

THE NEW YORK
CITY COUNCIL

MELISSA
MARK-VIVERITO
SPEAKER

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Landmarks for the Future

Learning from 50 Years of Preservation



THE COUNCIL OF
THE CITY OF NEW YORK
CITY HALL
NEW YORK, NY 10007

MELISSA MARK-VIVERITO
SPEAKER

TELEPHONE
(212) 788-7210

Dear Fellow New Yorkers,

Last year marked the 50th birthday of the New York City Landmarks Law and a year to celebrate all that we have achieved in protecting our rich history and architecture. Because of decades of advocacy by neighborhood residents, preservationists, and property owners and the extraordinary work of the Landmarks Preservation Commission, we have protected some of the most iconic buildings and places in the world.

This year represents an opportunity to look forward to the future of preservation.

The following report is the Council's attempt to take stock of the history of preservation in New York City, explain the rules that regulate preservation, analyze and interpret the available data, and suggest improvements to our current approaches.

Many of these recommendations are straightforward improvements to the law to make the practice of preservation more transparent and predictable, while other recommendations – like how we support financially burdened landmarked buildings – will require further work and study.

Above all we hope this report both highlights the importance of historic preservation and the need to continually examine our rules and practices to make sure they reflect the present challenges and opportunities we face as a City.

Sincerely,

A handwritten signature in black ink, appearing to read "Melissa Mark-Viverito".

Melissa Mark-Viverito
Speaker

A handwritten signature in black ink, appearing to read "David Greenfield".

David Greenfield,
Chair, Committee on Land Use

A handwritten signature in blue ink, appearing to read "Peter Koo".

Peter Koo,
Chair, Subcommittee on Landmarks, Public Siting, and Maritime Uses

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Executive Summary



Landmarks for the Future

After 50 years of the Landmarks Law what comes next? What are the big challenges we face as a city and what is the role of historic preservation in addressing these challenges? How do our rules and approaches to preservation continue to evolve in response to changing policy goals?

Too often these public discussions have been portrayed as black or white choices: protecting our shared history on the one hand vs. keeping up with the needs of a growing and modern city on the other.

Landmarks for the Future is an effort to break out of this dichotomy and create room for a broader conversation about the future of preservation.

The report is structured to provide context about the evolution of the field of preservation, the important accomplishments over the last 50 years, and the existing rules which govern preservation.

Based on this analysis we conclude with seven recommendations for moving this conversation forward:

1) Create a Timeline for Landmark Designation:

In evaluating whether a building or historic district is worthy of landmark designation we should have a clear process and deadlines for making that determination. Our analysis of how long it takes to landmark buildings and historic districts indicates that a one year timeline for buildings and a two year timeline for districts is appropriate.

2) Codify Community Board Role:

The existing community board referral process should be formalized and made part of the landmarks law to require consultation with affected communities on larger and more significant applications.

3) Provide Formal Protection for Calendared Properties:

Buildings which are being considered for landmark designation - calendared buildings - should have clear legislative protections in place.

4) Study Support for Landmark Assistance:

Proposals for grants, subsidies, tax benefits, and reforms to development rights transfers should all be considered as potential avenues to provide assistance for the upkeep and repair of designated properties with limited financial resources.

5) Create New Mechanisms for Protecting Buildings:

After protecting so many of our most important buildings we should think about creating new approaches to protect buildings which are culturally or aesthetically significant but don't necessarily rise to the level of a landmark. Many cities have other tools in their preservation toolbox and NYC should consider creating new approaches as well.

6) Plan and Preserve Together:

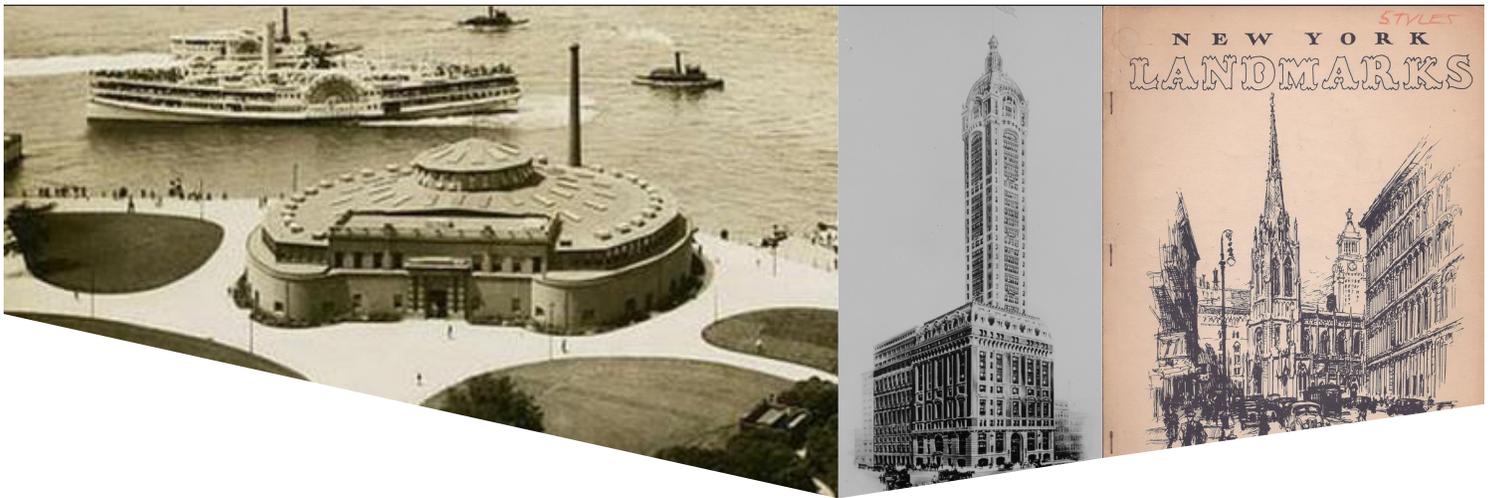
When the Department of City Planning is considering a potential rezoning, LPC should ensure that the potential landmarks or historic districts are a part of the neighborhood planning process. As recent studies have pointed out, we should also see preservation more clearer as a proactive economic development tool.

7) Make More Information Public:

Public disclosure of the status of items in the consideration process would help inform the expectations of the public and property owners.

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The Creation of the Landmarks Law

Though interest in the preservation of historic structures began much earlier in New York City, the movement that led to the passage of the Landmarks Law began around World War II. While early efforts to preserve historic buildings had focused on historic value, around World War II efforts expanded to include preserving distinctive architecture and neighborhoods. Following shortly after the destruction of Europe’s heritage during World War II, post-war urban renewal and development led to the demolition of many historic structures, including the Beaux-Arts aquarium at Castle Clinton, the Ritz-Carlton, and St. Nicholas Church. These events motivated the Municipal Art Society (MAS) and Albert Bard to focus on preservation and ultimately a citywide landmarks ordinance.¹

In the 1950s MAS created a list of historic structures in New York based on work done in 1941 by noted architectural historian and Avery Librarian Talbot Hamlin, with later updates and expansions done with assistance from the Society of Architectural Historians (SAH), the American Institute of Architects (AIA), Columbia University’s Avery Library, the New York Historical Society, and the Century Association.² This list was published as *New York Landmarks: A Study and Index of Architecturally Notable Structures in Greater New York* (1957)³ and formed the foundation of what the Landmarks Preservation Commission would consider in its initial preservation program.⁴

1 Anthony Wood, *Preserving New York: Winning the Right to Protect a City’s Landmarks* (New York: Routledge, 2008), 73-93.
 2 Ibid., 114-126.
 3 Marjorie Pearson, *New York City Landmarks Preservation Commission (1962-1999): Paradigm for Changing Attitudes Towards Historic Preservation* (The James Marston Fitch Charitable Foundation, 2010), 10.
 4 Wood, *Preserving New York*, 326-327.

Albert Bard



The Bard Act

“Protection of historic places, buildings and works of art. In addition to any power or authority of a municipal corporation to regulate by planning or zoning laws and regulations or by local laws and regulations, the governing board or local legislative body of any country, city, town, or village is empowered to provide by regulation, special conditions and restrictions for the protection, enhancement, perpetuation and use of places, districts, sites, buildings, structures, works of art, and other objects having a **special character or special historic or aesthetic interest or value**.

Such regulations, special conditions and restrictions may include appropriate and reasonable control of the use or appearance of neighboring private property within public view, or both.

In any such instance such measures, if adopted in the exercises of the police power, shall be reasonable and appropriate to the purpose, or if constituting a taking of private property shall provide for due compensation, which may include the limitation or remission of taxes.”

For decades aesthetic regulation of privately owned buildings was assumed to be unconstitutional. However, with the 1954 *Berman v. Parker* decision, the US Supreme Court held that “[it] is within the power of the legislature to determine that the community should be beautiful as well as healthy . . .”⁵ When the Supreme Court issued its *Berman* decision, Bard, who had for years been researching policy mechanisms that would allow municipalities to regulate the aesthetics of private property, was quick to realize that the decision opened the door to a regulatory approach to preservation. Bard drafted an enabling law for New York State; State Senator MacNeil Mitchell introduced Bard’s legislation in 1955, and in 1956 the Governor signed the bill into law. The bill is known as the Bard Act, and it is the State enabling legislation that serves as the legal basis for the Landmarks Law in New York City.⁶

Without a local law, demolition continued and it was estimated that by 1958, 10% of the buildings on the 1952 version of the MAS list had

been demolished.⁷ Carnegie Hall was spared only by the City of New York’s purchase of the building,⁸ and the great ceiling of Grand Central was very nearly hidden by a bowling alley above the main concourse.⁹

In parallel to citywide efforts that focused largely on individual historic buildings, residents of Greenwich Village and Brooklyn Heights were fighting to preserve their entire neighborhoods. Greenwich Villagers had begun fighting for preservation beginning in the 1930s through the 1950s, prevailing against Robert Moses-led efforts to put a road through Washington Square Park. But the park was not the only resource at risk; civic groups including the Greenwich Village Historical Society,¹⁰ the Greenwich Village Association, the Washington Square Association, and the Greenwich Village Chamber of Commerce fought (often unsuccessfully) against proposals to redevelop properties around the park.¹¹ Like

⁷ Wood, *Preserving New York*, 251.

⁸ *Ibid.*, 252-255.

⁹ *Ibid.*, 263-265.

¹⁰ Not to be confused with the Greenwich Village Society for Historic Preservation, which was founded in 1980.

¹¹ *Ibid.*, 169-189.

Photo credit: New York Preservation Archive Project

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Singer Building: Offices of the Singer Company, Inc., Wikimedia.org

NYC Landmarks: MAS Archives

⁵ 348 US 26, 33 (1954).

⁶ New York General Municipal Law § 96-a.

Ada Louise Huxtable



The Brokaw Mansions



Greenwich Village, Brooklyn Heights had its own showdown with Robert Moses over his plan to build a highway through the middle of the neighborhood, with the Brooklyn Heights Association winning a rerouting of the new Brooklyn Queens Expressway and creating the Brooklyn Heights Promenade in the process. In 1958 newcomers to the neighborhood launched a public effort to have their neighborhood protected with historic district legislation using the recently passed Bard Act.¹² Both these neighborhoods were critical in building political support for landmarks legislation.

THE CREATION OF THE LANDMARKS PRESERVATION COMMISSION AND THE LANDMARKS LAW

With the active support of Chairman James Felt of the City Planning Commission (and former head of the Real Estate Board of New York), in the early 1960s Mayor Wagner took action on landmark preservation. In 1962 the Board of Estimate appropriated funding to create the Landmarks Preservation Commission as an advisory body. The Mayor instructed the advisory commission to prepare a legislative program to

¹² Ibid., 197-222.

effect preservation.¹³ As the advisory commission was beginning its work, the Pennsylvania Railroad announced its plans to demolish Pennsylvania Station, the masterpiece of civic Beaux-Arts architecture designed by McKim, Mead, and White.¹⁴

The demolition of Penn Station created an atmosphere of crisis which was reinforced by the editorial writing of Ada Louise Huxtable, the new architecture critic at the *New York Times*.¹⁵ It was in this atmosphere that the advisory commission worked to draft the Landmarks Law. And while the bill reached the Mayor in 1965, it was only the impending demolition of the Brokaw mansions, French-renaissance inspired mansions on the Upper East Side¹⁶ that got the bill through the City Council¹⁷ and signed by the Mayor in 1965.¹⁸

The Landmarks Law included a policy statement that contained a list of public purposes. While today the economic impact of landmark

¹³ Pearson, *New York City Landmarks Preservation Commission (1962-1999)*, 12-15.

¹⁴ Wood, *Preserving New York*, 295-298.

¹⁵ Ibid., 284-286.

¹⁶ Ibid., 333-335.

¹⁷ Ibid., 354-355.

¹⁸ Pearson, *New York City Landmarks Preservation Commission (1962-1999)*, 30.

Photo credits:

Ada Louise Huxtable: Garth Huxtable
 Brokaw Mansions: Library of Congress

Pennsylvania Station



Mayor Wagner signing the Landmarks Law



The Public Purpose of the Landmarks Law

The Landmarks Law lists seven main purposes:

- To effect and accomplish the protection, enhancement and perpetuation of such improvements and landscape features and of districts which represent or reflect elements of the city’s cultural, social, economic, political and architectural history,
- To safeguard the city’s historic, aesthetic and cultural heritage, as embodied and reflected in such improvements, landscape features and districts,
- To stabilize and improve property values in such districts,
- To foster civic pride in the beauty and noble accomplishments of the past,
- To protect and enhance the city’s attractions to tourists and visitors and the support and stimulus to business and industry thereby provided,
- To strengthen the economy of the city, and
- To promote the use of historic districts, landmarks, interior landmarks and scenic landmarks for the education, pleasure and welfare of the people of the city

designation is a controversial topic, it is worth noting that enhancing property values, strengthening the city’s economy, and attracting tourists to help the city’s businesses were all specifically mentioned in the law’s policy statement.

