

STATE OF WASHINGTON
CERTIFIED LOCAL GOVERNMENTS PROGRAM
REQUIREMENTS AND PROCEDURES
AMENDED 2002

INTRODUCTION

Since 1966, when Congress established a preservation program for the United States, the national historic preservation program has operated as a decentralized partnership between the federal government and the states. In the simplest of terms, the federal government established a program of identification, evaluation, and protection of historic properties which the states, Federal Government, local governments, and tribes, primarily, implement. The National Historic Preservation Act as amended (16 U.S.C. 470 et. seq.) contains the legal basis for the federal-state-local preservation partnership. The purposes of the Certified Local Government (CLG) program are: (1) to ensure the broadest possible participation of local governments in the national historic preservation program while maintaining standards consistent with the National Historic Preservation Act, and the Secretary of the Interior's "Standards and Guidelines for Archaeology and Historic Preservation"; (2) to enrich, develop, and help maintain local historic preservation programs in cooperation and coordination with the State Historic Preservation Office (SHPO) thereby officially recognizing and protecting the local community's heritage; and (3) to provide financial and technical assistance to further these purposes.

The National Historic Preservation Act has required that all local governments requesting certification satisfy the five following minimum requirements:

1. Enforce appropriate state or local legislation for the designation and protection of historic properties [Section 101(c)(1)(A)].
2. Establish an adequate and qualified historic preservation review commission by state or local law [Section 101(c)(1)(B)].
3. Maintain a system for the survey and inventory of historic properties [Section 101(c)(1)(C)].
4. Provide for adequate public participation in the local preservation program, including the process of recommending properties to the National Register [Sections 101 (c)(1)(D), (c)(2)(A) and (c)(2)(B)].
5. Satisfactorily perform the responsibilities delegated to it under the National Historic Preservation Act, as amended [Section 101(c)(1)(E)].

The state shall make available orientation materials and training to all local commissions. The orientation and training shall be designed to provide a working knowledge of the roles and operations of federal, state, and local preservation programs [36 CFR 61.6(e)(2)(iv)].

The Code of Federal Regulations (CFR) reiterated the above requirements and has provided more information about what is needed to meet the statutory requirement for the implementation of the CLG program. The complete text of the federal regulations (36 CFR 61.6 and 36 CFR 61.7) is attached to these certification standards as an appendix.

I. REQUIREMENTS FOR CERTIFICATION

To qualify as well as maintain its status as a CLG, a local government in Washington must meet the following minimum requirements.

A. State Legislation

All CLGs shall be familiar with the provisions of the State Environmental Policy Act (RCW 43.21c), the State Historical Societies--Heritage Council--Archaeology and Historic Preservation Act (RCW 27.34), the Historic Properties [Special Valuation Property Tax Incentive for Historic Properties] (RCW 84.26), the Indian Graves and Records Act (RCW 27.44), Abandoned and Historic Cemeteries and Historic Graves (RCW 68.60), and any additional state historic preservation legislation enacted subsequent to the adoption of these standards. The SHPO will provide, within 60 calendar days of the effective date of legislation, written notification to all existing CLGs and new applicants if additional legislation is adopted pertinent to this requirement.

B. Local Legislation

All CLGs shall adopt and enforce a local historic preservation ordinance that provides for the designation and protection of historic properties. The ordinance must contain provisions establishing a qualified local historic preservation review commission with authority to designate or recommend designation of historic properties. Designation provisions in such legislation include the identification and registration of properties for protection that meet criteria established by the state or the locality for significant historic and prehistoric resources within the jurisdiction of the local government [36 CFR 61.6 (e)(1)(i)]. The commission must also be empowered to review and comment on any proposed public and private development projects that would affect a locally designated historic property. Protection provisions in such legislation include a local review process under state or local law for proposed demolitions of, changes to, or other action that may affect designated historic properties [36 CFR 61.6 (e)(1)(ii)]. The commission's role in the local designation and protection process may be advisory to the local legislative authority.

