definition of terms. Terms used in this chapter mean:

(1) "Board," the State Historical Society Board of Trustees established by § 1-18-12.2;

(2) "Historic preservation," the research, protection, restoration, and rehabilitation of districts, sites, buildings, structures, and objects significant in the history, architecture, archaeology, paleontology, or culture of the state;

(3) "Historic property," any building, structure, object, district, area, or site that is significant in the history, architecture, archaeology, paleontology, or culture of the state, its communities or the nation;

(4) "Office" or "Office of History," the Office of History of the Department of Tourism and State Development;

(5) "Rehabilitation," returning property to a state of utility, through expansion, addition, repair, or alteration, which makes possible an efficient contemporary use while retaining those portions of the property, which qualify such property for placement on the state register of historic places;

(6) "Restoration," the repair or replacement of historically significant features which qualify a structure or object for recognition by the state register of historic places.

1-19A-3. Statewide survey of historic properties. The Office of History shall have the power and duty to undertake a statewide survey to identify and document historic properties, including all those owned by the state, its instrumentalities and political subdivisions.

1-19A-4. Entry on private property for survey--Consent required. The Office of History is authorized to enter, solely in the performance of its official duties and only at reasonable times upon notice, upon private property for the examination or survey thereof. However, no member, employee, or agent of the office may enter any building or structure without the express consent of the owner or occupant thereof.

[151] Additional information on South Dakota Codified Laws can be found at http://legis.state.sd.us/statutes.

1-19A-5. State register of historic places--Standards for listing. The Office of History shall prepare and maintain a state register of historic places, including all those listed on the national register of historic places. Pursuant to chapter 1-26, the State Historical Society Board of Trustees shall adopt standards for the listing of a historic property on the state register based on the standards of the national register and shall further adopt standards for the continued listing of a property on the state register, consistent with the relevant federal standards of preservation and care.

1-19A-6. Participation in conferences and programs. The Office of History shall have the power and duty to participate in international conferences and programs concerning historic preservation and cooperate with federal officials and agencies in the conduct of such activities.

1-19A-7. Cooperation with other governmental agencies. The Office of History shall have the power and duty to cooperate with federal, state, and local government agencies in the planning and conduct of specific undertakings affecting historic properties and preservation objectives and in overall land use planning.

1-19A-8. Qualification for federal aid. The Office of History shall have the power and duty to undertake the procedures necessary to qualify the state for participation in sources of federal aid for historic preservation purposes.

1-19A-9. Office as agency to accept donations--Exception. The Office of History is designated the state agency with the power to accept any and all moneys provided for or made available to the State of South Dakota, except those moneys provided for or made available to programs at South Dakota School of Mines and Technology, for the purposes of historic preservation.

1-19A-10. Preparation of preservation plan--Review and revision. The Office of History shall have the power and duty to prepare the state's preservation plan and review that plan annually and revise it accordingly.

1-19A-11. Rules for acquisition and operation of properties. The State Historical Society Board of Trustees shall promulgate rules pursuant to chapters 1-26 to acquire and dispose of historic properties and specimens and for the preservation, restoration, maintenance, and operation of properties under the jurisdiction of the office.

1-19A-11.1. Preservation of historic property--Procedures. The state or any political subdivision of the state, or any instrumentality thereof, may not undertake any project which will encroach upon, damage or destroy any historic property included in the national register of historic places or the state register of historic places until the Office of History has been given notice and an opportunity to investigate and comment on the proposed project. The office may solicit the advice and recommendations of the board with respect to such project and may direct that a public hearing be held thereon. If the office determines that the proposed project will encroach upon, damage or destroy any historic property which is included in the national register of historic places or the state register of historic places or the environs of such property, the project may not proceed until:

(1) The Governor, in the case of a project of the state or an instrumentality thereof or the governing body of the political subdivision has made a written determination, based upon the consideration of all relevant factors, that there is no feasible and prudent alternative to the proposal and that the program includes all possible planning to minimize harm to the historic property, resulting from such use; and

(2) Ten day's notice of the determination has been given, by certified mail, to the Office of History. A complete record of factors considered shall be included with such notice.

Any person aggrieved by the determination of the Governor or governing body may appeal the decision pursuant to the provisions of chapter 1-26.

The failure of the office to initiate an investigation of any proposed project within thirty days from the date of receipt of notice thereof is approval of the project.

Any project subject to a federal historic preservation review need not be reviewed pursuant to this section.

1-19A-12. Coordination of activities of local commissions. The Office of History shall have the power and duty to coordinate the activities of local historical commissions in accordance with the state plan and programs for historic preservation.

1-19A-13. Assistance to local commissions and private parties. The Office of History shall have the power and duty to provide technical and financial assistance to local historical commissions and private parties involved in historic preservation activities.

1-19A-13.1. Historical preservation loan and grant fund established--Purpose--Sources of funds. There is established a historical preservation loan and grant fund in the Office of History. The purpose of such fund is to make loans and grants to purchase, restore, or develop historic South Dakota properties for residential, commercial, or public purposes. The State Historical Society Board of Trustees, with the approval of the Governor, may accept into the loan fund any funds which may be obtained from repayment of loan principal, interest, gifts, grants, or contributions.

1-19A-13.2. National register eligibility required. Structures which may be considered for loans or grants under §§ 1-19A-13.1 to 1-19A-13.5, inclusive, shall either be on or eligible for the national register of historic places according to the criteria established by the national register.