LANDMARKS DESIGNATION SINCE 1965

The new Landmarks Preservation Commission (LPC), brought into official being by the law, was given the authority to designate and regulate individual landmarks and historic districts. LPC was originally limited to 18 months to hold hearings on potential landmarks before the institution

of a three year moratorium on hearings, followed by another six month round of hearings, and then another three year moratorium, and so on.¹⁹ After designation, the Board of Estimate was given 90 days to affirm, deny, or modify the designations; a lack of action by the Board of Estimate led to the landmark designation being officially ratified.²⁰

After its first 18 month hearing schedule, LPC had designated 219 landmarks and 8 historic districts. Individual landmarks included City Hall, Brooklyn Borough Hall, St. Patrick’s Cathedral, the Brooklyn Museum, the New York Public Library, the Metropolitan Museum, Carnegie Hall, the Flatiron Building, and Grand Central Terminal. Brooklyn Heights was the first historic district (in November of 1965); Greenwich Village would have to wait until 1969.²¹

In the original law LPC only had jurisdiction over the exterior of buildings; there was no provision for the designation and regulation of historic interiors at that time. This allowed for the demolition of the entire Metropolitan Opera House (the “old Met”), as LPC could not designate the interior of the building (see picture to right) because of a lack of jurisdiction. Furthermore, LPC was not empowered to designate scenic landmarks.

¹⁹ Wood, *Preserving New York*, 354.

²⁰ Pearson, *New York City Landmarks Preservation Commission (1962-1999)*, 29.

²¹ *Ibid.*, 33-34.

Photo credits:
Penn Station: Detroit
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Mayor Wager: Margot Gayle

The Old Met

In 1973 the law was amended to allow LPC to designate interior and scenic landmarks.²² The law has not been amended since the 1973 changes.

Since 1965, LPC has designated many significant individual landmarks and historic districts that almost certainly would have been demolished had it not been for the Landmarks Law as well as the work of LPC staff and the preservation community. Two spectacular examples are Radio City Music Hall and SoHo; today they are popular destinations for New Yorkers and visitors alike. Additionally, the creation of LPC has led to a broader public awareness of the value of historic preservation, and LPC itself has helped educate the public about historic preservation through its outreach efforts.

After the passage of the Landmarks Law, LPC spent most of its time considering properties and neighborhoods for designation. As the ranks of designated individual, interior and scenic landmarks and historic districts have grown LPC has found it necessary to expend more and more resources on the regulatory function of reviewing applications for building alterations.

²² Ibid., 46.



Preservation Organizations

As LPC has grown and adapted to changing times and challenges, so has the historic preservation community. In 1973 MAS helped create two new organizations, the Historic Districts Council and the New York Landmarks Conservancy. MAS created the Historic Districts Council for representatives of the various historic districts to give these groups and neighborhoods a forum and common voice for their concerns. The New York Landmarks Conservancy was established to raise and administer funds for historic preservation, as well as to accept preservation easements.

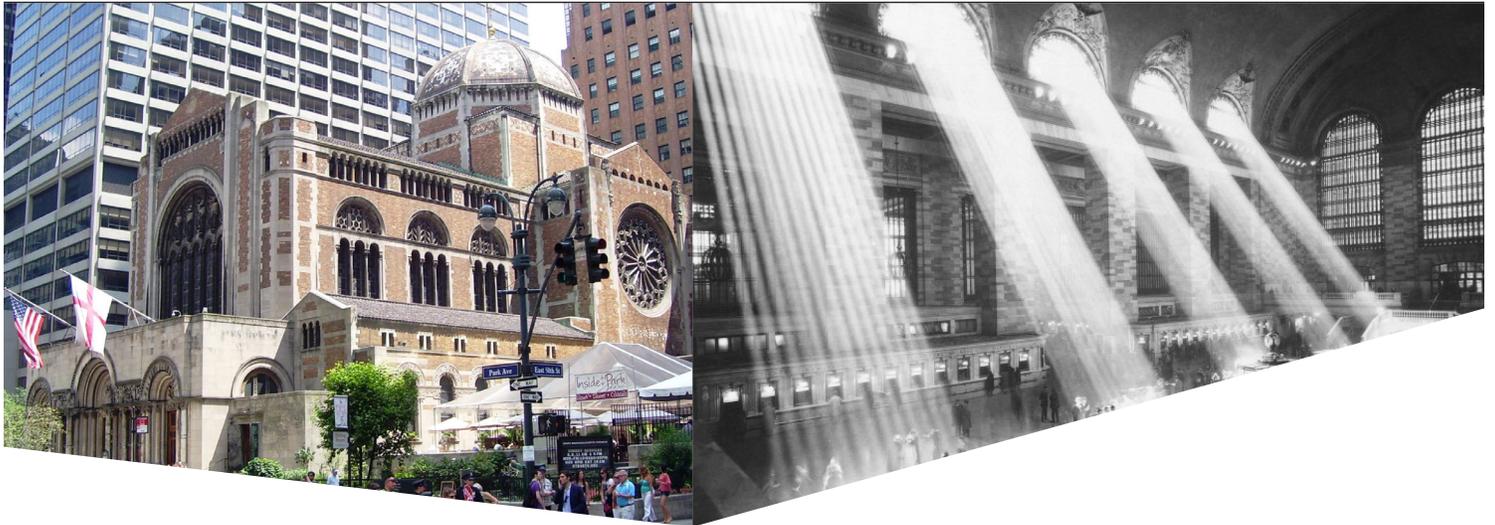
In addition to citywide groups, neighborhood-focused organizations have had a major impact as well. The Greenwich Village Society for Historic Preservation was founded in 1980 and has been very active in advocating for expanded preservation. Friends of the Upper East Side Historic Districts, founded in 1982, lists among its accomplishments the preservation of the City and Suburban Homes. Landmark West, founded in 1985, has been a tireless advocate for the preservation of the Upper West Side as well as stronger preservation policies across the city. However, these prominent organizations are just a few of the many organizations across the five boroughs devoted to preserving their neighborhoods.

Source: Pearson, *New York City Landmarks Preservation Commission (1962-1999)*, 50. Landmark West! "Mission." Accessed August 13, 2015. <http://www.landmarkwest.org/mission.html>

Friends of the Upper East Side Historic District. "About." Accessed August 13, 2015. <http://www.friends-ues.org/about/>

Greenwich Village Society for Historic Preservation. "Mission." Accessed August 13, 2015. http://www.gvshp.org/_gvshp/about/mission.htm

Photo credit: National Archives and Records Administration, Wikimedia.org



The Existing Legal Framework

The Landmarks Law, passed in 1965 and updated in 1973, is codified in the New York City Charter and Administrative Code. The Charter lays out the composition of the Commission and outlines the processes for designating and regulating landmarks.²³ The Administrative Code delineates the detailed authority, limitations on power, and procedures of LPC. While the practice of LPC in implementing these laws has evolved over the years, the core processes and legal authority have remained consistent.

LANDMARKS PRESERVATION COMMISSION

The Landmarks Preservation Commission is composed of eleven commissioners appointed by the Mayor.²⁴ All LPC commissioners except for the Chair serve without pay for three year terms.²⁵ The Commission is given the authority to employ an executive director and other employees to assist in performing its duties.²⁶ The Charter tasks LPC with considering “the establishment and regulation of landmarks, portions of landmarks, landmark sites, interior landmarks, scenic landmarks and historic districts” as prescribed by the Landmarks Law.²⁷

LPC is given two main responsibilities under the Landmarks Law. First, they are charged with designating landmarks and historic districts that warrant protection under the Landmarks Law. Second, LPC is responsible for reviewing development or alteration proposed for the designated property.

23 NYC Admin. Code § 25-301 et seq., New York City Charter § 3020.

24 New York City Charter § 3020(1).

25 § 3020(3).

26 § 3020(5).

27 § 3020(6).

DESIGNATION OF LANDMARKS AND HISTORIC DISTRICTS

LPC has the power to designate historic districts, individual buildings, building interiors, and scenic areas. Historic districts are areas of New York City which contain buildings that “have a special character or special historical or aesthetic interest or value, ... represent one or more periods or styles of architecture typical of one or more eras in the history of the city, and ... cause such area, by reason of such factors, to constitute a distinct section of the city.”²⁸

An individual landmark is “[a]ny improvement, any part of which is thirty years old or older, which has a special character or special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation.”²⁹

An interior landmark can be any interior of a building that fits the criteria of a landmark and is normally held open and accessible to the public.³⁰ A scenic landmark is an area with landscape features which meet the criteria for landmark designation and are situated on land owned by New York City.³¹

The designation process begins with an initial study or survey of a building or neighborhood by LPC staff. In some cases, this investigation is conducted in response to a Request for Evaluation, which can be submitted by members of the public. The Request for Evaluation procedure is not codified in the Landmarks Law, but affords an opportunity for the public to suggest buildings or districts to LPC.

While all Requests for Evaluation are acknowledged in writing by LPC, an RFE submission does not necessarily lead to consideration by LPC of the merits of the property suggested.

After LPC staff accumulate enough analysis and information for full consideration of individual landmark or historic district status, the Commission makes a determination as to whether the item warrants further consideration for designation. If a majority of Commissioners believe it does, the item is “calendared” for official public

28 NYC Admin. Code § 25-302(h).

29 § 25-302(n).

30 § 25-302(m).

31 § 25-302(w), 25-303(a)(3).

consideration as a landmark or historic district. Calendaring an item does not automatically set a date for the public hearing, but instead places the proposed designation on a list of properties that are officially under consideration for landmark or historic district designation. The calendaring process is not mentioned anywhere in the Landmarks Law and has instead been established by LPC through rulemaking.³² LPC has recently launched a web-based mapping tool (“Discover NYC Landmarks”) that contains geographic data on calendared properties as well as designated landmarks and historic districts.

Over the years, the Department of Buildings (DOB) and LPC have developed a practice through which DOB takes the maximum 40 days on permit applications requested for calendared properties to allow LPC time to designate the property. DOB has spelled out this practice in an Operations Policy and Procedure Notice (OPPN 13/88). However, because a property can remain on the LPC calendar indefinitely, this means that a property may be subject to the terms of the OPPN, including the delays in the building permitting process, indefinitely as well.

While the OPPN is a valuable check on demolition or alteration for properties where the owner may have an incentive to damage a property’s aesthetic or historic characteristics in an effort to prevent designation, a property should only be subject to such restrictions for a finite period of time, after which a designation decision should be rendered.

The Landmarks Law requires that LPC hold a public hearing prior to designating any item or amending any designation.³³ Prior to the hearing, the Commission is required to give notice of the proposed designation to the City Planning Commission, all affected community boards, the office of the Borough President,³⁴ and the

32 R.C.N.Y. Title 63, § 1-02. The administrative code gives LPC the authority to promulgate regulations “relating to the procedures of the commission in carrying out its functions, powers and duties under this chapter.” NYC Admin. Code § 25-319.

33 NYC Admin. Code § 25-303(a).

34 NYC Charter § 3020(7), Admin. Code § 25-303(j).

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Associated Press

St. Bartholomew’s Church:
Wikimedia.org

The Landmarks Law and the National Historic Preservation Act: Key Differences

The New York City Landmarks Law precedes the 1966 National Historic Preservation Act by one year, but the two laws have very different functions.

The New York City Landmarks Law allows for landmark designation of a property despite owner objection, while the National Historic Preservation Act does not allow for listing on the National Register against the wishes of an owner or the majority of owners in the case of an historic district or multiple property listing.

The Landmarks Law is regulatory, empowering the NYC Landmarks Preservation Commission to regulate private property within its jurisdiction, while the National Historic Preservation Act is not regulatory and endows minimal oversight powers to the government entities that implement it.

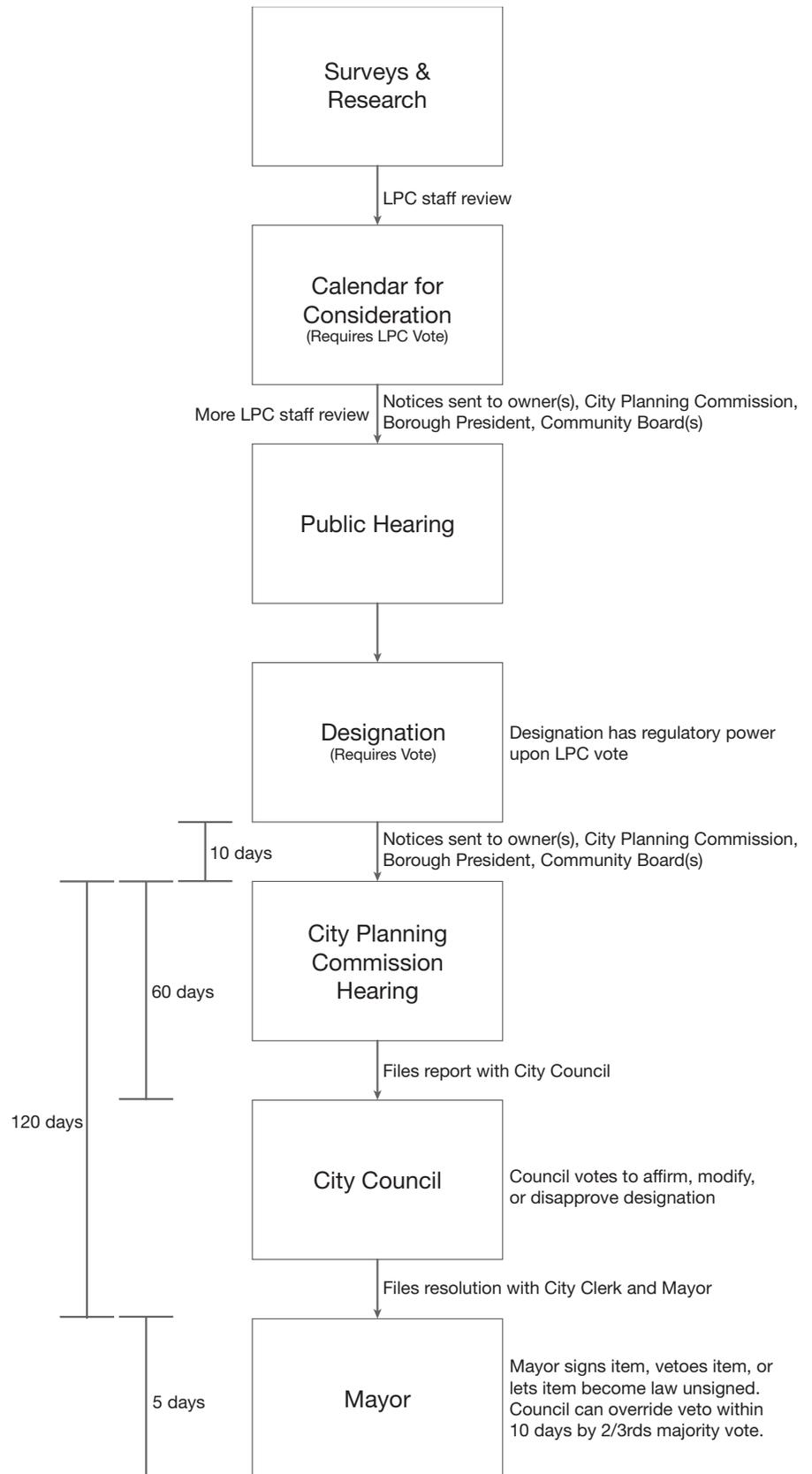
However, the National Historic Preservation Act, through its Section 106 provisions, creates a process by which Federal decision making incorporates a review and mitigation of potential damage done to National Register eligible sites.