The ordinance must be consistent with the purposes of the National Historic Preservation Act as amended (16 U.S.C. 470 et. seq.), the State Historic Preservation Plan, and all other provisions of these standards.

C. Commission Membership

The local historic preservation commission shall have no fewer than five members and no more than fifteen members. All commission members must have a demonstrated interest and competence or knowledge in historic preservation [36 CFR 61.6(e)(2)(ii)].

Lay persons appointed by the chief local elected official to the commission may qualify to serve if they have a record of avocational involvement in historic preservation studies or activities.

The commission shall also include 2 professional members in the disciplines of architecture, history, architectural history, planning, prehistoric and historic archaeology, folklore, cultural anthropology, curation, conservation, and landscape architecture, or related disciplines [NHPA as amended, Section 310(13)]. The SHPO will provide guidance on professional qualification standards for these disciplines. A broad range of professions shall be represented on the commission to the extent that qualified candidates are available in the community [36 CFR 61.6(e)(2)(ii)].

Local commissions may meet certification standards without a broad range of types of professional disciplines represented in the commission membership if the local government can demonstrate it has made in good faith a reasonable effort to recruit qualified professionals for those positions. A good faith, reasonable effort may include newspaper advertisement, solicitation from professional organizations, or personal requests among others. When a commission lacks expertise in a particular discipline, it must obtain the advice of a qualified consultant when considering National Register nominations and other actions that might impact properties which would ordinarily be evaluated by a professional from that field [36 CFR 61.6(e)(2)(i)].

D. Professional Staff

Every CLG must employ sufficient professional staff to carry out and/or facilitate the achievement of whatever historic preservation responsibilities it has agreed to assume in its Certification Agreement. At a minimum, the local government shall have professional staff adequate to coordinate the National Register review process and local survey program. "Professional staff" is someone who possesses expertise in historic preservation, archaeology, history, architectural history, urban planning, art history, architecture, or a closely related field. Professional staff may be employed on less than a full time basis where the volume of National Register and local survey activities in that jurisdiction does not warrant full time staff support. CLG staffing requirements may be met by private consultants employed under contract.

E. Public Participation

All CLGs shall provide for adequate public participation in the local historic preservation program, including the process of nominating properties to the National Register of Historic Places. The public must also have an opportunity to participate in any other responsibilities that the local government agrees to as a part of its Certification Agreement. Provisions for public participation shall be considered adequate if local commission meetings comply with the open public meetings act (RCW 42.30) subject to the limitations below.

The head of a Federal agency or other public official receiving grant assistance pursuant to the National Historic Preservation Act as amended, after consultation with the National Park Service, shall withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if the NPS and the agency determine that disclosure may [Section 304(a)]—

- (1) cause a significant invasion of privacy;
- (2) risk harm to the historic resources; or

(3) impede the use of a traditional religious site by practitioners.

F. Historic Sites Survey and Inventory

All CLGs shall maintain a system for the survey and inventory of historic properties. Local survey efforts must be coordinated with the state program and survey data must be compatible with and readily integrated into the state inventory. The SHPO will provide guidance on this. CLGs are encouraged to keep inventory forms in a safe, secure, and publicly available location. Staff or contract personnel directing surveys must meet the minimum professional qualifications defined in the NHPA as amended, Section 310(13).

G. National Register Nominations

The CLG shall establish local laws; this may include bylaws or administrative rules, which will provide for participation in the National Register Nomination process pursuant to Section IV of these requirements and procedures.

II. PROCEDURES FOR CERTIFICATION

A. Application Requirements

To apply for certification, a local government must submit evidence to the state that it has complied with the minimum requirements for initial certification described in Section I above. The application shall include the following documentation:

1. Two copies of the local ordinance establishing the historic preservation review commission and describing the commission's powers and duties and two copies of all other local ordinances and local laws pertaining to the preservation of historic properties.
2. Two copies of local laws, bylaws, or administrative rules governing the nomination and development review processes (Sections I.B. and III). If the local ordinance does not specify requirements for owner notification and public notice prior to meetings of the historic preservation commission, then the means of ensuring adequate public participation in CLG activities shall be included in the administrative rules.
3. A list of names and addresses of all commission members, a statement on each member demonstrating their interest or competence in historic preservation, and a brief statement of qualifications for the professional members from historic preservation related disciplines.
4. If the commission membership does not include representatives of a variety of historic preservation related professions, then the chief local elected official shall certify in writing that in good faith a reasonable effort has been made to recruit additional qualified commission members to fill these positions, but that no one is currently available to serve in that jurisdiction.