1-19A-13.3. Amount of loans and grants--Interest rate--Extensions and renewals--Amounts available for structures with public use. Loans and grants may be made from the loan and grant fund by the State Historical Society Board of Trustees to individuals, corporations, or historical organizations for up to ninety percent of the cost of purchase, restoration, and development of a structure. Loans shall be made at an annual interest rate of one-fourth the prime interest rate at the time the loan is made. The maximum amount of a loan for any one structure is twenty-five thousand dollars. Loans may not be extended beyond a three-year period, nor may they be renewed. Loans and grants may be made to nonprofit historical organizations, municipalities, and other local governmental entities for the full cost of purchase, restoration, and development of structures that will have a public use.

1-19A-13.4. Funds to be used for restoration of historic properties. The interest earned, gifts, contributions, and any appropriation for the purposes of §§ 1-19A-13.1 to 1-19A-13.5, inclusive, shall be used for the restoration of other historic properties specified in §§ 1-19A-13.1 and 1-19A- 13.2.

1-19A-13.5. Adoption of rules. For the purpose of the administration of §§ 1-19A-13.1 to 1-19A-13.5, inclusive, the State Historical Society Board of Trustees is authorized to adopt rules pursuant to chapter 1-26.

1-19A-14. Information provided on historic properties. The Office of History shall have the power and duty to provide information on historic properties within the state to the agencies and instrumentalities of the federal, state, and local governments and, where appropriate to private individuals and organizations.

1-19A-15. Stimulation of public interest in historic preservation. The Office of History shall have the power and duty to stimulate public interest in historic preservation including the development and implementation of interpretive programs for historic properties listed on the state register of historic places and through the management of the state's historical marker program.

1-19A-16. On-going programs of office--Programs of school of mines and technology not affected--Charge for publications. The Office of History shall have the power and duty to develop an on-going program of historical, architectural, paleontological, and archaeological research and development to include continuing surveys, excavation, scientific recording, interpretation, and publication of the state's historical, architectural, archaeological, paleontological, and cultural resources. The provisions of this section do not limit, modify, or in any way alter initiation, control, or administration of programs within the South Dakota School of Mines and Technology. A reasonable charge may be made for publications.

1-19A-17. Improvement and operation of historic properties--Legislative consent required for acquisition. Any historic property acquired, whether in fee or otherwise, may be used, maintained, improved, restored, or operated by the office for any purpose within its powers and not inconsistent with the purpose of the continued preservation of the property. No historic property shall be acquired, whether in fee or otherwise, except by act of the Legislature.

1-19A-18. Obsolete.

1-19A-18.1. State Review Board abolished. The State Review Board established pursuant to chapter 1-19A, is hereby abolished.

1-19A-19. Powers and duties of board. The State Historical Society Board of Trustees shall have the power and duty to:

(5) Approve nominations to the state and national registers of historic places;

(2) Review the state survey of historic properties undertaken in accordance with the provisions of this chapter;

(3) Review the content of the state preservation plan developed in accordance with the provisions of this chapter;

(4) Approve the removal of properties from the state register;

(5) Recommend the removal of properties from the national register;

(6) Otherwise act in an advisory capacity to the Office of History.

1-19A-20. Tax moratorium on increased valuation due to restoration or rehabilitation of historic property. There is a moratorium on the taxation of increased valuation due to restoration or rehabilitation of real estate placed on the State Register of Historic Places in accordance with § 1- 19A-5 and which has been assisted through federal restoration grant-in-aid assistance provided by Public Law 102-575 as amended to January 1, 1994, or which has been substantially restored or rehabilitated with the assistance of the historic preservation loan fund, or which has undergone privately funded restoration or rehabilitation which has been certified as meeting historic preservation standards by the State Historical Society Board of Trustees. The board shall use U.S. Department of the Interior standards for historic preservation projects codified in 36 C.F.R. 67 as of January 1, 1994, to approve or deny certifications. The moratorium shall begin in the year that approval of the completed work is granted and shall extend for a period of eight years.

1-19A-21. Covenant to maintain property required to benefit from chapter. No property so restored or rehabilitated may benefit from the provisions of this chapter unless the owner of such property attaches a restrictive covenant running with the land which states that the property shall be maintained in a manner which preserves the property's restored portions.

1-19A-22. Cancellation of tax moratorium. If the State Historical Society Board of Trustees determines that the owner of any property given a tax moratorium pursuant to § 1-19A-20 has failed to maintain such property, the board may, after a public hearing, cancel the tax moratorium on such property. If the board cancels a tax moratorium pursuant to this section, the board shall notify the director of equalization and the treasurer of the county where such property is located of such cancellation.

1-19A-23. Ratification of previous moratoriums. All applications for tax moratoriums on properties properly placed on the State Register of Historic Places which were restored with federal restoration grant-in-aid assistance, or received assistance from the historic preservation loan fund, or have undergone privately funded restoration or rehabilitation, and were filed with and formally certified by the State Historical Society Board of Trustees prior to January 1, 1994, are hereby ratified as of the date of such filing. Nothing in this section shall affect any tax moratorium filed, reviewed, or granted prior to January 1, 1992.

1-19A-24. Moratoriums for certain property prohibited. The State Historical Society Board of Trustees may not grant a tax moratorium to any real estate which is not on the state or national register and which is moved from the location where such real estate was located when originally constructed.