Additionally, listing on the National Register may allow owners to take advantage of certain tax credit programs, as will be discussed later in this report.

owner of the property being considered for designation.³⁵ LPC can make a final determination to designate a landmark, interior landmark, scenic landmark, or historic district by a vote of six commissioners, after which time the item is subject to the regulations of the Landmarks Law. In all cases, in order to make a designation determination, LPC considers whether a site, neighborhood, or improvement fits the applicable definition and whether designating would further “the protection, preservation, enhancement, perpetuation and use of landmarks, interior landmarks, scenic landmarks and

35 NYC Admin. Code § 25-313(a).

The Designation Process



The LPC Permit Spectrum

Greater Process and Oversight

No review and approval required:

Ordinary maintenance and repairs.
Only includes work that has the “purpose and effect [of] correct[ing] any deterioration or decay of or damage to such improvement or any part thereof and to restore same, as nearly as may be practicable, to its condition prior to the occurrence of such deterioration, decay or damage.”¹

Permit for Minor Work:

Staff level review and sign off for changes to designated structures that do not constitute ordinary maintenance and repairs but also do not require a Department of Buildings permit to carry out.²
The Landmarks Law gives LPC the authority to enact regulations to establish types of work that would be considered minor and could be approved by a permit for minor work.³

Certificate of No Effect:

For significant work that would have no effect on protected features. LPC must approve or deny applications within 30 days.
After notice of denial, owner has 10 days to file written demand for reconsideration.
If no demand is filed, LPC has 5 days to determine application.
If a demand is filed, LPC has 30 additional days to make a determination.
Work on existing buildings:

LPC must find that the proposal would not “change, destroy or affect” protected architectural features.⁴

New development:

LPC must find that the proposal would not affect or be out of harmony with “the external appearance of other, neighboring improvements.”⁵

Certificate of Appropriateness:

For significant work that would affect the protected architectural features
Work on existing buildings:

LPC considers whether the “proposed work would be appropriate for and consistent with the effectuation of the purposes of [the Landmarks Law].”⁶

New development:

LPC considers “the effect of the proposed work in creating, changing, destroying or affecting the exterior architectural features of the improvement ..., and ... the relationship between the results of such work and the exterior architectural features of other, neighboring improvements ...”⁷

LPC must hold a public hearing and make a determination within 90 days.⁸
Prior to filing LPC requires applicants to present proposals to the affected community board(s).

Certificate of Appropriateness authorizing demolition, alteration, or reconstruction based on insufficient returns:

Available for landmark owners who think their building cannot generate sufficient returns without alteration, reconstruction or demolition.
Can be filed after normal certificate of appropriateness application is denied
Process:

LPC first determines whether building can generate a reasonable return. If not, the City can grant property tax exemption to help increase the return. If, even after the tax exemptions, the building still cannot generate a reasonable return, the City is given an opportunity to acquire the building. If the City fails to acquire the building, LPC must approve the demolition, alteration, or reconstruction regardless of effect on protected architectural features.⁹

1. NYC Admin Code § 25-302(r). 2. § 25-302(q). 3. § 23-319. 4. § 25-306(a). 5. § 25-306(a). 6. § 25-307(a). 7. § 25-307(b). 8. § 25-308. 9. § 25-309.

historic districts ...”³⁶ This consideration mirrors the stated goals of the Landmarks Law: “the protection, enhancement, perpetuation and use of improvements and landscape features of special character or special historical or aesthetic interest or value is a public necessity and is required in the interest of the health, prosperity, safety and welfare of the people.”³⁷

Within 10 days of making a final determination to designate or amend a designation, LPC files the designation with the City Planning Commission and the City Council. The Planning Commission then has 60 days to file a report with the City Council regarding the projected public improvements and any plans for the development, growth, improvement or renewal of the area relating to the designation, and in the case of historic districts the City Planning Commission must also hold a public hearing.³⁸ The City Council can affirm, modify, or disapprove a designation within 120 days after receiving the designation from LPC.³⁹ Lastly, the Mayor may veto any Council decision to disapprove or modify an LPC designation, subject to Council override by two-thirds vote.⁴⁰ The City Planning Commission and the City Council are both subject to legally mandated timelines, but the Landmarks Preservation Commission is not subject to any legally mandated timelines.

36 § 25-303(a).

37 § 25-301(b).

38 NYC Charter § 3020(8).

39 § 3020(9).

40 *Id.*

REGULATION OF DESIGNATED IMPROVEMENTS, PROPERTIES, AND NEIGHBORHOODS

Designation is the beginning of a property's involvement with LPC. After designation, properties fall under the jurisdiction of the Landmark Law's provisions governing alteration and expansion of improvements, and new construction within historic districts and on landmark sites.

For individual landmarks and historic districts, all proposed construction on the designated property aside from ordinary maintenance and repairs is subject to varying levels of LPC review. The figure on the opposite page gives an outline of the various levels of review and the types of work that can be permitted under each, as well as the type of permit issued by LPC.

LPC requires that applicants seeking Certificates of Appropriateness first present their applications to the relevant community board prior to the Commission. The community board then submits comments to LPC, often including a recommendation on approving or rejecting the application and/or recommendations on how to change the application to make it more appropriate. However, this practice is not required by the Landmarks Law or LPC's Rules.

RULES, MASTER PLANS, AND GUIDELINES

In addition to the above-mentioned authority, the Landmarks Law gives the Commission the authority to promulgate regulations "for the protection, preservation, enhancement, and perpetuation and use of landmarks, interior landmarks, scenic landmarks and historic districts ..." ⁴¹ More significantly, LPC has utilized its broader rulemaking powers to set forth more detailed rules, master plans, and more informal guidelines governing review of applications for specific types of alterations and in certain historic districts.

To reduce the administrative burden on the agency and also to provide clarity to property owners, LPC has developed guidelines for certain types of building alterations; if a property owner conforms to the established guidelines, work can be performed with a Certificate of No Effect or Permit for Minor Work, approvable by ⁴¹ NYC Admin Code § 25-319.

Certificate of Appropriateness for Insufficient Return

Applications for certificates of appropriateness based on insufficient return are an attempt to deal with the confluence of the purpose of the Landmarks Law and constitutional limitations on the City's power to regulate land. Where the owner of the designated improvement seeks to destroy or significantly alter the parcel out of financial hardship brought on by the existing improvement, the City's ability to prevent such demolition or alterations is limited by the Fifth Amendment requirement that takings of property be justly compensated.

If landmark designation were to truly render an improvement so that it had no economic value to the owner, and no alterations deemed appropriate by the Commission would allow the owner to derive economic value from the property, requiring an owner to maintain a designated improvement as is would likely be a taking, requiring compensation of the landowner for the value of the property (*Lucas v. South Carolina Coastal Commission*).

Therefore, the Landmarks Law includes this last procedure to deal with these cases, and, in the worst of circumstances, it gives the City the opportunity to acquire a designated improvement in order to prevent destruction or deterioration of the architectural resources.

staff without requiring the direct input of the Commission or a public hearing as would be required for a Certificate of Appropriateness. In addition, work that owners seek to do on designated buildings that will have no effect on protected architectural features can also be permitted on the staff level through a Certificate of No Effect.⁴² For example, the Riverdale⁴³ and Jackson Heights⁴⁴ historic districts, designated Broadway theaters,⁴⁵ and banks designated as interior landmarks all have established sets of guidelines promulgated and approved by LPC for property owners to use to expedite their permitting processes.

According to recent testimony by the Chair of the Landmarks Preservation Commission, 95% of permits for proposed work on regulated

⁴² Pearson, *New York City Landmarks Preservation Commission (1962-1999)*, 75-79.

⁴³ 63 RCNY 6-01 et seq.

⁴⁴ 63 RCNY 8-01 et seq.

⁴⁵ 63 RCNY 4-01, 4-02

The City Planning Commission and the City Council are both subject to legally mandated timelines, but the Landmarks Preservation Commission is not subject to any timeline.

Grand Central Terminal



Case Study: Grand Central Terminal

Grand Central Terminal is the most prominent of landmarks in New York City. Built between 1903 and 1913, Grand Central Terminal is a magnificent example of Beaux-Arts architecture and is today not only a commuter rail hub but also one of the main tourist attractions in Midtown. But in the post-war era train travel was in steep decline, and the station became more valuable for the real estate it stood upon rather than for its value as a transit hub.

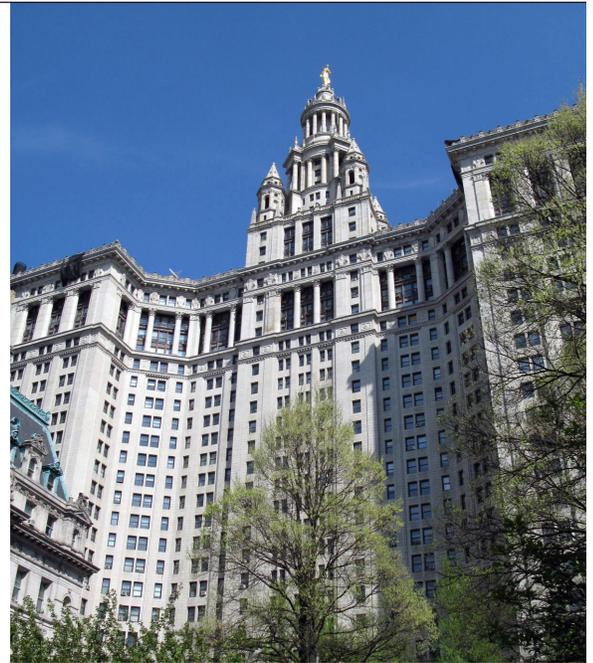
While Grand Central was designated as a landmark in 1967, in 1969 a developer filed applications for Certificates of Appropriateness to develop a tower above the terminal. LPC denied the applications, but Penn Central, the owner of the Terminal, appealed the ruling and a nine-year legal battle ensued. In 1975 the New York State Supreme Court of New York County ruled against the City, Mayor Beame agreed to appeal the case, which ultimately went to the Supreme Court. MAS had organized a Citizen's Committee to support saving the terminal, a committee that included Jacqueline Onassis as well as former Mayor Robert Wagner and architect Philip Johnson, and for the Supreme Court hearing MAS organized a special train to Washington, the Landmarks Express, that arrived in the capital in support of the cause the day before the hearing. The Court ruled 6-3 in favor of the City, allowing the MTA to lease the facility and launch a major restoration campaign; LPC then designated the interior and the Pershing Square Viaduct in 1980. The ruling not only saved Grand Central, but it also provided a firm legal basis for preservation laws across the country.

Today Grand Central Terminal is the jewel in the crown of the Landmarks Law and the NYC preservation movement generally.

Source: Pearson, Marjorie. 2010. *New York City Landmarks Preservation Commission (1962-1999): Paradigm for Changing Attitudes Towards Historic Preservation*. The James Marston Fitch Charitable Foundation.

Photo credit: Wikimedia.org

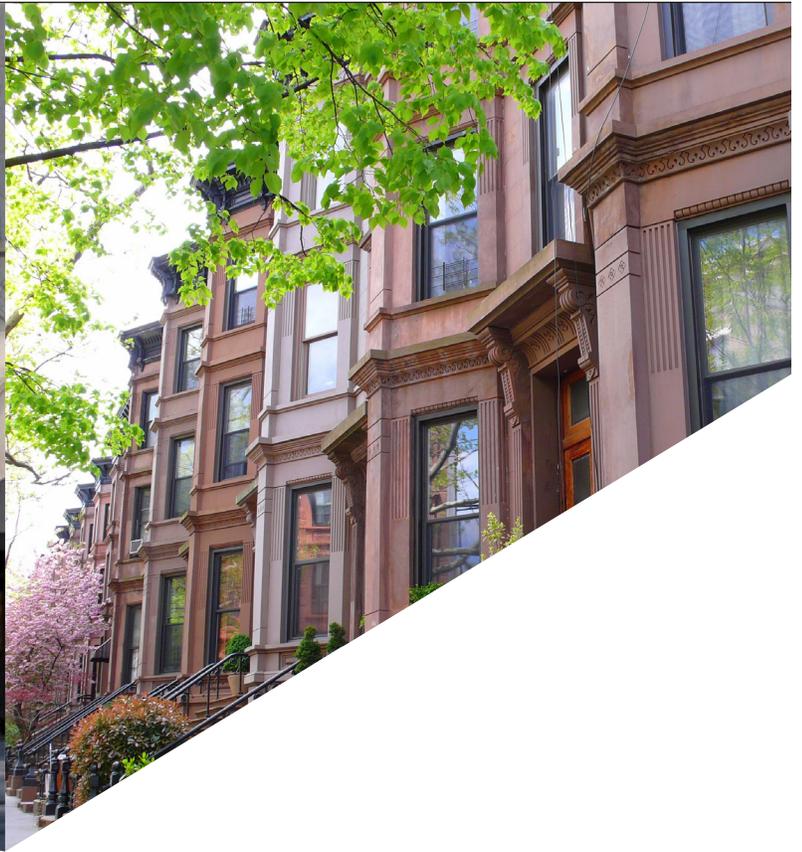
The Municipal Building: current home of LPC



buildings are issued at the staff level, with the remaining 5% handled by the full Commission at public hearings. LPC has created two processes to expedite permit review/approval: FastTrack service and Expedited Certificates of No Effect. Combined, these processes handle 30% of the agency's permits with approval coming in less than 10 days. Furthermore, the agency is in the process of improving and expanding its rules to provide more certainty and standards for applicants seeking ministerial staff level approval of permits.⁴⁶ These processes and reforms let the the Commission focus on major applications, provide greater certainty to applicants, and minimize the regulatory burden of owning a landmark designated property.

⁴⁶ *Testimony of Meenakshi Srinivasan, Chair of the Landmarks Preservation Commission, Before the Land Use Committee of the New York City Council, New York City Council (2015)* (New York, NY).

Photo credit: Wikimedia.org



Evidence from 50 Years

After 50 years of the Landmarks Law what comes next? What are the big challenges we face as a city and what is the role of historic preservation in addressing these challenges? How do our rules and approaches to preservation continue to evolve in response to changing policy goals? To answer these questions and formulate recommendations, we undertook empirical analyses of LPC processes and landmarks distributions. Additionally, we reviewed pertinent literature on economic impacts and assistance programs in addition to analyzing the legal framework surrounding landmarks and development rights.