5. A statement of qualification for the professional staff member(s) or contract employee(s) responsible for directing the local survey and coordinating the review of National Register nominations pursuant to Section IV of these rules.
6. Representative samples of local survey records and a U.S.G.S. map or maps showing the areas where the existing survey coverage is considered adequate for comprehensive planning purposes.

B. Approval Process

1. Within 30 calendar days of receiving a request for certification, the state shall review the application and determine if the local program complies with minimum certification requirements. If the application is found to be inadequate, or if the local program does not appear to qualify for certification, the state shall notify the applicant in writing of the reasons for not approving the request for certification. The state shall, at the request of the applicant, provide written recommendations concerning changes that are necessary to meet program requirements.

If the documentation is complete and all requirements are met, the state shall prepare a certification agreement that lists the responsibilities of the local government when certified. If the local commission membership does not include a broad range of professional disciplines, the certification agreement shall specify procedures for handling issues that are beyond the expertise of the local commission and staff. The certification agreement may be renegotiated later by mutual consent to reflect changes in the local program or to include additional delegated responsibilities.

2. NPS Review of CLG Applications. After having determined that a CLG application meets all the requirements in State procedures, the SHPO will forward a request for concurrence to the National Park Service. The request for concurrence must include the following:
 - a. Signed Certification Agreement. A copy of the signed certification agreement between the CLG and the SHPO.
 - b. Signed Review Checklist. A certification by the SHPO that the CLG application is complete and the locality meets the requirements for CLG status. The certification must be in the form of a completed review checklist or other review document. The checklist or review document must be signed and dated by the SHPO (or designee) or the State CLG Coordinator who completed the checklist while reviewing the application.
3. Results of NPS Review. If the request for concurrence cannot be affirmed as submitted. The National Park Service will notify the SHPO prior to 15 working days after receipt of the request. The National Park Service shall provide written notice of what is necessary for the request for concurrence to be approved.

4. Effective Date of Certification Agreement. A certification agreement is not effective until it is signed by the chief elected local official and the SHPO, and concurred with in writing by NPS. The effective date of certification is the date of NPS concurrence. When NPS concurs with the SHPO recommendation for certification, NPS will notify the SHPO in writing, and send a copy of that letter to the CLG.
5. Amendments to Local Government Certification Agreements.
 - a. Substantive changes in Certification Agreements must be forwarded as a written amendment to the National Park Service for concurrence. NPS written concurrence by letter or fax must be received before the amendment may be considered in effect. Changes in Certification Agreements must be consistent with State procedures.

When NPS acts upon the SHPO's certification amendment request, NPS will notify the SHPO of its decision in writing, and send a copy of the letter to the CLG.

III. STATE AND CLG RESPONSIBILITIES:

A. State and CLGS:

1. Basic Responsibilities:

Every CLG assumes basic responsibilities which at a minimum include regular commission meetings, review of National Register nominations for properties within their jurisdiction, and an annual report on their basic responsibilities. At a minimum and contingent upon adequate funding, the state provides every CLG with: annual training opportunities for both staff and commission members and quarterly contact for technical assistance, general information, and statewide newsletters.

IV. NATIONAL REGISTER NOMINATIONS

A. CLG Review and Recommendations

Before a property within the jurisdiction of the certified local government may be considered by the State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and the local historic preservation commission. The commission, after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register. Within sixty days of notice from the State Historic Preservation Officer, the chief local elected official or his/her designee shall transmit the report of the commission and his recommendation to the state Historic Preservation Officer. After receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the State shall make the nomination. The State may expedite such process with the concurrence of the certified local government. [NHPA as amended, Sections 101 (c)(1)(D), (c)(2)(A) and (c)(2)(B)]

B. Effect of CLG Recommendations

If both the commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic Preservation Officer shall take no further action, unless within thirty days of the receipt of such recommendation by the State Historic Preservation Officer an appeal is filed with the State. If such an appeal is filed, the state shall follow the procedures for making nomination pursuant to 36 CFR 60.