1-19A-25. Heritage area designation. A county, municipality, or township may apply to the board for a heritage area designation in accord with criteria contained in this section and §§ 1-19A- 26 to 1-19A-28, inclusive, and the rules promulgated pursuant thereto. For the purposes of this section and §§ 1-19A-26 to 1-19A-28, inclusive, a heritage area is any county, municipality, or township which contains historic properties which possess outstanding historic value, displays exceptional preservation qualities, or is otherwise genuine and exemplary of South Dakota's diverse history and culture.

1-19A-26. Determining heritage areas. The board shall consider the following when determining if a county, municipality, or township is designated as a heritage area:

(1) Whether there is an established program which interprets the entirety of the historic properties to both the residents and visiting public of the proposed heritage area;

(2) Whether there is an adopted and actively implemented historic preservation plan encompassing all of the historic properties within the proposed heritage area;

(3) Whether there is a demonstrated ability to use historic properties within the proposed heritage area to contribute to the economic welfare of this state;

(4) Whether the proposed heritage area is readily identifiable to the visiting public;

(5) Whether there are established effective partnerships among public, private, and nonprofit entities appropriate for the protection and promotion of the proposed heritage area; and

(6) Whether the quality of the preservation, interpretation, and management of the proposed heritage area meets the standards established by the board.

1-19A-27. Promulgation of rules for heritage area designations. The board shall promulgate rules pursuant to chapter 1-26 to:

(3) Establish criteria in addition to that found in § 1-19A-26 concerning natural or scenic qualities which would compliment the historic value of a proposed heritage area;

(2) Establish application procedures and criteria for designation as a heritage area;

(3) Establish preservation, interpretation, and management standards pursuant to subdivision

(4) Withdraw a heritage area designation if a county, municipality, or township fails to comply with the criteria established in subdivision (2) of this section.

1-19A-28. Promotional materials to consider designated heritage areas--Prioritizing heritage areas for historic properties benefits. Each agency of state government that produces promotional materials targeted to the visiting public shall accord special consideration to designated heritage areas. Each applicable agency of state government shall include heritage areas when establishing priorities for benefits accruing to historic properties, including appropriations or other funding for development of historic properties.

1-19A-29. Adoption of rules. For the purpose of the administration of this chapter the State Historical Society Board of Trustees shall adopt rules pursuant to chapter 1-26 in the following areas:

(1) Definitions;

(5) Standards for historic preservation, restoration, and rehabilitation projects;

(3) Project application procedures;

(4) Requests for project information;

(5) Project approval and nonapproval;

(6) Terms of project certification;

(7) County notification of certification;

(8) Terms of restrictive covenants;

(9) Filing of restrictive covenants;

(10) Violation of covenants; and

(11) Cancellation of certification.

1-19B-1. Legislative findings--Purpose of chapter. Whereas the Legislature of the State of South Dakota has determined that the historical, architectural, archaeological, paleontological, and cultural heritage of this state is among its most important assets, it is hereby declared to be the purpose of this chapter to authorize the local governing bodies of this state to engage in a comprehensive program of historic preservation, to promote the use and conservation of historic properties for the education, inspiration, pleasure, and enrichment of the citizens of this state.

1-19B-2. County and municipal historic preservation commissions authorized--Purpose. The governing body of any county or municipality is hereby authorized to establish an historic preservation commission, hereinafter referred to as "the commission," to preserve, promote and develop the historical resources of such county or municipality in accordance with the provisions of this chapter.

1-19B-3. Composition of preservation commission--Residence--Terms of office. The Historic Preservation Commission shall consist of not less than five nor more than ten members, who shall be appointed by the governing body with due regard to proper representation of such fields as history, architecture, urban planning, archaeology, paleontology, and law. All members of the commission shall reside within the jurisdiction of the county or municipality establishing the commission and shall serve for terms not to exceed three years, being eligible for reappointment as shall be specified by the governing body.

1-19B-4. Employment of personnel. The Historic Preservation Commission may employ such qualified staff personnel as it deems necessary.

1-19B-5. Annual special purpose tax levy--Approval by voters required. To achieve the purposes of this chapter, the governing body of any county or municipality may levy annual taxes therefor as a special purpose, in addition to any allowed by the Constitution of the State of South Dakota. No tax shall be levied for the purposes of this chapter unless it shall have been first approved by the qualified voters of the county or municipality.

1-19B-6. Revenue bonds authorized. To achieve the purposes of this chapter, the governing body of any county or municipality may issue revenue bonds in accordance with chapter 9-40.

1-19B-7. Appropriations for operating expenses and acquisition and management of historic properties. The governing board of a county or municipality is authorized to make appropriations to an historic preservation commission established pursuant to this chapter in any amount that it may determine necessary for the expenses of the operation of the commission, and may make available any additional amounts necessary for the acquisition, restoration, preservation, operation, and management of historic properties.

1-19B-8. Survey of local historic properties--Standards and criteria. Any county or municipal historic preservation commission established pursuant to this chapter shall be authorized to conduct a survey of local historic properties, complying with all applicable standards and criteria of the statewide survey undertaken by the Office of History of the Department of Tourism and State Development.

1-19B-9. Entry on private lands for survey--Consent required to enter building. Any county or municipal historic preservation commission established pursuant to this chapter shall be authorized to enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee, or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof.

