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Diane E. Hepford

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## TEXAS HISTORIC LANDMARKS — CRITERIA FOR DESIGNATION

DIANE E. HEPFORD

Public awareness and concern for the preservation of landmark buildings has recently increased. This awareness and concern has been displayed by the wide publicity the Grand Central Terminal case<sup>1</sup> received and the public outcry against the demolition of New York's Radio City Music Hall.<sup>2</sup> Interest exists in the preservation of "big city" historic landmarks as well as in other preservation projects.<sup>3</sup> Across the country, efforts are growing to restore old homes, convert decaying buildings into shops and offices, and revitalize downtown areas that are suffering from urban blight.<sup>4</sup> Along with this interest in recycling the old into economically useful buildings, is an increased public awareness of the need to protect "one of a kind" historic sites and landmarks.<sup>5</sup> Every state and more than five hundred municipalities have enacted legislation encouraging or requiring the preservation of historically important buildings and sites.<sup>6</sup>

### THE TEXAS ANTIQUITIES COMMITTEE

The Texas Antiquities Code,<sup>7</sup> enacted in 1969,<sup>8</sup> created the Texas Anti-

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1. Preservationists were exuberant over their victory in *Penn Central Transp. Co. v. City of New York*, \_\_\_ U.S. \_\_\_, 98 S. Ct. 2646, 57 L. Ed. 2d 631 (1978). The Supreme Court affirmed the lower court's decision enjoining the construction of a fifty-story office building over Penn Central's Grand Terminal, a designated landmark. *Id.* at \_\_\_, 98 S. Ct. at 2666, 57 L. Ed. 2d at 657. This decision affirms the rights of cities to designate and protect historical landmarks. *Id.* at \_\_\_, 98 S. Ct. at 2652-54, 57 L. Ed. 2d at 639-43.

2. PRESERVATION NEWS, January 1979, at 4.

3. *Id.* at 4.

4. See, e.g., PRESERVATION NEWS, February 1979, at 7 (restoration of historic Willard Hotel and federal buildings by Pennsylvania Avenue Development Corporation); HISTORIC PRESERVATION, October — December 1978, at 20, 24 (hotels, factories, schools converted to apartments for elderly); PRESERVATION NEWS, October 1978, at 15 (Main Street projects throughout small towns emphasize beauty and usefulness).

5. See PRESERVATION NEWS, January 1979, at 4.

6. *Penn Cent. Transp. Co. v. City of New York*, \_\_\_ U.S. \_\_\_, \_\_\_, 98 S. Ct. 2646, 2651, 57 L. Ed. 2d 631, 638 (1978); see PRESERVATION NEWS, January 1979, at 4. The philosophy behind these statutes is two fold. First, it is recognized that many historic landmarks and structures have been destroyed without consideration of their historic significance or value. Second, it is believed that buildings and sites of significant historic, cultural, or architectural value are worth preserving. These structures "represent . . . lessons of the past," "embody precious features of our heritage," and "serve as examples of quality for today." *Penn Cent. Transp. Co. v. City of New York*, \_\_\_ U.S. \_\_\_, \_\_\_, 98 S. Ct. 2646, 2651, 57 L. Ed. 2d 631, 638-39 (1978).

7. TEX. NAT. RES. CODE ANN. §§ 191.001-.174 (Vernon 1978).

8. 1969 Tex. Gen. Laws, 2d Sess. ch. 2, § 23, at 103.