The state shall proceed with the nomination process, subsequent to CLG review, under the following conditions: 1) if both the commission and chief local elected official recommend that a property be nominated to the National Register, 2) if the commission and the chief local elected official fail to agree on a recommendation, or 3) if the SHPO does not receive a report and recommendation before the end of the 60 day review period.

Any report and recommendations resulting from CLG review of a nomination shall be included with that nomination when it is submitted by the state to the Secretary of the Interior.

The above noted CLG notification procedures do not apply where a Federal agency nominates a property under its ownership or control. Federal agencies should, however, be encouraged to coordinate their nominations with CLGs.

C. Preparation and Editing of Nomination Forms

The SHPO shall ensure that nomination forms are complete and adequately documented before forwarding them to the appropriate CLG for review. The state may return to the originator any nomination form not meeting National Park Service guidelines. CLGs shall not be required to edit nomination forms submitted by the general public unless stipulated in their certification agreement.

D. Owner Notification

The state shall be responsible for notifying owners pursuant to 36 CFR 60 and responsible for compliance with owner objection.

E. Expedited Review

The state may expedite the nomination review process with the concurrence of the CLG. Expedited review may be initiated by either the state or the local government. In either case, CLG concurrence shall be formally indicated by written statements from the chief local elected official and the chair of the historic preservation review commission or their designees [NHPA as amended, Sections 101 (c)(2)(A)].

F. Additional Responsibilities

The State Historic Preservation Officer may also delegate to a CLG other responsibilities pertaining to the processing of National Register nominations, as agreed to by the CLG

(including responsibility for National Register owner notifications under 36 CFR 60, or allowing the local historic preservation commission to act in place of the State Review Board for the purposes of considering nominations).

V. MONITORING AND EVALUATION

A. Annual Program Review

1. Program Monitoring

Each CLG shall provide an annual report to the state documenting compliance with the certification agreement and updating the information in the original CLG application.. Local governments receiving Historic Preservation Fund (HPF) grant assistance shall also include a completion report for the previous year's HPF grant activity. Annual reports shall be due each January and report on the preceding twelve month period. Exceptions: new CLGs, certified for less than six months, are exempt from the annual reporting requirements in the first January following their certification.

2. Program Evaluation

Within 30 days of receipt of an adequately documented annual report, the state shall verify whether or not the local government: 1) has complied with the certification agreement; 2) met minimum program requirements; 3) performed its responsibility consistently; and 4) coordinated with the identification, evaluation, and preservation priorities of the comprehensive state historic preservation planning process. If the annual report is complete, the SHPO will respond in writing with a twelve month agreement. If the annual report does not substantiate that the local government is currently qualified for participation in the CLG program, the SHPO shall identify in writing the specific requirements that have not been met. The state shall offer recommendations for correcting any inadequacies that are identified during the annual evaluation.

B. Decertification

The local government shall have 180 days to show evidence that it has implemented the state's recommendations or some other appropriate plan for meeting Certification Agreement requirements. If, at the end of that period, the local government is still not in compliance, the SHPO shall determine whether to recommend CLG decertification to the Secretary of the Interior. The state shall specify the reasons for decertification and provide the Secretary with documentation of the state's findings. If the Secretary does not object within 30 working days of receipt of the state's recommendation, the decertification shall be considered approved.

When a local government receiving HPF grant assistance is decertified, the state as appropriate may conduct suspension and termination of financial assistance procedures as specified in the Historic Preservation Fund Grants Manual [Chapter 9 M].