1-19B-10. Participation in local planning processes. Any county or municipal historic preservation commission established pursuant to this chapter shall be authorized to participate in the conduct of land-use, urban renewal, and other planning processes undertaken by the county or municipality.

1-19B-11. Cooperation with governmental agencies. Any county or municipal historic preservation commission established pursuant to this chapter shall be authorized to cooperate with the federal, state, and local governments in the pursuance of the objectives of historic preservation.

1-19B-12. Contractual powers of preservation commission. Any county or municipal historic preservation commission established pursuant to this chapter shall be authorized to contract, with the approval of the local governing body, with the state or the federal government, or any agency of either, or with any other organization.

1-19B-13. Acquisition of historic properties. Any county or municipal historic preservation commission established pursuant to this chapter shall be authorized to acquire fee and lesser interests in historic properties, including adjacent or associated lands, by purchase, bequest, or donation.

1-19B-14. Title to property acquired--Supervision and control. All lands, buildings, structures, sites, areas, or objects acquired by funds appropriated by a county or municipality shall be acquired in the name of the county or municipality unless otherwise provided by the governing board. So long as owned by the county or municipality, historic properties may be maintained by or under the supervision and control of the county or municipality. However, all lands, buildings, or structures acquired by an historic preservation commission from funds other than those appropriated by a county or municipality may be acquired and held in the name of the Historic Preservation Commission, the county or municipality, or both.

1-19B-15. Maintenance and operation of historic properties. Any county or municipal historic preservation commission established pursuant to this chapter shall be authorized to preserve, restore, maintain, and operate historic properties under the ownership or control of the commission.

1-19B-16. Acquisition of historic easements--Definition. Any county or municipality may acquire, by purchase, donation, or condemnation, historic easements in any area within their respective jurisdictions wherever and to the extent that the governing body of the county or municipality determines that the acquisition will be in the public interest. For the purpose of this section, "historic easement" means any easement, restriction, covenant, or condition running with the land, designated to preserve, maintain, or enhance all or part of the existing state of places of historical, architectural, archaeological, paleontological, or cultural significance.

1-19B-17. Lease or disposition of historic properties--Rights reserved. Any county or municipal historic preservation commission established pursuant to this chapter shall be authorized to lease, sell, and otherwise transfer or dispose of historic properties subject to rights of public access and other covenants and in a manner that will preserve the property.

1-19B-18. Educational and interpretive programs. Any county or municipal historic preservation commission established pursuant to this chapter shall be authorized to promote and conduct an educational and interpretive program on historic properties within its jurisdiction.

1-19B-19. Recommendations and information to governing body. Any county or municipal historic preservation commission established pursuant to this chapter shall be authorized to recommend ordinances and otherwise provide information for the purposes of historic preservation to the county or municipal governing body.

1-19B-20. Ordinances designating historic properties--Criteria--Procedure. The local governing body of any county or municipality may adopt an ordinance designating one or more historic properties on the following criteria: historical, architectural, archaeological, and cultural significance; suitability for preservation or restoration; educational value; cost of acquisition, restoration, maintenance, operation, or repair; possibilities for adaptive or alternative use of the property; appraised value; and the administrative and financial responsibility of any person or organization willing to underwrite all or a portion of such costs. In order for any historic property to be designated in the ordinance, it must in addition meet the criteria established for inclusion of the property in the state register of historic places established pursuant to chapter 1-19A. No ordinance designating an historic property pursuant to this section may be adopted until the procedural steps set forth in §§ 1-19B-21 to 1-19B-24, inclusive, have been taken.

1-19B-21. Investigation and report before designation of historic property. Before an ordinance designating an historic property is adopted pursuant to § 1-19B-20, the local historic preservation commission shall make an investigation and report on the historical, architectural, archaeological, or cultural significance of the property in question.

1-19B-22. Hearing on designation of historic property--Notice. Before an ordinance designating an historic property is adopted pursuant to § 1-19B-20, the local governing body shall hold a public hearing on the proposed ordinance, after giving sufficient written notice to the owners and occupants of the property and posting public notice in its normal manner.

1-19B-23. Ordinance enforcing waiting period--Posting of sign. For each designated historic property, an ordinance adopted pursuant to §§ 1-19B-20 to 1-19B-24, inclusive, shall require that the waiting period set forth in § 1-19B-27 be observed prior to its demolition, material alteration, remodeling, or removal. The ordinance shall also provide for a suitable sign or marker on or near the property indicating that the property has been so designated.

1-19B-24. Notification to owners of historic property designated--Filing of ordinance. Upon adoption of an ordinance pursuant to § 1-19B-20, the owners and occupants of each designated historic property shall be given written notification of such designation by the local governing body. One copy of the ordinance shall be filed by the local historic preservation commission in the office of the register of deeds for the county in which the property is located.

1-19B-25. Notice to director of equalization of designation of historic property-- Consideration in appraisal. Upon the adoption of an ordinance designating an historic property pursuant to § 1-19B-20 or if the property is designated an historic property by the Department of Interior or the national park service, the local historic preservation commission shall give notice of such designation to the director of equalization of the county in which the property is located. The designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the director of equalization in appraising it for tax purposes.