quities Committee of seven members from pre-designated classes.<sup>9</sup> Four of the seven members, the director of the State Historical Commission, the director of the State Parks and Wildlife Department, the commissioner of the General Land Office and the State Archeologist, are automatically appointed by virtue of their office.<sup>10</sup> Three citizens, who must be residents of the State of Texas, are appointed by the Governor to serve on this Committee.<sup>11</sup> These committee members consist of one professional historian with expertise in Texas history and culture, one professional archeologist from a recognized museum or a Texas college or university and the director of the Texas Memorial Museum of the University of Texas.<sup>12</sup> The duties of the Committee include designating and determining the site of state archeological landmarks, protecting and preserving the archeological resources of Texas, and keeping an inventory of archeological items maintained by the state.<sup>13</sup> The statute sets forth in detail the procedures to be followed by the Committee in designating a "State Archeological Landmark,"<sup>14</sup> in removing landmark designation,<sup>15</sup> and in permitting salvage and recovery operations of artifacts.<sup>16</sup> It also sets forth criminal penalties for the defacement of historical sites including Indian relics and other designated property.<sup>17</sup>

#### THE TEXAS PROBLEM

The Texas Antiquities Code was enacted under interesting circumstances during a special legislative session in 1969. An emergency clause was appended to the statute, allowing it to take effect immediately.<sup>18</sup> The emergency the legislature referred to was that Texas had no adequate laws providing for the treatment of historic landmarks,<sup>19</sup> and this emergency situation was made evident by the case of an Indiana corporation that salvaged a sunken Spanish galleon off the shores of Padre Island.<sup>20</sup> The

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9. TEX. NAT. RES. CODE ANN. § 191.001 (Vernon 1978).

10. *Id.*

11. *Id.* §§ 191.012-.013. The members of the Antiquities Committee serve a term co-existent with the appointing Governor's term and each serves until his or her successor has been appointed and qualified. *Id.* § 191.014.

12. *Id.* § 191.011.

13. *Id.* § 191.051.

14. *Id.* § 191.094.

15. *Id.* § 191.097.

16. *Id.* §§ 191.053-.056.

17. *Id.* § 191.171 (criminal penalty); *see id.* §§ 191.132-.133 (damage, destruction, or entry without consent) & §§ 191.172-.174 (civil actions by Attorney General, citizen, or state agency).

18. Because "irreparable damage and harm" was rapidly occurring to the "archeological and historical heritage" of Texas, the legislature declared an emergency situation. 1969 Tex. Gen. Laws, 2d Called Sess., ch. 2, § 23, at 103.

19. *Id.* at 103.

20. *Platoro Ltd. v. Unidentified Remains of a Vessel*, 371 F. Supp. 351, 352 (S.D. Tex.

corporation, Platoro Limited, had discovered and attempted to remove artifacts from the galleon. Under Texas statutes that had no connection with historic preservation, the Attorney General of Texas filed suit to enjoin the corporation from removing the artifacts to Indiana.<sup>21</sup> The artifacts were returned to Texas and Platoro Ltd. filed suit in federal district court to establish title to the salvaged artifacts.<sup>22</sup> The court upheld an agreement between the Land Commissioner of Texas and Platoro Ltd. calling for an equal division of the value of the artifacts.<sup>23</sup> Had this contract not been made, it is unclear what amounts the court would have awarded Platoro Ltd. and the State of Texas since there were no controlling statutes.<sup>24</sup>

It is readily apparent that the legislature had the sunken Spanish galleon in mind when drafting the Antiquities Code. Specific references are made to sunken ships and the permissible measures available to salvage sunken artifacts.<sup>25</sup> The legislature's immediate concern for sunken treasures and archeological landmarks is evidenced because it is these concerns, rather than historical sites and buildings, which are the focal points of the statute.<sup>26</sup> Section 191.092 designates all "other sites, objects, buildings, artifacts, implements and locations of historical, archeological, scientific or educational interest" situated on state land as State Archeological Landmarks.<sup>27</sup> The Code also restricts the unauthorized alteration, damage, destruction and excavation of state owned, as well as privately owned, designated landmarks.<sup>28</sup> Section 191.092 is quite broad, placing restrictions on many items of historical, archeological, scientific, or educational interest.<sup>29</sup>

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1970), *supplemented at* 371 F. Supp. 356, 357 (S.D. Tex. 1973), *rev'd on other grounds*, 508 F.2d 1113 (5th Cir. 1975).