St. Michael's Episcopal Church: on LPC calendar from 1980 to 2016, when it was designated as part of LPC's backlog initiative.



Photo credit:
St. Michael's Church:
Google Streetview

Previous page photo credits:
Bergdorf-Goodman Building:
Anthony Lanzilote for *The New York Times*
Parkslope Brownstones:
Matthew Rutledge, Flickr.com

TIMELINE ANALYSIS

Most land use actions, from dispositions of land to the granting of revocable consents, undertaken by agencies or the City Council have legally mandated timelines associated to both, whether during the public review phase, the Council review phase, or both. While the City Council and City Planning Commission are currently bound by specific timeframes to act on landmark designations, LPC itself does not have any such timeline, with the result that over the years a number of items have accumulated on the LPC calendar. In December 2014, LPC proposed removing 96 such items from its calendar, all of which had been on the calendar for more than five years. Of these 96 items, 80 had been on the calendar for more than 20 years.⁴⁷ Since that time LPC has developed and implemented a plan to clear the backlog by holding a series of public hearings and making determinations on each item as to whether to designate or remove from the calendar.⁴⁸

To determine how much time the agency needs to move an item from calendaring to designation, we analyzed data that are available from LPC via the New York City Open Data Portal. The data identifies dates of hearings and the dates of designation for landmarks. Records from the late 1990s until the present day include the date of calendaring as well as the dates of the actual hearing and the designation date. We analyzed individual landmarks and historic districts separately.

⁴⁷ Matt A. V. Chaban, "Proposal Would Trim New York City's List of Potential Landmarks," *The New York Times*, December 1, 2014, http://www.nytimes.com/2014/12/02/nyregion/proposal-would-trim-new-york-citys-list-of-potential-landmarks.html?_r=0

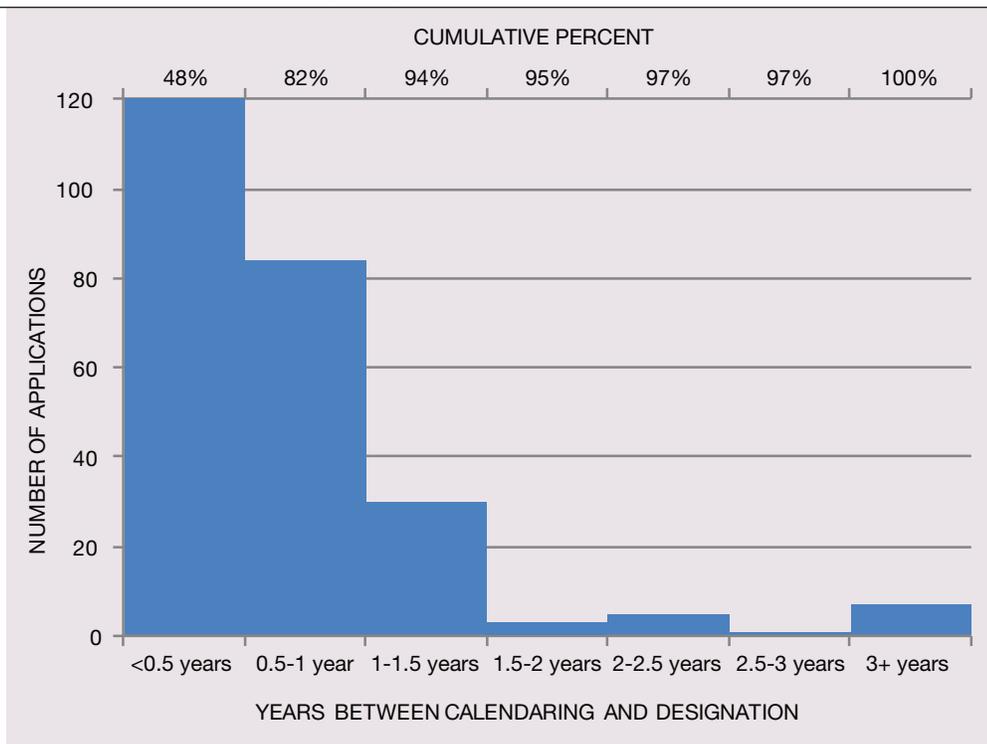
⁴⁸ "LPC Backlog Initiative," Landmarks Preservation Commission, accessed May 4, 2016, <http://www.nyc.gov/html/lpc/html/backlog95/backlog.shtml>.

Individual Landmarks by Days on Calendar

INDIVIDUAL LANDMARKS

When “calendar” dates are available for individual landmarks (as they are for most designated landmarks after 1998):

- Average time from calendaring to designation: 290 days
- Median time from calendaring to designation: 189 days
- 82% of items were designated within 1 year of calendaring
- 94% of items were designated within 1.5 years days of calendaring
- Very few items took greater than 1.5 years to be designated.

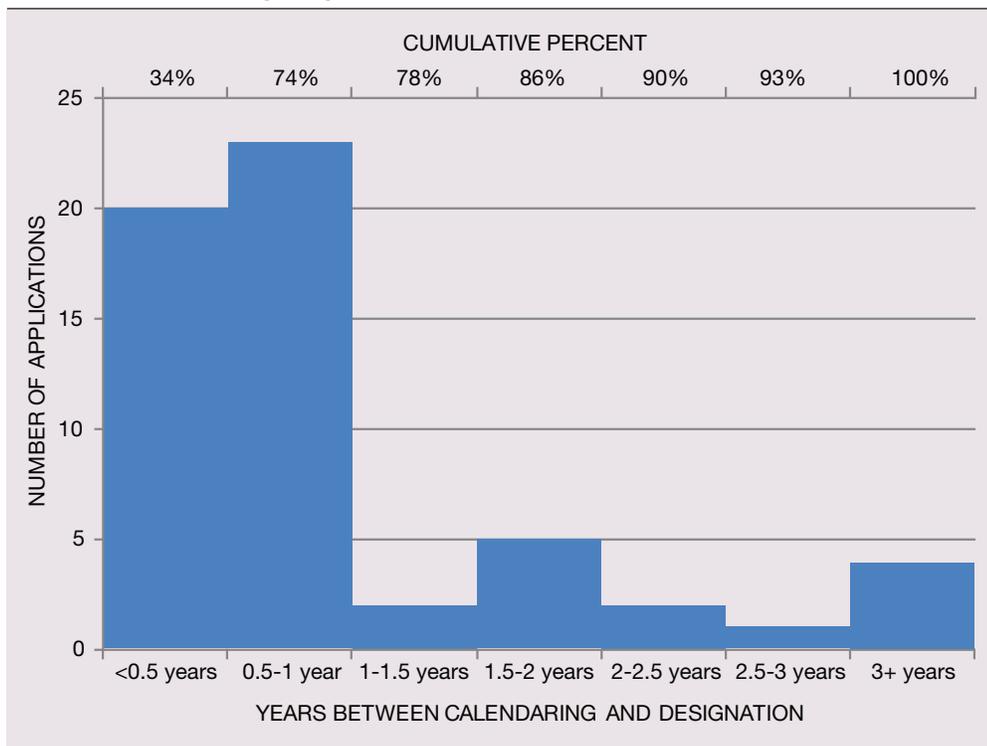


HISTORIC DISTRICTS

When calendaring dates are available for districts (for almost all districts after 1999):

- Average time from calendaring to designation: 377 days
- Median time from calendaring to designation is 252 days
- Most items (74%) were designated within one year of calendaring
- 93% of items were designated within 3 years

Historic Districts by Days on Calendar



Distribution of Individual Landmarks by Borough

Distribution of Historic Districts by Borough

Distribution of Interior Landmarks by Borough

GEOGRAPHIC DISTRIBUTION

While there are individual landmarks and historic districts in all five boroughs, the bulk of individual landmarks (65%) and interior landmarks (79%) lie within Manhattan. The number of interior landmarks is much smaller than the number of individual landmarks. LPC only gained the authority to landmark interiors in 1973, and such spaces have to be customarily accessible to the public, which disqualifies a large number of privately owned buildings.

A large majority of New York City’s designated historic districts are found in Manhattan and Brooklyn, with 77 and 35 mapped in the two boroughs, respectively, while the Bronx, Queens, and Staten Island together only have 27.

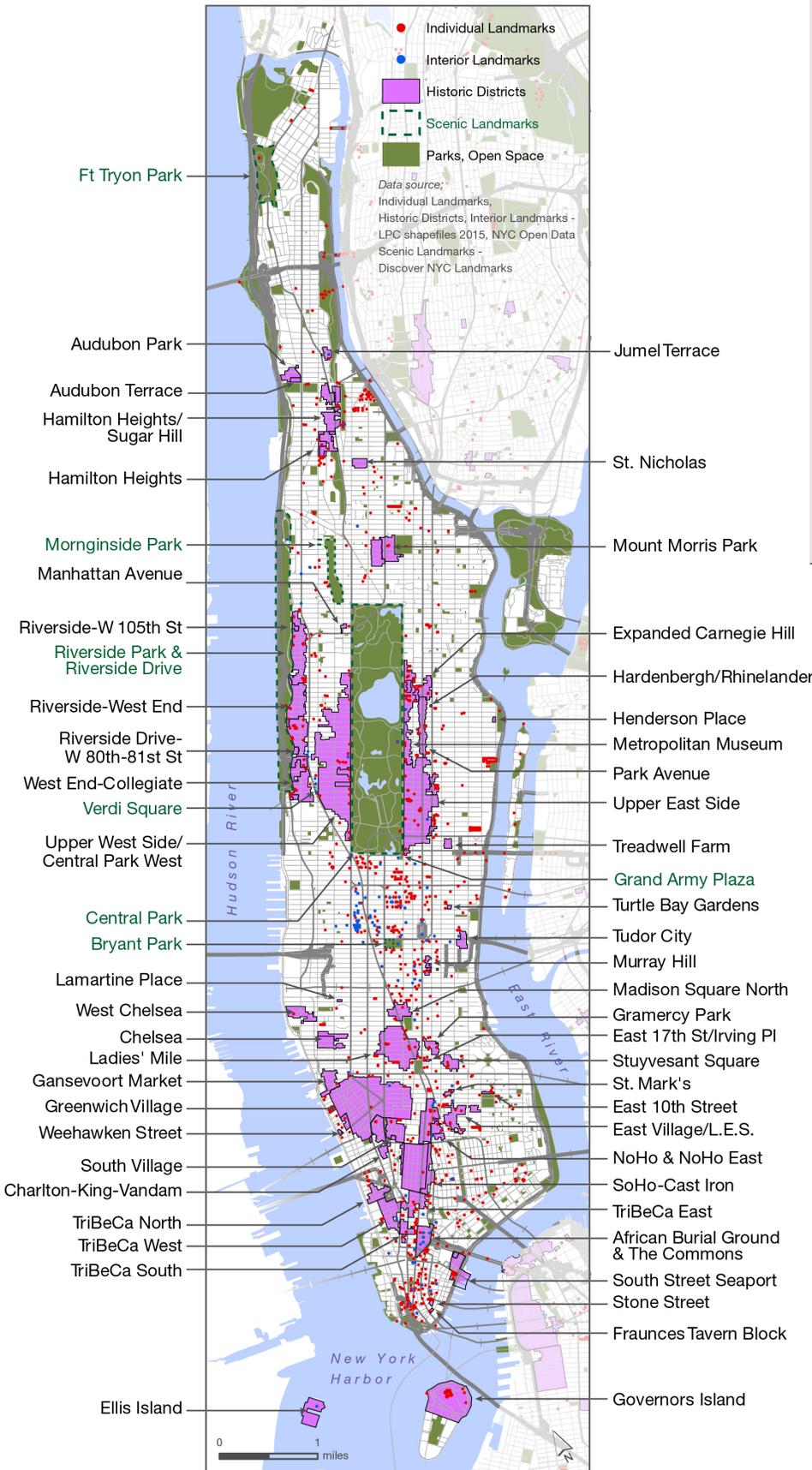
While Manhattan contains over 12,200 designated parcels, representing 28.5% of the parcels in the borough, Brooklyn contains even more designated parcels, with over 14,200. The other boroughs have considerably smaller numbers of designated parcels.

Recent testimony by Meenakshi Srinivasan, the current Chair of LPC indicates that designation efforts under Mayor de Blasio will concentrate on neighborhoods that are not well represented in existing surveys or designations, as well as areas that are undergoing rezonings or neighborhood plans.⁴⁹ LPC’s focus on rezoning areas is critical, as these areas are likely to undergo rapid development in the coming years, with pressure to redevelop historic structures. Early coordination between LPC and DCP is particularly important in such areas, as rezoning areas may experience increased market attention during the community planning process with the potential for speculative demolition of historic structures.

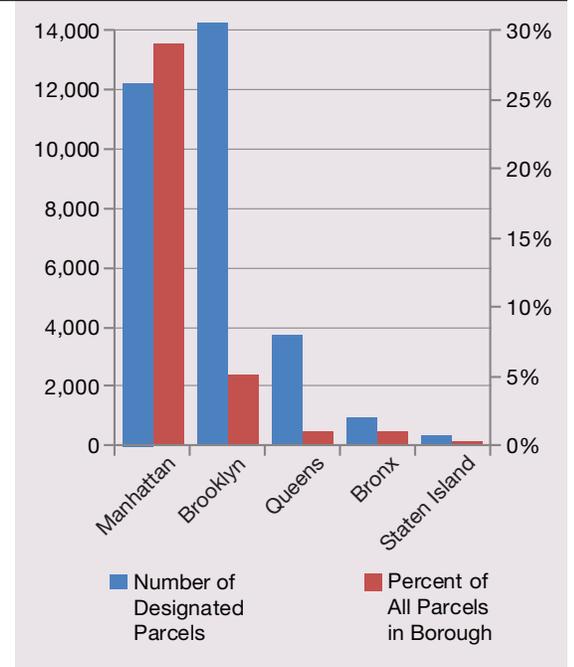
⁴⁹ *Testimony of Meenakshi Srinivasan, Landmarks Preservation Commission Chair, Before the Land Use Committee of the New York City Council, New York City Council (2015) (New York, NY).*



Manhattan Landmarks



Designated Parcels by Borough



While Manhattan contains over 12,200 designated parcels, representing 28.5% of the total number of parcels in the borough, Brooklyn contains even more designated parcels, with over 14,200.