1-19B-26. Transfer by owners of development rights in historic properties. Any county or municipal governing body may establish procedures authorizing owners of designated historic properties to transfer development rights in such amounts and subject to such conditions as the governing body shall determine. For the purposes of this section, "development rights" are the rights granted under applicable local law respecting the permissible bulk and size of improvements erected thereon.

1-19B-27. Notice by owner before demolition or alteration of historic property--Waiting period--Negotiations by commission. An historic property designated by ordinance as herein provided may be demolished, materially altered, remodeled, relocated, or put to a different use only after one hundred eighty days' written notice of the owner's proposed action has been given to the local historic preservation commission. During this period, the commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the property.

1-19B-28. Negotiations during waiting period for acquisition of historic property. During the waiting period required by § 1-19B-27, or at any time prior thereto following notice of designation to the owner as provided in § 1-19B-24 and where such action is reasonably necessary or appropriate for the continued preservation of the property, the Historic Preservation Commission may enter into negotiations with the owner for the acquisition by gift, purchase, exchange, or otherwise of the property or any interest therein.

1-19B-29. Waiver of waiting period when preservation of character of property ensured. The Historic Preservation Commission shall have the discretionary authority to waive all or any portion of the waiting period required by § 1-19B-27, provided that the alteration, remodeling, relocation, or change of use is undertaken subject to conditions agreed to by the commission ensuring the continued maintenance of the historical, architectural, archaeological, or cultural integrity and character of the property.

1-19B-30. Reduction of waiting period for extreme hardship. The Historic Preservation Commission may reduce the waiting period required by § 1-19B-27 in any case where the owner would suffer extreme hardship, not including loss of profit, unless a reduction in the required period were allowed.

1-19B-31. Ordinary maintenance and repairs not prohibited--Changes required for public safety. Nothing in this chapter shall be construed to prevent the ordinary maintenance or repair of any exterior feature in or on an historic property that does not involve a change in design, material, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, demolition, or removal of any such feature when a building inspector or similar official certifies to the Historic Preservation Commission that such action is required for the public safety because of an unsafe or dangerous condition.

1-19B-32. Establishment of district study committee authorized. An historic district study committee may be established as provided by § 1-19B-33 for the purpose of making an investigation of a proposed historic district.

1-19B-33. Composition of district study committee--Residence of members. A committee established pursuant to § 1-19B-32 shall consist of not less than three nor more than seven members appointed by the local governing body with due regard to proper representation of fields such as history, architecture, architectural history, urban planning, archaeology, paleontology, and law. Where possible, the members shall be selected from residents of the proposed district.

1-19B-34. Investigations by district study committee--Criteria. An historic district study committee, established pursuant to § 1-19B-32, shall make an investigation of the historical, architectural, archaeological, paleontological, and cultural significance of the buildings, structures, sites, or surroundings included as any proposed historic district. The committee's investigation and recommendations shall comply with the criteria adopted by the State Historical Society Board of Trustees pursuant to chapter 1-19A.

1-19B-35. Report of findings by district study committee. The historic district study committee shall report its findings to the local planning board, the local historic preservation commission, and the State Historical Society Board of Trustees for their consideration and recommendations.

1-19B-36. Hearing on establishment of historic district--Notice to property owners. Sixty days after transmittal of its findings pursuant to § 1-19B-35 the historic district study committee shall hold a public hearing thereon after due notice, which shall include written notice, postage prepaid, to the owners of all properties to be included in any proposed historic district.

1-19B-37. Final recommendations by study committee--Draft ordinance. An historic district study committee shall submit a final report with its recommendations and a draft of a proposed ordinance to the county or municipal governing body.

1-19B-38. Establishment of historic district by ordinance--Commission required. A county or municipality may, after meeting the requirements of §§ 1-19B-34 to 1-19B-37, inclusive, establish by ordinance one or more historic districts within the area of its jurisdiction. Whenever an historic district is established, an historic district commission shall be established.

1-19B-39. Amendment of historic district ordinance--Studies and reports. Any ordinance adopted pursuant to § 1-19B-38 may, from time to time, be amended in the same manner except that the historic district commission established as provided in § 1-19B-38 shall study such proposed amendments and report thereon as required under §§ 1-19B-34 to 1-19B-37, inclusive.

1-19B-40. Composition of district commission--Residence of members--Terms of office of members--Chairman and vice-chairman. An historic district commission established pursuant to § 1- 19B-38 shall consist of not less than three nor more than seven members appointed by the local governing body with due regard to proper representation of fields such as history, architecture, architectural history, urban planning, archaeology, paleontology, and law. Where possible, the members shall be selected from residents of the proposed district. The appointments to membership on the commission shall be so arranged that the term of at least one member will expire each year, and their successors shall be appointed in like manner for terms of three years. The commission shall elect annually a chairman and vice-chairman from its own number.

1-19B-41. Rules and regulations of district commission--Employment of personnel--Acceptance and use of gifts. An historic district commission established pursuant to § 1-19B-38 may adopt rules and regulations not inconsistent with the provisions of this chapter, and may, subject to appropriation, employ clerical and technical assistants or consultants and may accept gifts of money and expend the same for such purposes.

1-19B-42. Certificate of appropriateness required for exterior alterations in historic district. After the designation of an historic district, no exterior portion of any building or other structure (including walls, fences, light fixtures, steps, and pavement, or other appurtenant features) nor above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered,

restored, moved, or demolished within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the Historic District Commission. The municipality shall require such a certificate to be issued by the commission prior to the issuance of a building permit or other permit granted for purposes of constructing or altering structures. A certificate of appropriateness shall be required whether or not a building permit is required.