21. *Id.* at 352-53; *see* TEX. BUS. CORP. ACT ANN. art. 8.18 (Vernon 1956) (doing business without a certificate of authority); TEX. PENAL CODE ANN. § 147(b) (Vernon 1952) (failure to obtain required permit); Comment, *The Texas Antiquities Code: An Historical Commentary in a Contemporary Context*, 24 Sw. L.J. 326, 326-29 (1970).

22. *Platoro Ltd. v. Unidentified Remains of a Vessel*, 371 F. Supp. 356, 358 (S.D. Tex. 1973), *rev'd on other grounds*, 508 F.2d 1113 (5th Cir. 1975).

23. *Id.* at 358, 361. *Platoro Ltd.* was to receive fifty percent of the valuation of the salvaged goods in cash from the State of Texas. Failure of the state to pay would result in a division of the salvaged items themselves. *Id.* at 361.

24. The court noted that at the time this cause of action arose, Texas had no statute protecting sunken treasures. *Id.* at 354, 361.

25. *See* TEX. NAT. RES. CODE ANN. §§ 191.053, .091, .093 (Vernon 1978). Section 191.091 deals with "[s]unken or abandoned pre-twentieth century ships and wrecks of the sea, and any part of the contents of them." *Id.* § 191.091. Section 191.053 restricts any salvage or recovery operation to those persons, firms, or corporations who obtain contracts from the Antiquities Committee. *Id.* § 191.053.

26. *Id.* §§ 191.053, .091.

27. *Id.* § 191.092 (emphasis added).

28. *Id.* § 191.093-.095; *see* Comment, *Public Historic Preservation in Texas*, 49 TEXAS L. REV. 267, 281-82 (1971).

29. TEX. NAT. RES. CODE ANN. § 191.092 (Vernon 1978).

In 1975, for the first time, the Antiquities Committee used its power to authorize and deny permits for the destruction or alteration of historical buildings.<sup>30</sup> After the Committee denied the Dallas County Community College District a permit to demolish three buildings located on its downtown campus, the college filed for an injunction against the Committee. This case was the first to test the validity of the Antiquities Code.<sup>31</sup>

In discussing the constitutionality of the statute, particularly the section designating historic landmarks, the Texas Supreme Court stated that "no rules or standards which state criteria for 'buildings . . . and locations of historical . . . interest'" exist.<sup>32</sup> The wording of the section was unconstitutionally vague, because "'buildings' comprehends all structures; 'historical' includes all of the past; 'interest' ranges broadly from public to private concerns and embraces fads and ephemeral fascinations."<sup>33</sup> Also the court held that the application of this section of the Antiquities Code to the three buildings was unconstitutional.<sup>34</sup> The Antiquities Committee had advanced the position that the legislature had established the Committee as a group of experts and professionals with unlimited authority to decide what was of historical importance.<sup>35</sup> The court rejected this argument, stating that some reasonable standard is required to safeguard against the dangers of arbitrariness and discriminatory applications by the Committee.<sup>36</sup>

At present, Texas has a void in its Antiquities Code that must be filled.<sup>37</sup> It is necessary, therefore, for Texas to adopt specific criteria and standards to be employed by the Antiquities Committee in the designation of build-

30. 15 Hous. L. Rev. 747, 751 (1978); see *Texas Antiquities Comm. v. Dallas County Community College Dist.*, 554 S.W.2d 924, 926 (Tex. 1977).

31. See *Texas Antiquities Comm. v. Dallas County Community College Dist.*, 554 S.W.2d 924, 925-26 (Tex. 1977); 15 Hous. L. Rev. 747, 751 (1978) See also TEX. NAT. RES. CODE ANN. § 191.093 (Vernon 1978).