ECONOMIC IMPACTS

Part of the original intent of the Landmarks Law was to strengthen New York City's economy. The Landmarks Law is a regulation of land use, and it places a burden on property owners to keep their buildings in good repair⁵⁰ and to request permits via LPC when they desire to conduct work on their properties.⁵¹ Benefits can also accrue to owners in the form of higher rents because of the desirability of renting a historic space, or the general revaluation of a neighborhood that can accompany preservation. As is set forth in the Landmarks Law, one of the public purposes of this regulation is related to economic concerns. The Law's policy statement expresses the intent to "... (c) stabilize and improve property values in such districts ... (e) protect and enhance the city's attractions to tourists and visitors and the support and stimulus to business and industry thereby provided; (f) strengthen the economy of the city..."

Today, however, the economic impact of landmark designation is a contested issue. While those in the real estate industry may criticize designation on the grounds that it imperils housing production and other social goals,⁵² preservationists hold that landmark designation has stabilized and enhanced property values in addition to helping the tourism economy and fostering civic pride and other social goods.⁵³ Famously, SoHo was revalued in just this way, with plans for urban renewal disrupted by preservation advocates.⁵⁴

Leaving aside the public benefit inherent to preserving historic buildings, historic district

50 § 25-311

51 § 25-305

52 Real Estate Board of New York, "Housing Production on NYC Landmarked Properties," accessed March 26, 2015, http://www.rebny.com/content/dam/rebny/Documents/PDF/News/Research/Policy%20Reports/Housing_Production_on_NYC_Landmarked_Properties.pdf

53 Simeon Bankoff, "HDC Defends NYC Landmark Preservation," *City Land*, December 19, 2013, accessed March 26, 2015, <http://www.citylandnyc.org/hdc-defends-nyc-landmark-preservation/>

54 Sharon Zukin, *Loft Living* (New Brunswick: Rutgers University Press, 1982), 45.



Case Study: SoHo

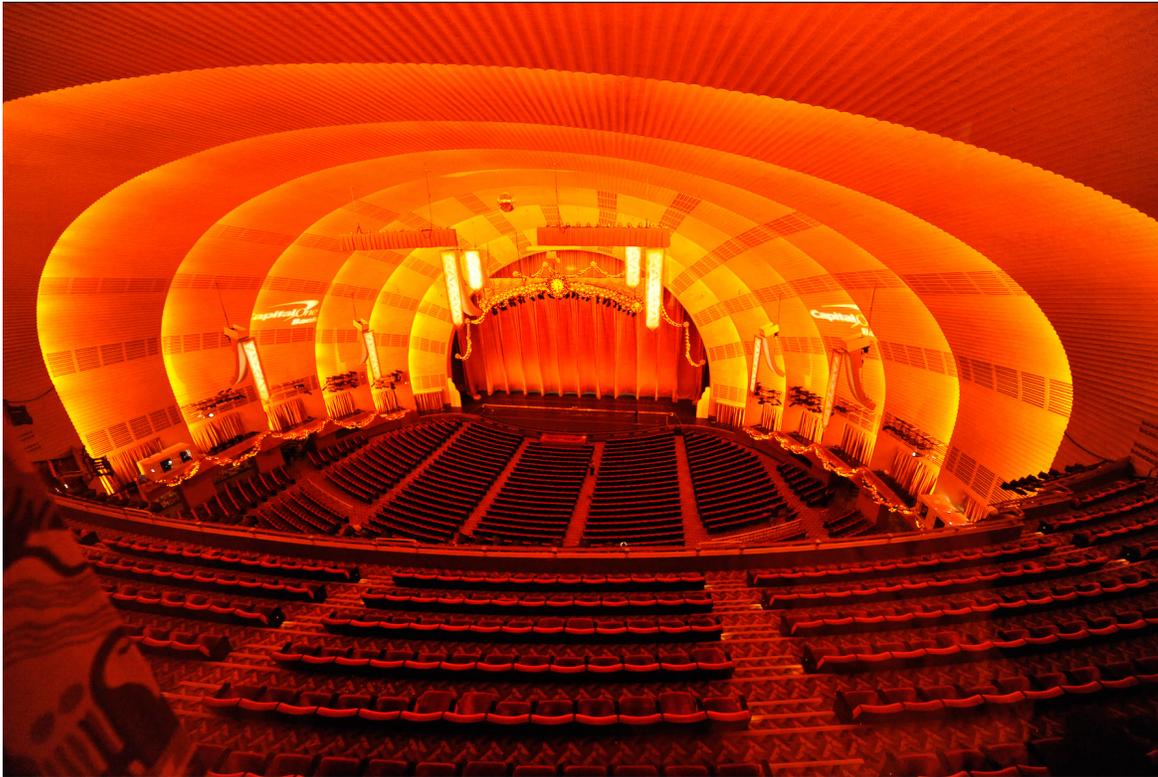
SoHo, also known as the Cast Iron District or Hell's Hundred Acres, is a large section of Manhattan south of Houston Street composed of cast-iron façade loft buildings that were constructed in the 19th century. By the 1950s the area was full of small manufactures, particularly print shops. The area had been contemplated as an urban renewal area, and Robert Moses planned to construct the Lower Manhattan Expressway (never completed) through the neighborhood. Preservationists rallied against the proposed plan and were successfully in defeating the highway; in 1973 the area won designation as a historic district, and in 1978 was listed on the National Register.

In the early 1970s artists began to move into the neighborhood, as the artists valued the same features that had made loft construction so attractive to industry: large open spaces and natural light.

Today SoHo is a major destination for visitors to the city and since the 1970s municipalities across the country have followed its example, turning to reuse rather than urban renewal.

Source: Zukin, Sharon. 1982. *Loft Living*. Baltimore: Johns Hopkins University Press.
Photo credit: smu.gs/1jfcNbz, Joey Lax-Salinas

Radio City Music Hall



In 2013 visitors spent \$38.8 billion in New York City, generating \$57.3 billion in overall economic impact.

Photo credit:
Wikimedia.org

designation has a heterogeneous economic impact on the city, according to a recent study by New York University's Furman Center. Generally speaking, historic district designation is associated with enhanced property values when there are minimal unused development rights available, such as in historic districts outside of Manhattan. However, designation has a more negative economic effect when the area's zoning would allow considerably more development than currently exists. Additionally, construction activity falls after designation. In both cases, however, designation enhances the value of properties located adjacent to the district.⁵⁵ In other words, the economic effects of landmark designation in terms of land values are neither clearly positive nor clearly negative.

The tourism value of historic preservation should also be acknowledged. In 2013 visitors spent \$38.8 billion in New York City, generating

\$57.3 billion in overall economic impact. This led to \$4.7 billion in federal, state, and local tax revenues, with 348,000 jobs sustained by direct and indirect economic impacts. It cannot be questioned that historic buildings and neighborhoods contribute heavily to the appeal of the city for visitors, and the list of designated landmarks that are major attractions in and of themselves is lengthy: the Broadway theaters; Radio City Music Hall; Carnegie Hall; the Empire State Building; the Chrysler Building; the Flatiron Building; Rockefeller Center; the Metropolitan Museum; the American Museum of Natural History; the Guggenheim Museum; Grand Central Terminal; the Brooklyn Bridge; the New York Public Library; the New York Stock Exchange; Ellis Island; the Statue of Liberty; Central Park; Greenwich Village; SoHo; and South Street Seaport, just to name a few.

However, preservation has other economic impacts visible when one widens the scope of analysis to include the effects of historic preservation programs at the State and Federal levels. Preservation does provide an economic benefit to the owners of income producing properties via the Federal Historic Preservation Tax Credit,

55 Vicki Been, Ingrid Gould Ellen, Michael Gedal, Edward Glaeser, and Brian J. McCade. "Preserving History of Hinder Growth? The Heterogeneous Effects of Historic Districts on Local Housing Markets in New York City," (New York: NYU Furman Center Working Paper, 2014), 3-4.

which can award property owners up to 20% of the cost of a renovation for certified historic structures, provided the owner adheres to the renovation standards of the Secretary of the Interior⁵⁶ and the property is listed in the National Register. This tool has been widely used by non-profit and for-profit housing developers across the nation. Developers have an incentive to use Historic Tax Credits in combination with Low Income Housing Tax Credits, as the Historic Tax Credits can be applied against the non-residential portion of building. Also, the Historic Tax Credits can be taken in the first year after project completion, while Low Income Housing Tax Credits must be spread over 10 years.⁵⁷

For commercial buildings, National Register listing can often accompany NYC landmark designation, providing both a carrot in the form of a tax credit, and a stick in the form of LPC regulation. This combination of cost and benefit can encourage owners to keep buildings in good repair. Radio City Music Hall, for instance, was both designated a local landmark⁵⁸ and listed in the National Register in 1978.⁵⁹ Radio City was preserved and restored first in the late '70s⁶⁰ and later in the late '90s,⁶¹ and the owners contracted with a firm specializing in historic preservation tax credits.⁶² Given the combination of local landmark designation, National Register listing, and potential use of historic tax credits, the venue is

56 John M. Fowler, "The Federal Preservation Program," in *A Richer Heritage*, ed. Robert E. Stipe (Chapel Hill: The University of North Carolina Press, 2008), 62.

57 David Listokin, Barbara Listokin, and Michael Lahr, "The contributions of historic preservation to housing and economic development," *Housing Policy Debate* 9 (1998): 449-450.

58 Pearson, *New York City Landmarks Preservation Commission (1962-1999)*, 71.

59 "National Register of Historic Places Program: Research." National Park Service, accessed March 1, 2015, <http://www.nps.gov/nr/research/index.htm>.

60 Pearson, *New York City Landmarks Preservation Commission (1962-1999)*, 71.

61 Glenn Collins, "Radio City's Luster to Be Renewed in \$30 Million Project," *The New York Times*, June 15, 1998.

62 "List of Projects," MacRostie Historic Advisors LLC, accessed March 1, 2015, http://www.macrostiehistoric.com/pages/list_of_projects_/51.php



Photo credit:
Jim Henderson, Wikimedia.org

an excellent example of local and federal preservation tools being applied simultaneously.

From 1977 to 2014, the federal Historic Tax Credit program has been applied to 40,384 historic rehabilitation projects nationwide, leveraging \$73.8 billion of rehabilitation investment, rehabilitating 255,994 housing units, and creating 248,303 new housing units. Of these housing units, low and moderate income housing units totaled 137,978. All this investment created an estimated 2.47 million jobs. While numbers are more difficult to come by at the local level, in Fiscal Year 2014 New York State saw \$383 million in completed federal Historic Tax Credits projects.⁶³ It should be noted that these figures do not even including multiplier (indirect/induced) effects, which can exceed those of new construction.⁶⁴

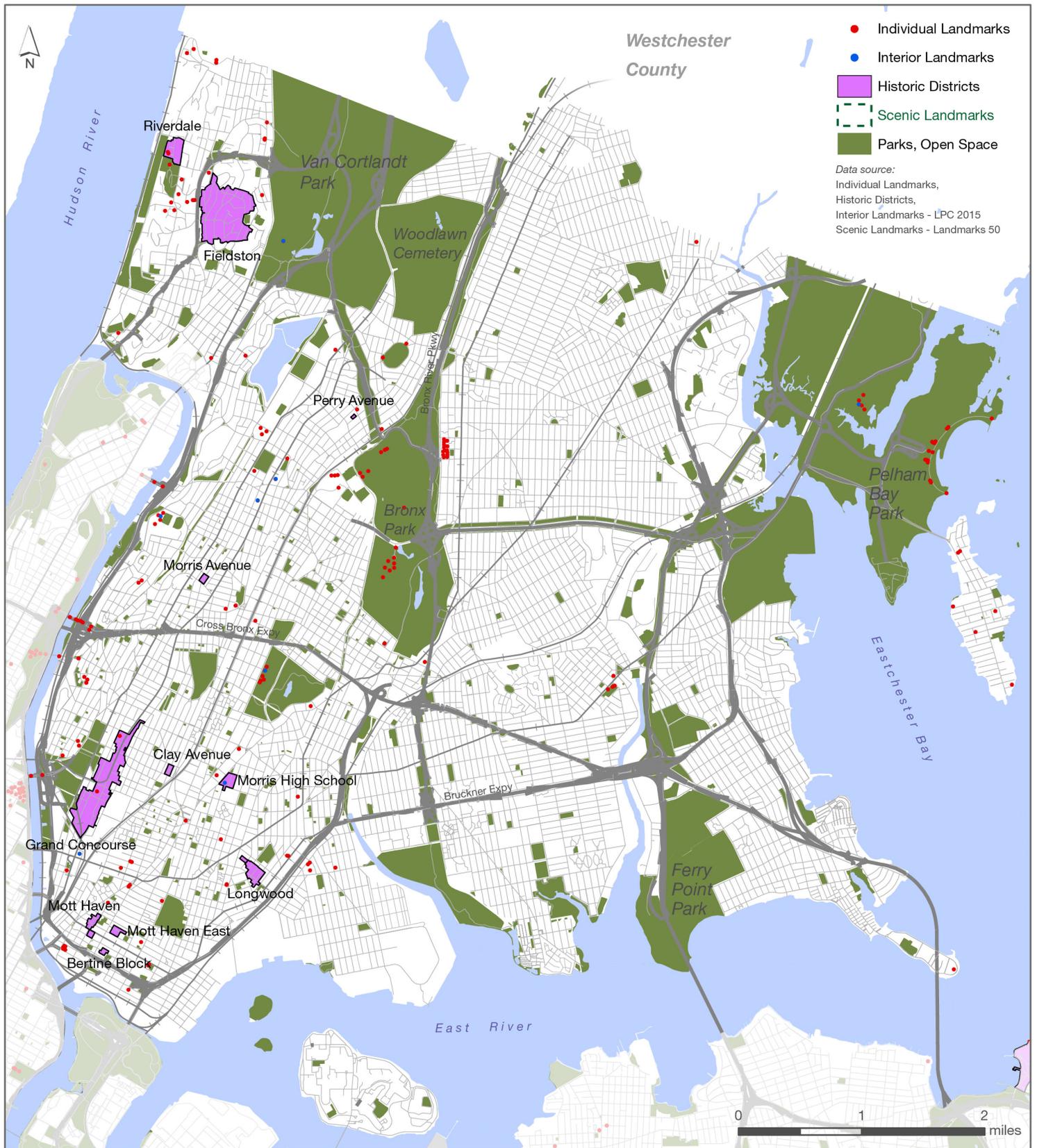
New York State operates its own tax credit program for both income producing buildings and primary residences. Buildings eligible for the Federal tax credit for income producing

63 "Federal Tax Incentives for Rehabilitating Historic Buildings: Statistical Report and Analysis for Fiscal Year 2014," National Park Service, accessed March 26, 2015, <http://www.nps.gov/tps/tax-incentives/taxdocs/tax-incentives-2014statistical.pdf>, 9.