1-19B-43. Exterior features subject to control. For purposes of this chapter, "exterior features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the color, the kind and texture of the building material, and the type and style of all windows, doors, light fixtures, signs, other appurtenant fixtures, and natural features such as trees and shrubbery. In the case of outdoor advertising signs, "exterior features" shall be construed to mean the style, material, size, and location of all such signs.

1-19B-44. Interior arrangement not subject to control--Restriction on commission activities. The Historic District Commission shall not consider interior arrangement and shall take no action under § 1-19B-42 except for the purpose of preventing the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or natural features in the historic district which would be incongruous with the historical, architectural, archaeological, or cultural aspects of the district.

1-19B-45. Certificate of appropriateness required for change in use within historic district--Prerequisite to zoning change. No change in the use of any structure or property within a designated historic district shall be permitted until after an application for a certificate of appropriateness has been submitted to and approved by the Historic District Commission. The county or municipality shall require such a certificate to be issued by the commission prior to the approval of any change of zoning classification within the historic district.

1-19B-46. Certificate issued in case of extreme hardship. The Historic District Commission may approve an application for a certificate of appropriateness in any case where the owner would suffer extreme hardship, not including loss of profit, unless the certificate of appropriateness were issued forthwith.

1-19B-47. Notice and hearing before action on certificate of appropriateness. Prior to issuance or denial of a certificate of appropriateness the historic district commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard. In cases where the commission deems it necessary, it may hold a public hearing concerning the application.

1-19B-48. Issuance of certificate when proposed change appropriate. If the Historic District Commission determines that the proposed construction, reconstruction, alteration, moving, or demolition is appropriate, it shall forthwith approve such application and shall issue to the applicant a certificate of appropriateness.

1-19B-49. Denial of certificate--Reasons recorded--Notice to applicant. If the Historic District Commission determines that a certificate of appropriateness should not be issued, it shall place upon its records the reasons for such determination and shall forthwith notify the applicant of such determination, furnishing him an attested copy of its reasons therefor and its recommendations, if any, as appearing in the records of said commission.

1-19B-50. Appeal to circuit court by applicant for certificate. Any applicant aggrieved by a determination of the Historic District Commission may appeal to the circuit court for the county in which the land concerned is situated.

1-19B-51. Maintenance and repairs not changing appearance not prevented--Correction of unsafe conditions. Nothing in this chapter shall be construed to prevent the ordinary maintenance or repair of any exterior feature in an historic district which does not involve a change in design, material, color, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, or demolition of any such feature which the building inspector or similar official shall certify is required by the public safety because of an unsafe or dangerous condition.

1-19B-52. Ordinances to prevent deterioration by neglect--Misdemeanor. The governing body of any county or municipality may enact an ordinance to prevent the deterioration by intentional neglect of any designated historic property or any property within an established historic district. Any property owner violating an ordinance established pursuant to this section shall be guilty of a Class 2 misdemeanor. Each day that a violation continues to exist shall constitute a separate offense.

1-19B-53. Governing body's power to protect historic properties. In addition to any power or authority of a county or municipality to regulate by planning or zoning laws and regulations or by local laws and regulations, the governing body of any county or municipality is empowered to provide by regulations, special conditions, or restrictions for the protection, enhancement, preservation and use of historic properties. Such regulations, special conditions, and restrictions may include appropriate and reasonable control of the use or appearance of adjacent or associated private property within the public view, or both.

1-19B-54. Exemption of historic properties from health and building codes. The governing body of any county or municipality, in order to promote the preservation and restoration of historic properties within its jurisdiction, may exempt an historic property from the application of such standards contained in the county or municipal health or building codes, or both, as the governing body, upon recommendation of the local historic preservation commission, shall determine would otherwise prevent or seriously hinder the preservation or restoration of said historic property.

1-19B-55. Public regulation or acquisition of historic properties unimpaired. Nothing in this chapter shall be construed to prevent the regulation or acquisition of historic buildings, structures, sites, areas, or objects owned by the state or any of its political subdivisions, agencies, or instrumentalities.

1-19B-56. Definitions. Terms used in §§ 1-19B-56 to 1-19B-60, inclusive, mean:

(1) "Conservation easement," a non-possessory interest of a holder in real property imposing limitations or affirmative obligations the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forest, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, paleontological or cultural aspects of real property;

(2) "Holder":

(a) A governmental body empowered to hold an interest in real property under the laws of this state or the United States; or

(b) A charitable corporation, charitable association or charitable trust, the purposes or powers of which include retaining or protecting the natural or open-space values of real property, assuring the availability of real property for agricultural, forest, recreational or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural, archaeological, paleontological, or cultural aspects of real property;

(5) "Third-party right of enforcement," a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association, or charitable trust, which, although eligible to be a holder, is not a holder.

1-19B-57. Conservation easement creation, modification, transfer, and termination. A conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements. The term of the conservation easement shall be established by the parties to the easement. No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and recording the acceptance. An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it.

1-19B-58. Actions affecting conservation easements. An action affecting a conservation easement may be brought by:

(1) An owner of an interest in the real property burdened by the easement;

(2) A holder of the easement; or

(3) A person having a third-party right of enforcement.