32. *Texas Antiquities Comm. v. Dallas County Community College Dist.*, 554 S.W.2d 924, 927 (Tex. 1977); see TEX. NAT. RES. CODE ANN. § 191.092 (Vernon 1978) (formerly TEX. REV. CIV. STAT. ANN. art. 6145-9, § 6 (Vernon Supp. 1970)).

33. *Texas Antiquities Comm. v. Dallas County Community College Dist.*, 554 S.W.2d 924, 927-28 (Tex. 1977).

34. *Id.* at 928. This holding was based on two reasons. First, restoring the buildings as an alternative to demolition would be a misuse of public funds which were obtained by a bond issue for education. *Id.* at 928-29. Second, it would take an "unreasonable expenditure of money" to restore these buildings. No evidence was presented that even after restoration the buildings could be used for educational purposes. *Id.* at 929.

35. *Id.* at 927.

36. *Id.* at 927-28.

37. See TEX. NAT. RES. CODE ANN. § 191.092 (Vernon 1978) (formerly TEX. REV. CIV. STAT. ANN. art. 6145-9, § 6 (Vernon Supp. 1970)).

ings of historical interest. In doing so, it is instructive to consider the historic preservation statutes of other states.

#### POSSIBLE SOLUTIONS

Jurisdictions differ widely in the types of historic preservation laws that they have enacted, as well as the purposes they seek to achieve.<sup>38</sup> The purposes of the statutes vary from the general to the specific. The Vermont statute states the reason for creating its division for historic preservation is "to coordinate historic preservation activities,"<sup>39</sup> whereas Indiana's statute voices a declaration of public policy to save historic structures and areas from urban decay and dilapidation.<sup>40</sup> Whatever the announced or unstated purposes of these states are, the goals of their legislation are essentially the same: to preserve and protect existing, and possibly decaying, buildings, sites, and areas for public welfare, education, enjoyment, and enrichment.<sup>41</sup> The manner in which these goals are achieved is by governmental designation of a commission, department, or committee to handle the affairs of historic preservation.<sup>42</sup> Usually, as in Texas,<sup>43</sup> professional architects, archeologists, and historians, as well as political or governmental officials, serve on these commissions.<sup>44</sup>

Generally, the criteria to be used by these various committees may be determined in two ways. The legislature can state in its legislation exactly what type of building, site, or area the legislation is to deal with and the latitude that the committee has within these specific definitions.<sup>45</sup> Alterna-

38. Compare TEX. NAT. RES. CODE ANN. § 191.001-.174 (Vernon 1978) (no specific criteria stated) with CAL. PUB. RES. CODE § 5020.4 (Deering 1976) (detailing criteria to determine historical landmarks) and VT. STAT. ANN. tit. 22, § 723(a)(6) (1978) (general language allowing historical preservation division to determine criteria). See generally Beckwith, *Developments in the Law of Historic Preservation and a Reflection on Liberty*, 12 WAKE FOREST L. REV. 93, 95-119 (1976).

39. VT. STAT. ANN. tit. 22, § 721 (1978).

40. IND. CODE ANN. § 18-4-22-1 (b) (Burns Supp. 1978).

41. See, e.g., ALA. CODE tit. 41, § 9-240 (1977) (to further understanding and preservation of heritage); IDAHO CODE § 67-4601 (Supp. 1978) (for "education, inspiration; pleasure and enrichment" of citizens); IND. CODE ANN. § 18-4-22-1(e) (Burns Supp. 1978) (for public welfare).

42. See generally Beckwith, *Developments in the Law of Historic Preservation and a Reflection on Liberty*, 12 WAKE FOREST L. REV. 93, 160-81 (1976).

43. See TEX. NAT. RES. CODE ANN. § 191.011 (Vernon 1978).

44. See, e.g., ALA. CODE tit. 41, § 9-243 (1977); CAL. PUB. RES. CODE § 5020.2 (Deering 1976); IND. CODE ANN. § 18-4-22-3 (Burns Supp. 1978). Each state provides for the length of term on the committee, the salary, if any, and the method of appointment.