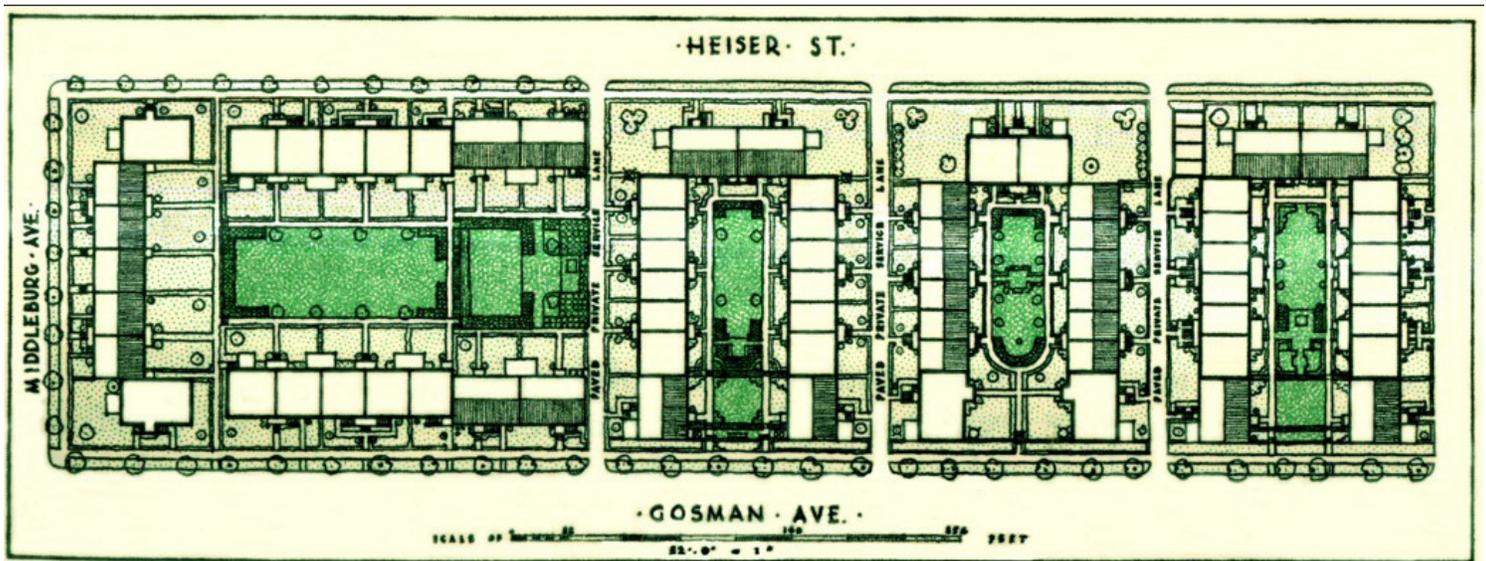
64 Listokin, Listokin, and Lahr, "The contributions of historic preservation to housing and economic development," 458.

**In Fiscal Year 2014
New York State
saw \$383 million in
completed federal
Historic Tax Credits
projects.**

Bronx Landmarks



Site plan for Sunnyside Gardens



Site Plan Source:
Sunnyside Gardens
Preservation Alliance

properties are automatically eligible for the State program provided that they are located in an eligible census tract. The State tax credit is also 20% of the eligible basis, up to \$5 million. Individual homeowners can also claim a credit for 20% of qualified rehabilitation expenses up to a credit value of \$50,000, provided that the home is listed on the State or National Register or is a contributing building in a State or National Register Historic District. The home must also be in a qualifying census tract.⁶⁵

While Landmark designation (and, potentially, an accompanying National Register listing) may enhance the property values of an outer borough neighborhood and make it more attractive to higher income groups, National Register listing can be a tool that helps a community development corporation rehabilitate abandoned buildings for low income housing. Over 25% of the housing units rehabilitated or developed by Federal tax credits have been for low or moderate-income groups.⁶⁶

However, the current financial regime does

65 "Tax Credit Programs," New York State Historic Preservation Office, accessed March 26, 2015, <http://nyspark.com/shpo/tax-credit-programs/>.

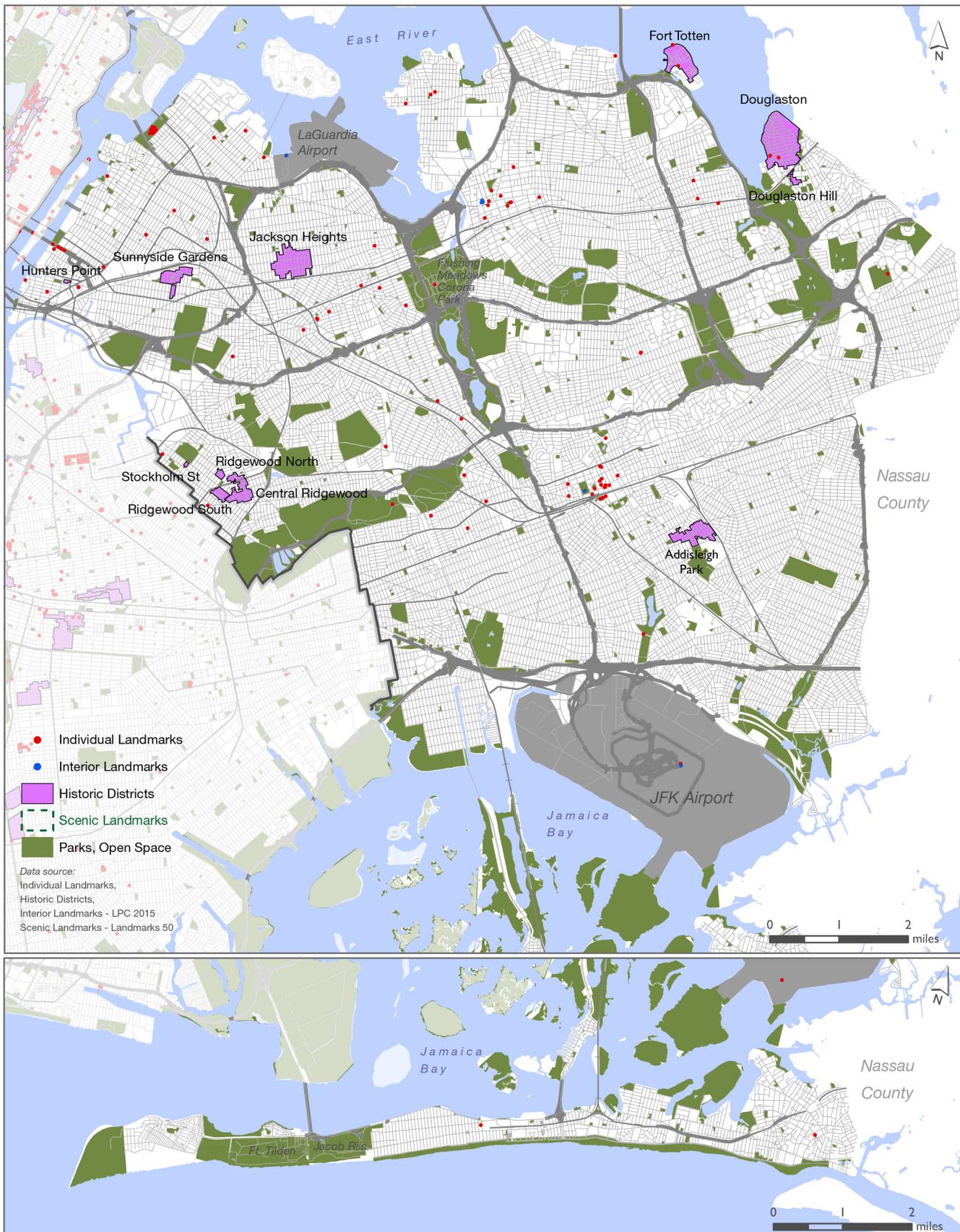
66 "Federal Tax Incentives for Rehabilitating Historic Buildings: Statistical Report and Analysis for Fiscal Year 2014," 3.

leave gaps in assistance. For instance, a historic structure may be a private home and not in a qualifying census tract. Tax credits may only come into play if the historic structure is renovated, as opposed to ongoing preventative maintenance that must be performed year in, year out. In such cases, tax abatements may provide more effective assistance than tax credits. The largest hole in the current assistance regime concerns non-profit organizations, which are already tax-exempt.

ECONOMIC BURDEN ON NON-PROFIT ORGANIZATIONS

Non-profit organizations are more constrained than commercial real estate owners. While non-profit housing organizations can indeed use the Federal historic preservation tax credit for the rehabilitation of rental housing, only income-producing properties can receive the historic preservation tax credit; this precludes the use of the credit by houses of worship. A religious structure that has received landmark designation also cannot be repositioned to take advantage of potential higher rents, as it has no rents, and its only income is typically in the form of offerings/alms/tithes or financial support from its parent religious institution. Because of the lack of return on the property, court cases have created undue burden tests to determine if landmark designation constitutes a hardship to the fulfillment of

Queens Landmarks



New York City Farm Colony: deteriorated structure



Site plan for redevelopment of New York City Farm Colony



the organization's mission.⁶⁷ However, hardship claims lead to one of two undesirable outcomes: the continued burden of maintaining a designated structure; or the demolition of the designated structure, which damages our collective heritage.

Charitable and religious institutions that hold landmark designated properties therefore bear a certain burden; on the one hand they are often ineligible for historic preservation tax credits, and on the other they may have been denied the fullest development rights of their property unless such a denial is found to constitute a hardship to the fulfillment of their mission. One of the only remaining ways for such an organization to seek financial redress for the burdens of landmark regulation is through the transfer of development rights (TDR).

Section 74-79 of the New York City Zoning Resolution allows for TDRs from landmark-designated properties through a special permit process. This special permit was conceived as a method to partially mitigate some of the lost value imposed on properties due to designation under the Landmarks Law. Over the years, Section 74-79 has resulted in very few transfers of development rights from landmark designated

⁶⁷ *Trustees of Sailors Snug Harbor v. Platt*, 288 N.Y.S. 2d 314, 3XX (App. Div. 1968); *St. Bartholomew's Church v. City of New York*, 914 F.2d 348 (2nd Cir. 1990); Pearson, *New York City Landmarks Preservation Commission (1962-1999)*, 38-39.

Case Study: New York City Farm Colony

The New York City Farm Colony began as the Richmond County Poor Farm in 1829, but its greatest architectural and historic significance is derived from the turn of the century commitment by the City to provide better services to its dependent community. In the early 20th century the site saw an extensive building program by the City, and by 1912 the site held almost 1500 residents. However, the City pulled back from its support of the facility in the post-war era, and in 1975 the remaining residents were consolidated in Seaview Hospital, leaving the Farm Colony facilities to deteriorate through neglect. The historic district, designated in 1985, includes the New York City Farm Colony, Seaview Hospital, the former Richmond County Isolation Hospital, and Staten Island Potter's Field. By 2015 the buildings were in various states of disrepair, with the graffiti-covered buildings containing makeshift bedrooms and the outdoor spaces serving as an informal paintball venue.

The City of New York has disposed of the site to NFC Associates to redevelop the site into senior housing including a certain amount of affordable housing, preserving six of the original structures and salvaging portions of the remaining historic structures. In January 2016 the City Council approved the disposition and related land use items to allow the project to proceed.

The primary lesson from the Farm Colony is that historic district or landmark designation, on its own, will not save historic buildings; it takes money and commitment by the owner to effect preservation.

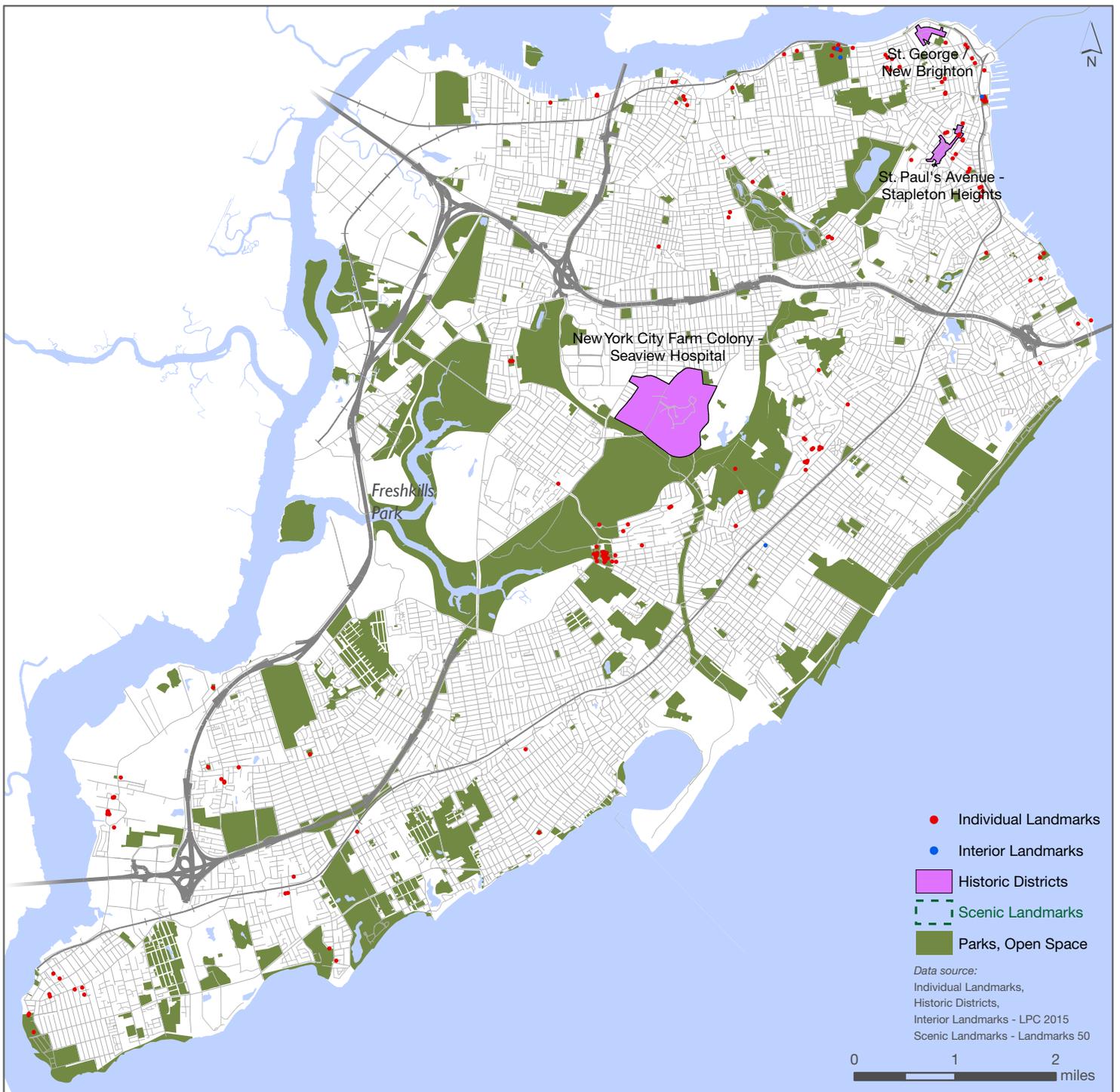
Sources: LPC. 1985. *New York City Farm Colony - Seaview Hospital Historic District Designation Report*. New York, NY.