Sections 1-19B-56 to 1-19B-60, inclusive, do not affect the power of a court to modify or terminate a conservation easement according to the principles of law and equity.

1-19B-59. Validity of conservation easements. A conservation easement is valid even though:

(1) It is not appurtenant to an interest in real property;

(2) It can be or has been assigned to another holder;

(3) It is not of a character that has been recognized traditionally at common law;

(4) It imposes a negative burden;

(5) It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

(6) The benefit does not touch or concern real property; or

(7) There is no privity of estate or of contract.

1-19B-60. Application to conservation easements. Sections 1-19B-56 to 1-19B-60, inclusive, apply to any interest created after July 1, 1984 which complies with §§ 1-19B-56 to 1-19B-60, inclusive, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise. Sections 1-19B-56 to 1-19B-60 apply to any interest created before July 1, 1984 if it would have been enforceable had it been created after July 1, 1984 unless retroactive application contravenes the Constitution or laws of this state or the United States. Sections 1-19B-56 to 1-19B-60, inclusive, do not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement, or otherwise, that is enforceable under other law of this state.

1-19B-61. Rejected by special referendum election held September 14, 1993.

1-19B-62. Ordinance requiring review of undertakings which will encroach upon, damage or destroy historic property. Any county or municipality may enact an ordinance requiring a county or municipal historic preservation commission to review any undertaking, whether publicly or privately funded, which will encroach upon, damage, or destroy any historic property included in the national register of historic places or the state register of historic places. The ordinance may require the issuance of a permit before any undertaking which will encroach upon, damage, or destroy historic property may proceed. The decision to approve or deny a permit shall be based on the U.S. Department of the Interior Standards for Historic Preservation Projects codified in 36 C.F.R. 67 as of January 1, 1994. Properties owned by the State of South Dakota are exempt from local review.

Appendix J:

Consultation Procedures for State and Local Government Projects (SDCL 1-19A-11.1).[152]

The Office of History may require an abbreviated case report if, in its opinion, less than a comprehensive review of a preservation issue is needed. The office shall evaluate each project to determine whether an abbreviated case report is appropriate.

24:52:07:03. Standards for case report. If a state entity of a political subdivision of the state is required by law or rule to repot possible threats to the historical integrity of a property on the state register, the threat must be reported by means of a case report that meets the requirements of this section.

Case reports must provide the Office of History with sufficient information for the office to make an independent review of effects on the historical integrity of historic properties and shall be the basis for informed comments to state entities and the public. Case reports shall thoroughly examine all relevant factors involved in a preservation question. They must contain the following:

(1) A description of any impending project which may adversely affect historic property;

(2) Photography, maps, or drawings showing the existing project site, the extent of projects, and details of the proposed projects, which may include three-dimensional models or accurate computer-generated representations of proposed new construction. Models or representations must clearly show the visual impacts of new construction on surrounding neighborhood or landscapes;

(3) The planning and approval schedule for projects which may adversely affect historic property;

(4) A statement explaining how projects adversely affect the historic property were brought to the attention of a state entity or political subdivision;

(5) A description of potentially affected historic property with any relevant physical, economic, or situational information on the property;

(6) A description of the potential effects of a proposed project on historic property and the basis for the determinations of effect;

(7) A historic preservation plan or description and evaluation of all feasible and prudent alternatives which a state entity or political subdivision proposes in order to minimize adverse effects of a project on historic property and alternatives which the state entity or political subdivision has examined and rejected. The reasons for rejection must be included. This section of the case report must clearly substantiate that all possible efforts to minimize harm to the historic property have been undertaken. Alternatives to aspects of the project which may adversely affect the historic property must:

[152] Additional information on consultation procedures for state and local government projects can be found at http://www.sdhistory.org/HP/hp_rev.htm

(a.) Receive consideration based of factual reports, research, tried methods, and professional and lay preservation advice;

(b.) Explore alternatives beyond the immediate project, taking into account broad community or regional issues in which the historic resources may play a contributing role;

(c.) Take into account the impact of potential adverse effect on surrounding historic resources, community preservation plans, and long-range community opportunities;

(d.) Be based on professional assessments of the value and basic structural condition of the affected property and estimates of a range of rehabilitation or mitigative options prepared by people experienced in historical preservation work; and

(e.) Provide adequate periods of time for information to be prepared and for preservation options to be attempted;

(8.) Documentation of consultation with the Office of History regarding the identification and Evaluation of historic properties, assessment of effect, and any consideration of alternatives or mitigation measures;

(9.) A description of the efforts of a state entity or political subdivision to obtain and consider the views of affected and interested parties;

(10.) Documentation that a local historical preservation commission constituted under SDCL-1-19B with jurisdiction in the city or county where the affected historic property is located was provided a specified period of time to examine plans for proposed projects. Official comments of the commission must be included. The Office of History shall specify periods of time not to exceed 180 days to be given local historical preservation commissions to examine plans and may specify such periods for each set of revised plans submitted for a project. The commission shall:

(a.) Agree with the findings of the case report;

(b.) Disagree with the findings of the case report; or

(c.) Decline to comment on the findings of the case report;

(11.) Copies of written views submitted by the public to the state entity or political subdivision concerning the potential adverse effects of projects on historic properties and alternatives to reduce or avoid those effects.