45. See, e.g., ALA. CODE tit. 41, § 9-249 (9)-(12) (1977) (commission establishes criteria); CAL. PUB. RES. CODE § 5020.4(c) (Deering 1976) (commission establishes criteria and recommends standards to department); IND. CODE ANN. § 14-3-3-.5 (2)-(3) (Burns 1973) (criteria established by state Secretary of Interior).

tively, the legislature can establish the committee and authorize it to determine the criteria essential to establishing what should and should not be designated as a historic landmark or preservation site.<sup>46</sup> The rationale is that experts in the field are better qualified than a legislative body to evaluate buildings and sites.<sup>47</sup>

The State of California has comprehensive historic preservation legislation. The Historical Resources statute<sup>48</sup> provides guidance for the State Historical Resources Commission, which the California legislature created to fulfill the statute's goals.<sup>49</sup> It requires that the Commission "[e]stablish criteria for the recording and preservation of historical resources"<sup>50</sup> and "receive and evaluate applications for registration" of historical sites and landmarks.<sup>51</sup> The Commission is authorized to select and designate landmarks and points of historic interest<sup>52</sup> based upon the criteria set out by the legislature under a section entitled "qualified historical property."<sup>53</sup> Generally, the property may be properly "qualified" for three basic reasons: first, the property itself has historical or architectural significance; second, the property is associated with a person or group having a profound influence in California's history; or third, the property is listed in the National Register.<sup>54</sup> California's criteria enable the Commission to be objective about designation and are by no means vague.<sup>55</sup>

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46. See VT. STAT. ANN. tit. 22, § 723(a)(2) (1978) (historic preservation division shall adopt standards).

47. See Beckwith, *Developments in the Law of Historic Preservation and a Reflection on Liberty*, 12 WAKE FOREST L. REV. 93, 97 (1976); Kramer, *Proposed Guidelines for Historic Preservation in Texas*, 5 TEX. TECH L. REV. 61, 69 (1973).

48. CAL. PUB. RES. CODE § 5020-25.12 (Deering 1976).

49. CAL. PUB. RES. CODE § 5020 (Deering 1976). The Commission consists of seven members appointed by the Governor, including an architect, archeologist, historian, and any other experts deemed necessary. *Id.* § 5020.2.

50. *Id.* § 5020.4(c).

51. *Id.* § 5020.4(g).

52. *Id.*

53. *Id.* § 5031.

54. CAL. PUB. RES. CODE § 5031 (Deering Supp. 1978) provides in part:

(a) (1) The property is the first, last, only, or most significant historical property of its type in the region;

(2) The property is associated with an individual or group having a profound influence on the history of California; or

(3) The property is a prototype of, or an outstanding example of, a period, style, architectural movement, or construction, or if it is one of the most notable works, or the best surviving work, in a region of a pioneer architect, designer, or master builder; or

(b) A property which is listed on the national register described in Section 470a of Title 16 of the United States Code.

55. See *id.* § 5032(b). These criteria apply only to property with structures on them. *Id.*

Another example of concise drafting is the Alabama preservation statute. That statute authorizes the Alabama Historical Commission to acquire "buildings, objects and sites *deemed worthy* of being preserved, improved, protected and maintained."<sup>56</sup> It is not directly stated what criteria are to be applied when considering what is "deemed worthy," but a general statement is made encouraging maintenance of buildings, objects, and sites of historic, archeological, or architectural significance.<sup>57</sup> The Alabama legislature charges the Commission to preserve, protect, and maintain buildings where events of great importance to the state or nation took place.<sup>58</sup> This includes birthplaces of outstanding individuals<sup>59</sup> and sites of historic events in Alabama or United States history.<sup>60</sup> The Commission also is to preserve buildings of outstanding architectural value, buildings of "special significance to our cultural, military, social, economic, religious or commercial heritage,"<sup>61</sup> and "archeological sites for excavational, salvage, protective and interpretative purposes."<sup>62</sup> Thus, Alabama and California agree on two categories in determining what is worthy of preservation: that the building or site has a historic or significant individual associated with it, such as a birthplace or residence of a President, and that the building or site itself has significance, either culturally or architecturally.<sup>63</sup>