Kensinger, Nathan. 2014. "Staten Island's Farm Colony Faces Development After Decay." *Curbed*, April 4.

Bindelglass, Evan. 2014. "Staten Island's Abandoned Farm Colony Could House Seniors." *Curbed*, October 1.

Photo credit: Nathan Kensinger.

Staten Island Landmarks



properties.⁶⁸ Depending on one's view of the relative importance of compensating landmarked properties compared with the City's other planning goals, this scarcity of transfers under 74-79 could be viewed as a failure of the program.

Zooming out of New York City, San Francisco created a comprehensive downtown plan in the 1980s that established generous building envelope standards, tight Floor Area Ratio (FAR) limits, and a TDR program for landmarks. Property owners were expected to purchase development rights from landmark designated buildings in order to maximize onsite FAR and fill out the building envelopes. Over 30 years this has resulted in the preservation of ~50 landmarks, as intended by the plan.⁶⁹ In recent years demand for TDRs has lessened as San Francisco has made other bonus mechanisms available, which have achieved other public purposes.⁷⁰ Similarly, in Portland, where development rights are more constrained, developers have been opting not to utilize TDR mechanisms because they can obtain additional development rights through other incentive programs, such as the provision of locker rooms (for cyclists) and green roofs.⁷¹ New York City has myriad floor area bonus mechanisms, including inclusionary housing, plazas, subway bonuses, theater preservation bonuses, etc. If developers could choose between historic preservation TDRs and these other incentive programs, they would choose whichever program offered the least expensive development rights or were the best fit

for the project.

Within New York City developments rights are not evenly distributed across landmarks; a landmark in a C5-3 district has an available 15.0 of commercial FAR or 10.0 of residential FAR, while a landmark in an R6B district has a maximum 2.0 commercial FAR or 2.0 residential FAR, though the buildings themselves may face very similar capital needs. Additionally, the number of receiving sites and market for the development rights vary by location.

From time to time commentators point to the legal necessity to compensate owners of landmarked properties to avoid City liability for "taking" the property. Landmark designation has never been held to constitute a taking of private property by the government. Under the U.S. Constitution's Fifth Amendment standard, compensation is only required where a taking has occurred; therefore, landmarks are not legally required to be given compensation in the form of TDRs at all. A court conducting a takings analysis of landmarked property would look at the value of the entire landmarked parcel, including improvements, future development potential, and TDRs to determine whether regulation has deprived the owner of nearly all the value in the property and unfairly thwarted his or her investment-backed expectations for that value.⁷² The Landmarks Law already contains provisions addressing potential takings claims by providing for tax abatements, acquisition of the property, or allowing demolition and redevelopment.⁷³

TDRs are a promising method for providing financial assistance to designated properties, particularly in that they require no direct expenditure of City funds. However, any expansion of TDR programs needs to take into account the uneven distribution of development rights, the difficulty of finding receiving sites, and the potential competition between preservation and other city goals.

68 New York City Department of City Planning, *A Survey of Transferable Development Rights Mechanisms in New York City*, accessed March 26, 2015, <http://www.nyc.gov/html/dcp/pdf/tdr/research.pdf?r=1>.

69 Dan Sider, San Francisco Planning Department, "Panel One: Experience from Elsewhere," (panel discussion, *Trading High in the Sky: A critical understanding of TDRs with a look toward change*, New York, NY, February 26, 2015).

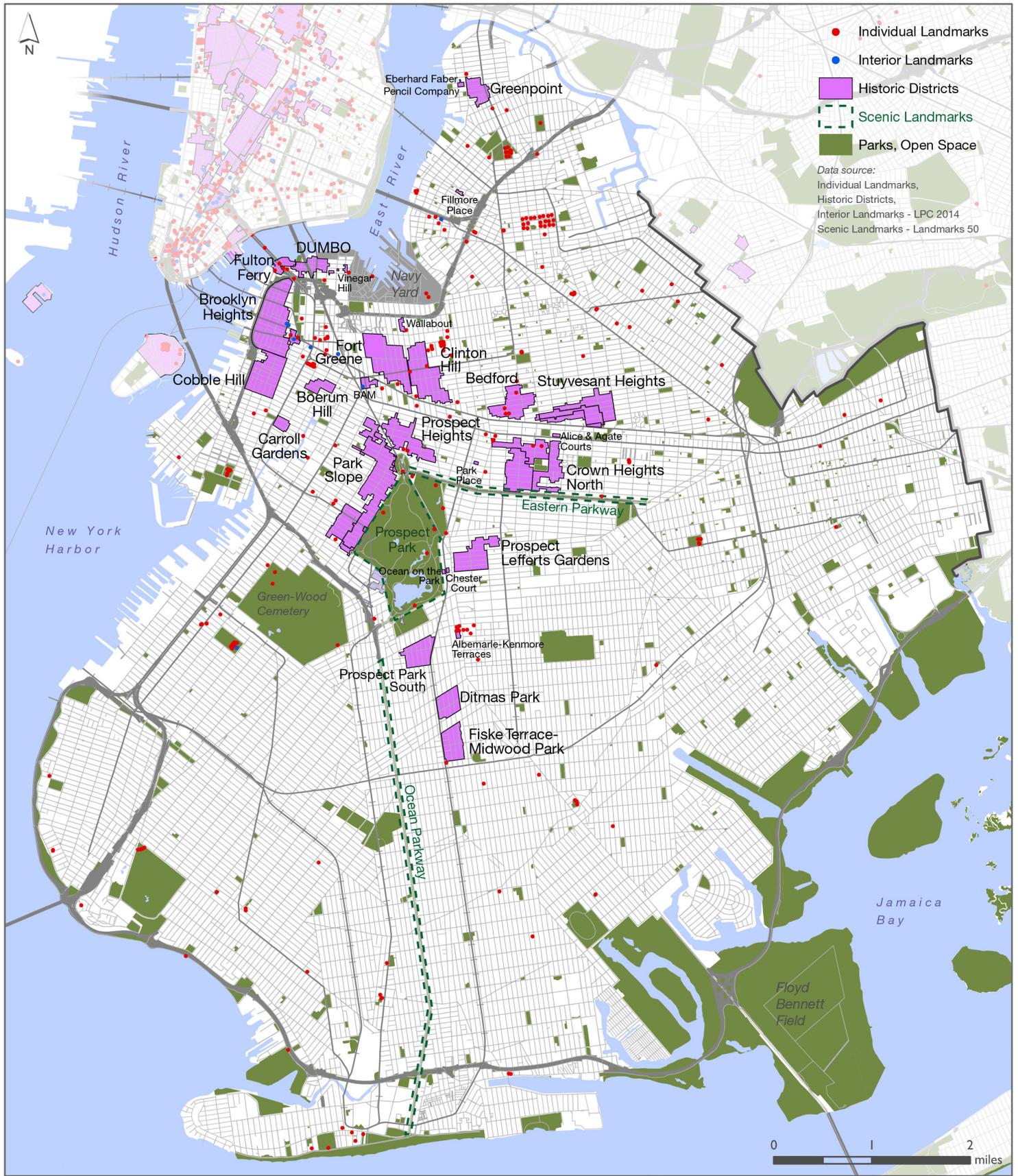
70 Seifel Consulting, *TDR Study: San Francisco's Transfer of Development Rights Program* (San Francisco: San Francisco Planning Department, 2013), III-10.

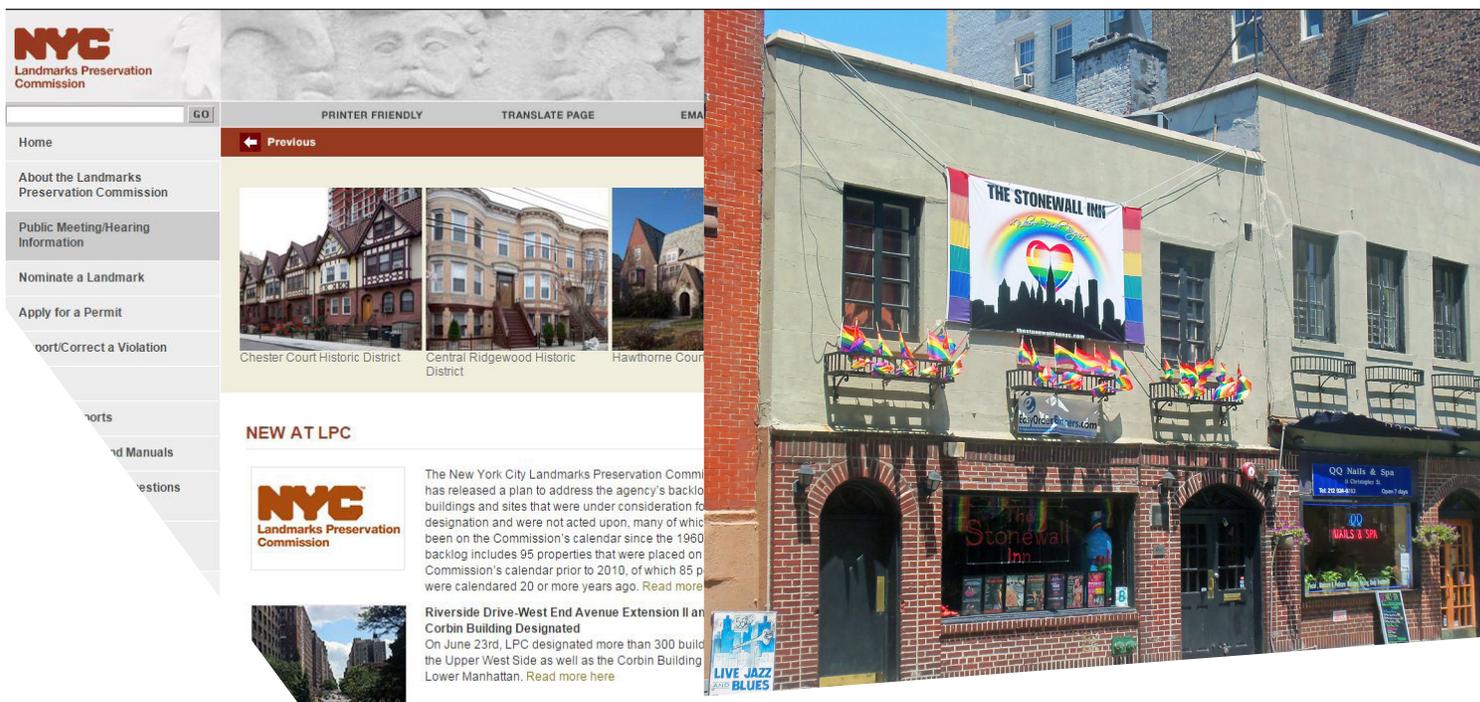
71 Johnson & Gardner, *Evaluation of Entitlement Bonus and Transfer Programs Portland's Central City*, (Portland: City of Portland Bureau of Planning, 2007), 25-29.

72 See *Penn Central Transportation Co. v. New York City*, 438 U.S.104 (1978).

73 See, NEW YORK CITY ADMIN. CODE, § 25-309.

Brooklyn Landmarks





Recommendations

After careful study of the issues described above we have identified a number of approaches to strengthen the Landmarks Law and support the work of LPC by focusing on improving the transparency of the designation process and the public’s access to information, expanding the approach to cultural preservation, and coordinating planning strategies more directly with preservation. By combining the codification of protection for calendared buildings with a timeline for designation there will be enhanced predictability for the public and property owners alike.

These strategies are proposed in the spirit of strengthening the legitimacy of an important public process while not compromising what has made the Landmarks Law so strong and enduring. The law and preservation practice can continue to evolve as society changes. For instance, as time has passed it has become clear that certain properties, such as the Stonewall Inn, are just as worthy of preservation as masterpieces of Beaux-Arts architecture. Similarly, modern technology and new approaches to open data allow for public process to be made truly open to the public.

Recommendation 1.

Create a Timeline

RECOMMENDATION

■ The landmarks law should be amended to implement reasonable mandatory timelines for the process for designating landmarks, interior landmarks, scenic landmarks, and historic districts. The timelines should cover the period from calendaring through designation. This reform would help to inform landowners, neighborhood residents, and advocates about the prospects and timelines for potential LPC actions, and address the current issue with items remaining on the calendar for years.

■ Introduction 775, a bill sponsored by Council Members Peter Koo and David Greenfield, would implement a total one-year timeline for individual landmarks and two years for historic districts. The Council held a public hearing on this bill on September 9, 2015 and heard testimony from LPC as well as preservation advocacy organizations and other civic groups and private citizens. The main area of concern raised by both advocates and LPC was the proposed moratorium on reconsideration should an item not be designated within the timeline.

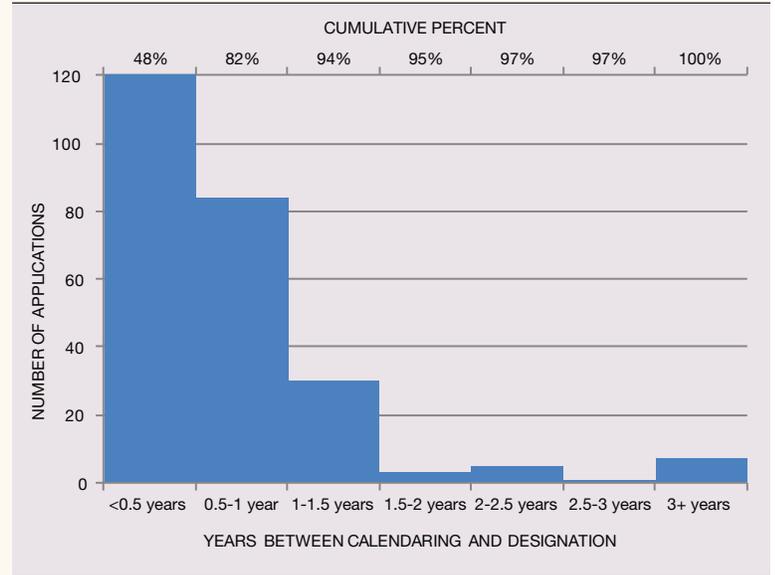
■ Landmark designation is a public process and involves public discussion. The agency and the public should have adequate time to conduct this process. The analysis shows that over the last 15 years, LPC was able to move from calendaring to designation in less than one year for 82% of individual landmarks. For historic districts, LPC was able to move from calendaring to designation in less than three years for 93% of applications.