SDCL 1-19A-11.1 - PROJECT NOTIFICATION FORM

State/Local Government Entity Requesting Review:

Contact Person:
Name:
Address:
Phone Number:
Email:

Project Information:
Project Location:

This property is:
- ☐ Listed individually in the State/National Register of Historic Places
- ☐ Located in a listed historic district: _____

Project Description:

Please include **photographs** of the property, including at least an overall photograph of the main façade and other features that may be impacted.

Government Official's Signature: _____

Mail this form and photographs to:

ATTN: Review and Compliance
State Historic Preservation Office
900 Governors Dr.
Pierre SD 57501

Appendix K:

Consultation Procedures for Federal Government Projects

Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires Federal agencies to take into account the effects of their undertakings on historic properties, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The historic preservation review process mandated by Section 106 is outlined in regulations issued by ACHP. Revised regulations, "Protection of Historic Properties" (36 CFR Part 800), became effective January 11, 2001, and are summarized below. [153]

Initiate Section 106 Process

The responsible Federal agency first determines whether it has an undertaking that is a type of activity that could affect historic properties. Historic properties are properties that are included in the National Register of Historic Places or that meet the criteria for the National Register. If so, it must identify the appropriate State Historic Preservation Officer/Tribal Historic Preservation Officer (SHPO/THPO) to consult with during the process.[154] It should also plan to involve the public, and identify other potential consulting parties. If it determines that it has no undertaking, or that its undertaking is a type of activity that has no potential to affect historic properties, the agency has no further Section 106 obligations.

Identify Historic Properties

If the agency's undertaking could affect historic properties, the agency determines the scope of appropriate identification efforts and then proceeds to identify historic properties in the area of potential effects. The agency reviews background information, consults with the SHPO/THPO and others, seeks information from knowledgeable parties, and conducts additional studies as necessary. Districts, sites, buildings, structures, and objects listed in the National Register are considered; unlisted properties are evaluated against the National Park Service's published criteria, in consultation with the SHPO/THPO and any Indian tribe or Native Hawaiian organization that may attach religious or cultural importance to them.

If questions arise about the eligibility of a given property, the agency may seek a formal determination of eligibility from the National Park Service. Section 106 review gives equal consideration to properties that have already been included in the National Register as well as those that have not been so included, but that meet National Register criteria.

If the agency finds that no historic properties are present or affected, it provides documentation to the SHPO/THPO and, barring any objection in 30 days, proceeds with its undertaking.

If the agency finds that historic properties are present, it proceeds to assess possible adverse effects.

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[153] Additional information on the Section 106 process can be found at www.achp.gov/106summary.html

[154] The regulations define the term "THPO" as those tribes that have assumed SHPO responsibilities on their tribal lands and have been certified pursuant to Section 101(d)(2) of the NHPA. Nevertheless, remember that tribes that have not been so certified have the same consultation and concurrence rights as THPOs when the undertaking takes place, or affects historic properties, on their tribal lands. The practical difference is that during such undertakings, THPOs would be consulted *in lieu of* the SHPO, while non-certified tribes would be consulted *in addition to* the SHPO.

Assess Adverse Effects

The agency, in consultation with the SHPO/THPO, makes an assessment of adverse effects on the identified historic properties based on criteria found in ACHP's regulations.

If they agree that there will be no adverse effect, the agency proceeds with the undertaking and any agreed-upon conditions.

If a) they find that there is an adverse effect, or if the parties cannot agree and ACHP determines within 15 days that there is an adverse effect, the agency begins consultation to seek ways to avoid, minimize, or mitigate the adverse effects.

Resolve Adverse Effects

The agency consults to resolve adverse effects with the SHPO/THPO and others, who may include Indian tribes and Native Hawaiian organizations, local governments, permit or license applicants, and members of the public. ACHP may participate in consultation when there are substantial impacts to important historic properties, when a case presents important questions of policy or interpretation, when there is a potential for procedural problems, or when there are issues of concern to Indian tribes or Native Hawaiian organizations.

Consultation usually results in a Memorandum of Agreement (MOA), which outlines agreed-upon measures that the agency will take to avoid, minimize, or mitigate the adverse effects. In some cases, the consulting parties may agree that no such measures are possible, but that the adverse effects must be accepted in the public interest.

Implementation

If an MOA is executed, the agency proceeds with its undertaking under the terms of the MOA.

Failure to resolve adverse effects

If consultation proves unproductive, the agency or the SHPO/THPO, or ACHP itself, may terminate consultation. If a SHPO terminates consultation, the agency and ACHP may conclude an MOA without SHPO involvement. However, if a THPO terminates consultation and the undertaking is on or affecting historic properties on tribal lands, ACHP must provide its comments. The agency must submit appropriate documentation to ACHP and request ACHP's written comments. The agency head must take into account ACHP's written comments in deciding how to proceed.

Tribes, Native Hawaiians, and the public

Public involvement is a key ingredient in successful Section 106 consultation, and the views of the public should be solicited and considered throughout the process.

The regulations also place major emphasis on consultation with Indian tribes and Native Hawaiian organizations, in keeping with the 1992 amendments to NHPA. Consultation with an Indian tribe must respect tribal sovereignty and the government-to-government relationship between the Federal Government and Indian tribes. Even if an Indian tribe has not been certified by NPS to have a Tribal Historic Preservation Officer who can act for the SHPO on its lands, it must be consulted about undertakings on or affecting its lands on the same basis and in addition to the SHPO.