Another, state, North Carolina, has a two-tiered statute regarding criteria for state historic properties.<sup>64</sup> Under one subsection, the legislature authorizes a Historical Commission to prepare and adopt criteria to determine what is to be preserved by the state.<sup>65</sup> This statute is a general statute allowing the Commission to establish its own criteria, rather than the legislature.<sup>66</sup> It recommends consideration of the property's "historic, architectural, archeological, or cultural importance."<sup>67</sup> The following subsec-

56. ALA. CODE tit. 41, § 9-242 (1977) (emphasis added).

57. *Id.*

58. *See id.* (1).

59. *See id.* (2).

60. *See id.* (3).

61. *Id.* (4)-(5).

62. *Id.* (6).

63. Compare ALA. CODE tit. 41 § 9-242(2) (1977) (birthplaces, residences of outstanding persons) with CAL. PUB. RES. CODE § 5031 (Deering Supp. 1978) (property associated with group or individual influencing California history).

64. See N.C. GEN. STAT. § 121-12(b)-(c) (1974); Ross, *Practical Aspects of Historic Preservation in North Carolina*, 12 WAKE FOREST L. REV. 9, 19-27 (1976).

65. N.C. GEN. STAT. § 121-12(b) (1974).

66. *Id.*; cf. VT. STAT. ANN. tit. 22, § 723(a)(6) (1978) (Vermont statute authorizes division for historic preservation to establish standards for acquisition and preservation of historic properties).

67. N.C. GEN. STAT. § 121-12(b) (1974).



tion, however, enumerates much more specific criteria for the determination of the site's importance when state aid is sought.<sup>68</sup> To obtain state aid, a cost-benefit approach is used to determine the site's importance.<sup>69</sup> A report concerning the authenticity of the structure or site and its historical, cultural, and educational significance must be submitted to the legislature by the Commission.<sup>70</sup> An estimated cost of the proposed project, an estimated cost of the maintenance and operation, and plans of continued operation on non-state funds must also be submitted.<sup>71</sup> The North Carolina legislature then balances these factors to determine whether or not the designated landmark will receive state aid.<sup>72</sup> Clearly, when state funds enter the picture, the Commission is more limited in determining what is worthy of preservation and what is of historic, cultural, or educational value and interest.<sup>73</sup> When the actual financing and maintenance of the sites are at issue, the standards become more restrictive, ultimately resulting in few structures being preserved.<sup>74</sup>

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68. *Id.* (c); see Ross, *Practical Aspects of Historic Preservation in North Carolina*, 12 WAKE FOREST L. REV. 9, 23-24 (1976). The North Carolina legislature has made available limited state funds to support the preservation efforts of qualifying plans to buildings. One commentator has identified several possible problems with this aid. First, a definitional problem exists in determining what is "significant." The availability of funds and personnel may pose a second problem. Third, there is the constant problem of "overcoming the general inertia which exists" and motivating groups to actively seek this state aid. *Id.* at 23-24.

69. *Id.* at 23. Under the cost-benefit analysis, various factors are considered and weighed against each other. The cost of the restoration, plans of operation, the public's accessibility to the restored property, and other factors are considered.