■ Under current law, both the City Planning Commission and the City Council operate under time limitations for review of landmark designations.

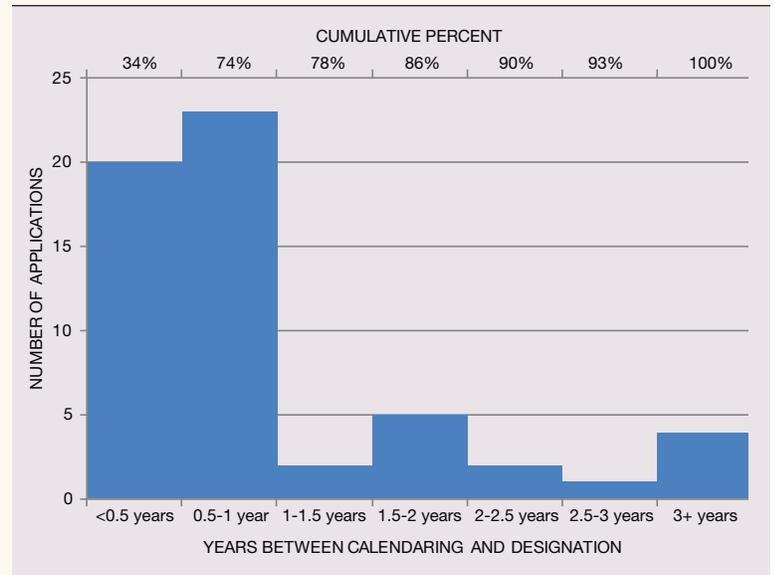
■ Designation timelines are part of the landmark designation process in many other jurisdictions, including Chicago, Los Angeles, San Francisco, Miami.¹ These jurisdictions require a final decision on designation within 7 to 90 days of the public hearing held for an item. The New York model municipal preservation law, published by the New York State Historic Preservation Office, also requires action to be taken

1 Chicago Mun. Code § 2-120-690; L.A. Planning Code § 22.171.10(e); San. Fran. Planning Code § 1004.1-2; Miami-Dade Planning Code § 16A-10(e)-(f).

Individual Landmarks by Days on Calendar



Historic Districts by Days on Calendar



on items within 62 days of the public hearing.²

■ A reasonable time limit on LPC consideration of designation would lend both predictability and legitimacy to the process and bring the New York City Landmarks Law up to date with preservation ordinances around the country.

2 Model Landmarks Preservation Local Law for New York State Municipalities, § 12(f) available at <http://parks.ny.gov/shpo/certified-local-governments/documents/ModelLawForLocalGovernments.pdf>.

Recommendation 2.

Codify Community Board Role

RECOMMENDATION

- The existing community board referral process should be formalized and made part of the Landmarks Law to require consultation with affected communities on larger and more significant applications. Certificates of appropriateness are the highest-level, most involved review for the significant changes to design of designated properties. While LPC currently asks applicants for certificates of appropriateness to present to the affected community board, the Landmarks Law should require this consultation in order to formalize the public participation in the process.
- While on its face this change would be another required procedural step, the referral is an informal requirement at present, and formally requiring this referral would add no more time to an application process. Furthermore, formalizing the referral process should lead to a situation where more work is done by applicants with staff before submitting their applications to the community board so that these boards can see the version of the proposal most likely to be considered by the Commission.

Recommendation 3.

Provide Formal Protection for Calendared Properties

RECOMMENDATION

- The Landmarks Law and the construction code should be updated to require an official hold on building permit applications for calendared properties. The hold should provide enough time for LPC to review and make a decision on pending designations.
- Under the current system, the Department of Buildings waits for the maximum permitted 40 days to review construction documents on building permit applications for properties that are calendared for consideration by LPC.³ The Department of Buildings also notifies LPC when it receives such applications. This process gives LPC a window to make a designation decision in the event a calendared property is at risk of significant alterations.

³ See, New York City Department of Buildings, Operational Policy & Procedure Notice # 13/88, July 6, 1988, *available at*, <http://www.nyc.gov/html/dob/downloads/ppn/oppn1388.pdf>.

Recommendation 4.

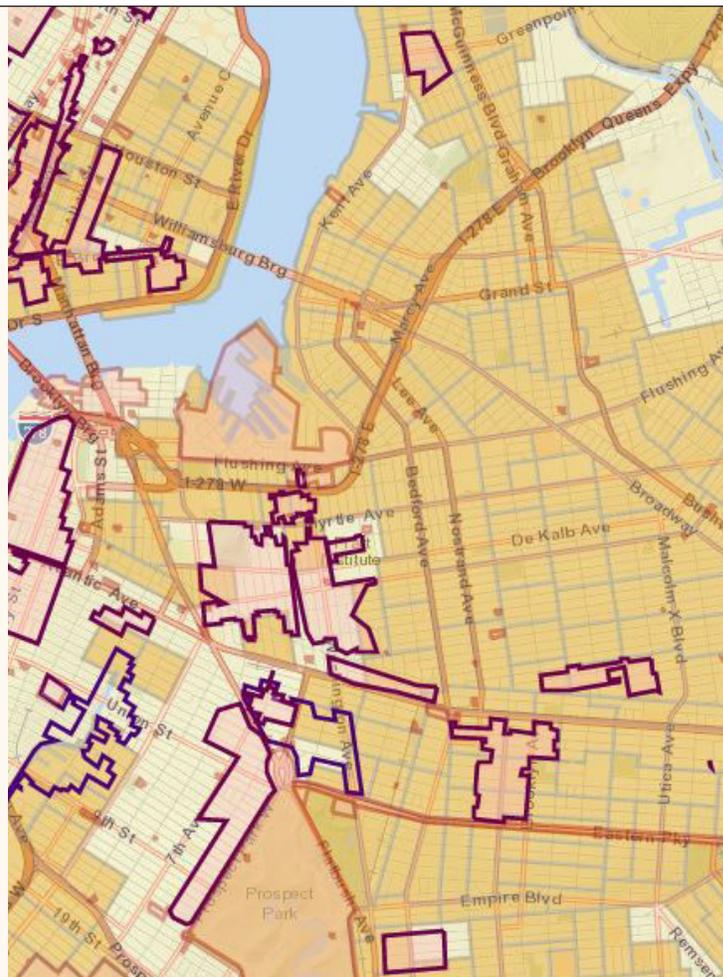
Study Support for Landmark Assistance

RECOMMENDATION

■ A broader study is needed to investigate ways to make funding available to assist landmark owners with the upkeep and repair of designated buildings. Such assistance could take many different forms. Proposals for grants, subsidies, tax benefits or exemptions, and reforms to development rights transfers should all be considered as potential avenues to provide assistance for the upkeep and repair of designated properties. The New York Landmarks Conservancy, for instance, has been very active in employing financial assistance tools to effect preservation across the city. While listing on the national and state registers of historic places does allow for financial assistance in certain circumstances, this assistance fails to reach many owners of landmarks buildings.

■ In order to properly evaluate proposals for increased aid to landmarked properties, there should be a thorough survey to gather data on the condition of designated buildings to determine existing needs. To avoid having properties fall into disrepair, proposals should be targeted to address landmarks with the most pressing needs where existing programs fail to provide assistance.

■ Additionally, existing tools should be used when possible to enhance the condition of historic structures. Perhaps LPC could use its surveying resources to help community based organizations prepare National Register nominations to enable non-profit low-income housing developers to take advantage of federal and state historic preservation tax credits. This would bring LPC resources to bear in the effort to preserve and develop affordable housing and also enhance the physical condition of historic resources.



Screen capture from the New York State Cultural Resource Information System showing National Register listed buildings, National Register Historic Districts, and Census Tracts that qualify for New York State Historic Tax Credits.

Recommendation 5.

Create New Mechanisms for Protecting Buildings



RECOMMENDATION

■ LPC should continue to bring its criteria for designation in line with preservation at the State and National levels to consider places valuable to the heritage of historically marginalized communities, not just architecturally significant buildings.⁴ The Landmarks Law itself calls for protection of places important to the “city’s cultural, social, economic, political and architectural history,” but over time LPC has often focused heavily on architectural criteria.

■ While developing regulatory tools to address non-architectural criteria is challenging it will become increasingly important as neighborhoods continue to change dramatically and seek to hold on to their history and culture.⁴

■ LPC has recently taken steps to embrace broader criteria for preservation in its designation decisions including the recent designation of the Stonewall Inn in the West Village which was approved by the City Council.

■ The Stonewall Inn was the epicenter of the Stonewall Rebellion in 1969, a momentous event in the history of the LGBT rights movement. As stated by Andrew Berman of the Greenwich Village Society for Historic Preservation after the vote to place Stonewall on the calendar:

Today’s vote is a welcome and long overdue step forward in recognizing and preserving a tremendously important piece of our history. Few sites more powerfully embody the struggle for lesbian, gay, bisexual, and transgender rights, and for achieving a fairer and more just society, than the Stonewall Inn.⁵

⁴ Robert E. Stipe, “Where Do We Go From Here?” in *A Richer Heritage*, ed. Robert E. Stipe (Chapel Hill: The University of North Carolina Press, 2008), 462-463.

⁵ Giulia Olsson, “Stonewall Inn Is a Step Closer to Becoming a

■ Along these same lines we should continue to develop approaches to protecting buildings where landmark designation may not be the right solution. A form of preservation easement to protect critical elements of a building acceptable to the property owner, LPC and organizations like NYC Landmarks Conservancy may help to protect more buildings. Exploring the broader use of preservation easements can help provide the public the certainty that a building will be protected and give the property owner the flexibility to manage and operate a building as needed.

■ As we look to landmarking new kinds of buildings we also have to ensure that landmarked buildings can perform routine and essential work on their properties quickly and that LPC staff and the Commission’s review is focused on the proposals that represent significant changes to the landmark qualities of a building.

Landmark,” *The Observer*, June 2, 2015, <http://observer.com/2015/06/stonewall-inn-is-a-step-closer-to-becoming-a-landmark/>

Photo credit:
NY Daily News

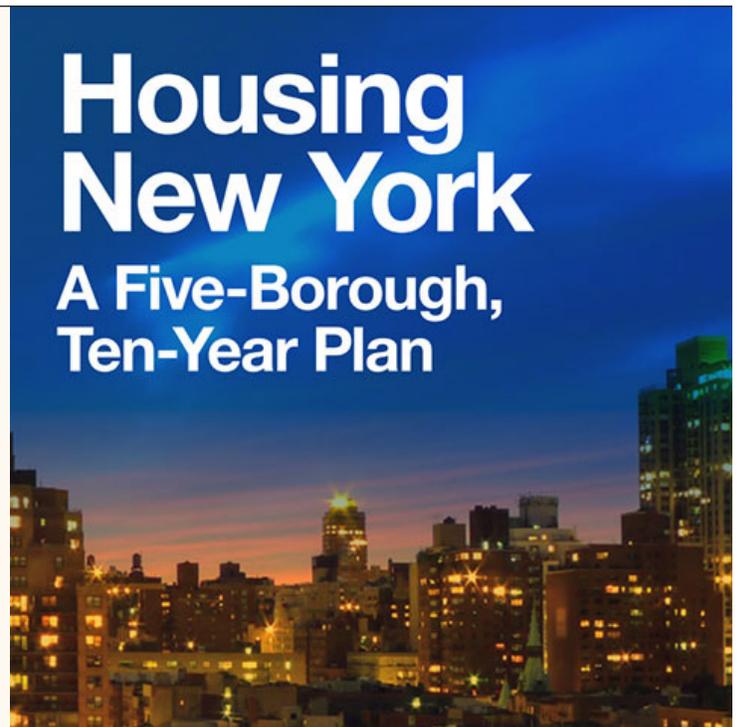
Recommendation 6.

Plan and Preserve Together

RECOMMENDATION

■ LPC should continue to increase emphasis on coordination of preservation goals and other city priorities. For example, when the Department of City Planning is considering a potential rezoning, LPC should analyze the historic resources located in the neighborhood and calendar buildings for designation during the public review process. This coordination would ensure that decisions about development and preservation are not treated as separate and apart, but rather as a part of a comprehensive neighborhood planning strategy. This will give both the community and the City Council an opportunity to consider these decisions within a useful context.

■ As recent work commissioned by the New York Landmarks Conservancy points out, preservation, in many cases, has been a very successful economic development strategy. We need to continue to leverage the benefits of preservation in developing neighborhood based planning and economic development strategies and see it as a proactive tool rather than a reactive one.



Recommendation 7.

Make Information Public

RECOMMENDATION

■ LPC has recently made public all designated and calendared items via an online mapping tool: Discover NYC Landmarks. This information is very helpful as it lets prospective buyers of a property know that the subject property could indeed be landmarked, a status that a title search would not uncover.

■ Introduction 837, sponsored by Council Member Garodnick in conjunction with Manhattan Borough President Brewer, would require LPC to establish a database to provide additional information on the status of calendared items, surveys, and designated landmarks and historic districts.

■ Public disclosure of the status of items in the designation consideration process would help inform the expectations of the public and owners of property under consideration. The designation process begins with an initial study or survey of a building or neighborhood by LPC staff. In some cases, this investigation is conducted in response to a Request for Evaluation (RFE), which can be submitted by members of the public. The RFE procedure is not codified in the Landmarks Law, but affords an opportunity to the public to suggest buildings or districts to LPC. LPC's recent efforts have improved transparency, and Introduction 837 would require additional information be made public.

ACKNOWLEDGMENTS

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The report was written by Project Manager James Lloyd and Deputy General Counsel Dylan Casey with editing by Raju Mann, General Counsel Julie Lubin, and Project Manager Chris Rice and input from preservation professionals. James Lloyd performed all the cartography, data analysis, and graphic design, with the report design based on the work of Michael L. Kelly (www.mlkelly.com).

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Finally, those most deserving of thanks are the thousands of New Yorkers who in their free time committed themselves to preserving the history of New York and whose work has ensured that future generations will benefit from our collective heritage.



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