70. N.C. GEN. STAT. § 121-12 (c) (1974).

71. N.C. GEN. STAT. § 121-12 (c) (1974) provides in part:

(c) Criteria for State Aid —

- (1) Whether the property is historically authentic;
- (2) Whether it is of such educational, historical, or cultural significance as to be essential to the development of a balanced State program of historic and archaeological sites and properties;
- (3) The estimated total cost of the project under consideration and the apportionment of said cost among State and nonstate sources;
- (4) Whether practical plans have been or can be developed for the funding of the nonstate portion of the costs;
- (5) Whether practical plans have been developed for the continued staffing, maintenance and operation of the property without State assistance; and
- (6) Such further comments and recommendations that the Commission may make.

72. N.C. GEN. STAT. § 121-12(d) (Supp. 1977).

73. See Ross, *Practical Aspects of Historic Preservation in North Carolina*, 12 WAKE FOREST L. REV. 9, 22-24 (1976).

74. See *id.* at 23-24. North Carolina may have a problem of whether sufficient funds and personnel will be available to meet the intent of this statute. *Id.* at 24.

Virginia also has a detailed set of criteria for designation of historic landmarks.<sup>75</sup> The Virginia Historic Landmarks Commission is empowered to designate "landmarks, buildings, structures and sites" which are of national or state significance.<sup>76</sup> The standards set forth on architecture require that the building be identified with a major aspect of cultural, political, or social history and that the structures "embody the principle or unique features of an architectural type or . . . method of construction, or serve as an illustration of the work of a master builder, designer or architect whose genius influenced the period."<sup>77</sup> The statute also set forth standards for archeological sites.<sup>78</sup> Thus, the Virginia statute specifically states what criteria the Commission is to consider in its designation of historic landmarks.<sup>79</sup>

#### SUGGESTED CRITERIA FOR TEXAS

In considering a redrafting of section 191.094 of the Antiquities Code, the Texas legislature should analyze the statutes from other jurisdictions.<sup>80</sup> The legislature has two major alternatives. It may require the Antiquities Committee to determine the criteria specifically and empower the Committee to work within those standards.<sup>81</sup> The other alternative, and the more desirable one, is for the legislature to designate what the Committee

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75. VA. CODE § 10-138 (1978); see *Virginia Historic Landmarks Comm'n v. Board of Supervisors*, 230 S.E.2d 449, 451-52 (Va. 1976).

76. VA. CODE § 10-138 (a) (1978).

77. *Id.*

78. *Id.*

79. The Virginia guidelines were submitted in the Texas State Bar's recommended proposal for Texas Preservation Law. 15 HOUS. L. REV. 747, 756, n.72 (1978).

80. See 15 HOUS. L. REV. 747, 756 (1978). The proposal recommended by the Texas State Bar suggested the definition of "object of historical significance" be as follows:

- (A) a structure or site at which occurred an event that made an outstanding contribution to, and is identified prominently with, an important aspect of the history of this state or of the United States;
- (B) a structure or site significantly associated with the life of an outstanding person;
- (C) a structure or site significantly associated with an important event that represents a significant idea or ideal;
- (D) a structure that embodies the distinguishing characteristics of an architectural type and is valuable for study of a period, style, or construction technique; or
- (E) real property situated adjacent to a site or structure set forth in Subdivisions (A)-(D) of this subdivision.

*Id.* at 756-57, n.72. This recommendation was not included in the Bar's "legislative package" of 1977. The criteria suggested in this proposal, however, would probably be "sufficiently definite" for the Texas Supreme Court. *Id.* at 756-57, n.72.

81. See *Texas Antiquities Comm. v. Dallas County Community College Dist.*, 554 S.W.2d 924, 927 (Tex. 1978).

should consider about a site or building of historical interest. The systems used by California<sup>82</sup> and Alabama<sup>83</sup> and many other states<sup>84</sup> are desirable for Texas because they are thorough, they specifically set out guidelines for the committee to follow, and they often designate landmarks that must be included.

The criteria the Texas Antiquities Committee should apply in the determination of what is and is not a landmark may be arranged into three major categories. To qualify as a landmark, a building or site should satisfy one of the following three requirements. First, the building or site should be significant within state or national history.<sup>85</sup> This requirement pertains to sites or buildings where events of great significance occurred and would include sites of historic, cultural, military, social, economic, religious, or commercial heritage.<sup>86</sup> Second, a building or site should be designated a landmark if identified with or associated with a historic or significant individual or organization.<sup>87</sup> Examples of this category would be a birthplace or home of an historic person or a headquarters of a society that played an important role in Texas or American history.<sup>88</sup> Both of the above categories pertain to unique buildings, "one of a kind" places, because one event or one person is connected with the particular site.<sup>89</sup> Categories one and two differ from the third, which is based upon architectural standards for designating landmarks.

Architecture is the most difficult category for which to set standards because it requires a balancing test between aesthetics and utility.<sup>90</sup> Some buildings should be designated historic landmarks because they are unique, as in the above two categories. The California statute sets forth the most explicit guidelines for architecture.<sup>91</sup> To qualify, the architecture must be a superb example of a builder, an architect, a period, or a motif. On the other hand, not every old building should be designated as a land-

82. See CAL. PUB. RES. CODE § 5032 (Deering 1976).

83. See ALA. CODE tit. 41, § 9-242(1) (1977).

84. See generally Comment, *Historic Preservation Cases: A Collection*, 12 WAKE FOREST L. REV. 227 (1977).

85. See, e.g., ALA. CODE tit. 41, § 9-242 (3) (1977) (state or national history); CAL. PUB. RES. CODE § 5031 (a) (2) (Deering Supp. 1978) (influence on California's history); VA. CODE § 10-138 (a) (1978) (historically significant to nation or state).

86. See ALA. CODE tit. 41, § 9-242 (5) (1977).

87. See *id.* (2) (birthplaces, residences of "outstanding personages"); CAL. PUB. RES. CODE § 5031 (a) (2) (Deering Supp. 1978) (property associated with individual or group influencing California history).

88. See ALA. CODE tit. 41, § 9-242 (2) (1977).

89. See *id.* (3); CAL. PUB. RES. CODE § 5031 (Deering Supp. 1978); VA. CODE § 10-138 (a) (1978).

90. See Kramer, *Proposed Guidelines for Historic Preservation in Texas*, 5 TEX. TECH L. REV. 61, 63-64 (1973).

91. CAL. PUB. RES. CODE § 5032 (Deering 1976); see VA. CODE § 10-138 (a) (1978) (Virginia gives guidelines for what is architecturally significant).

mark merely because it is old.<sup>92</sup> Other factors should be carefully considered before designating a building that is not "one of a kind" as a landmark. These factors are the economic situation of the owner and the cost of restoration and maintenance, the location of the building and the accessibility to the public, the present condition of the building and its usefulness after restoration.<sup>93</sup> The Committee should apply a balancing test weighing the aesthetic and architectural value of the building against the practical economics of restoration of the building and restrictions placed on the owners.

#### CONCLUSION

The importance of an effective statute regarding historic landmark designation cannot be overemphasized. By providing specific criteria defining a "building . . . of historical . . . interest,"<sup>94</sup> the Texas Antiquities Code will no longer be unconstitutionally vague. With the criteria specifically established and outlined, the Committee can more fairly consider what should be designated as a historic landmark. Without such legislation, a decision like the *Dallas Community College* case, allowing the demolition of historic buildings, could occur again.

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92. This is not to say that old buildings should not be *preserved* but only that they should not be arbitrarily designated a landmark requiring that they be preserved. See Kramer, *Proposed Guidelines for Historic Preservation in Texas*, 5 *TEX. TECH L. REV.* 61, 69 (1973).

93. See *Texas Antiquities Comm. v. Dallas County Community College Dist.*, 554 S.W.2d 924, 928-29 (Tex. 1977). The only use that the college's landmark buildings had after restoration was commercial office space. The buildings could not have been used for educational purposes. *Id.* at 929.

94. *Id.* at 927.