VI. TRANSFER OF FUNDS TO CERTIFIED LOCAL GOVERNMENTS

A. Eligibility

The SHPO shall transfer to CLGs a minimum of ten percent of all federal HPF grants received by the state of Washington. For any year in which the total annual HPF allocation for all states exceeds \$65 million, one-half of the excess received by the state shall be transferred to CLGs. Only CLGs are eligible to apply for grant assistance under this program. The state is not required to award funds to all CLGs that are eligible to receive funds.

The amount awarded to any applicant must be sufficient to produce a specific impact. The funds awarded shall be sufficient to generate effects directly as a result of the funds transfer, and the requirement for tangible results shall not be waived even if there are many otherwise eligible applicants for the amount set aside for CLG share.

B. Project Staff

If the CLG intends to apply for federal Historic Preservation Fund (HPF) grant assistance, the personnel responsible for implementing the project must meet minimum federal professional qualifications as defined in the National Historic Preservation Act, as amended, Section 310(13) if such expertise is needed for the project.

C. Grant Management Requirements

CLGs receiving HPF grant assistance must fulfill the terms of their grant agreement with the state and adhere to all requirements of the Historic Preservation Fund Grants Manual. Indirect costs may be charged as part of the CLG grant only if the CLG subgrantee meets the requirements of the Historic Preservation Fund Grants Manual. Unless the CLG has a current indirect cost rate approved by the cognizant federal agency, only direct costs may be charged. Grant recipients must maintain auditable financial records in accordance with the "General Accounting Office's standards for Audit of Governmental Organizations, Programs, Activities, and Functions". The state shall specify in the grant agreement any special conditions mandated by Congress or the Secretary of the Interior that apply to CLGs. Annually, the state shall assess the CLG fiscal management of HPF money.

CLGs receiving HPF grants from the CLG share shall be considered subgrantees of the state. CLG requirements shall be included in the state's required written grant agreement with the local government. Any state directed specific uses of funds are to be for activities that are eligible for HPF assistance as specified in the Historic Preservation Fund Grants Manual, and are to be consistent with the state comprehensive historic preservation planning process.

D. Grant Project Selection Process

Unless a majority of the CLGs object, the state shall adopt a three-year plan specifying priorities for the CLG grant program and criteria for selecting projects from among the applicants. The SHPO shall develop proposed grant allocation criteria and hold a public meeting to review the

draft three-year plan prior to its adoption. Copies of the draft shall be circulated to all CLGs and other interested parties 15 days prior to the public meeting. Following the meeting, the state shall prepare a revised draft taking into account the comments made during the meeting and any other written comments received within 7 days after the hearing date. The revised draft shall then again be circulated to all CLGs and other interested parties for their review. Unless a majority of the CLGs object in writing to the revised three year plan within 15 days of transmittal, it shall be considered approved. The plan shall remain in effect for the duration of the three-year period unless it is amended following the same process as used for its adoption.

1. Application Timetable

The SHPO shall circulate guidelines and instructions for preliminary grant applications by January 31 each year. CLGs shall then be allowed 45 days after the date of transmittal to file preliminary applications with the state. Applications that do not conform to the guidelines will be returned to the originator within 15 days with written comments describing the additional information required. The applicant shall then have thirty days from the date of notification to file an acceptable preliminary application without disqualification.

2. Review for Eligibility and Conformance to Plan

The state shall review the applications for HPF grant eligibility. The state shall develop a staff report listing the proposed projects from highest priority to lowest priority according to the three-year plan, and the policies set forth in Section VI. A-C above. In addition, the state shall indicate projects with statewide applicability (models) as a priority for funding.

3. Public Participation

The SHPO shall schedule a meeting before the Historic Preservation Grants Advisory Committee (WAC 2524) to take public testimony concerning the proposed CLG grant projects. The meeting shall be held within 90 days following the deadline for receiving preliminary applications.

After the public comment portion of the meeting, the committee shall rank the applications in order of their priority and develop a list of recommended projects. In making its recommendation, the Grants Advisory Committee shall take into account the products which shall result from each project and the degree of preparedness as reflected in the application, the staff report, public testimony, any written comments received prior to the meeting, the criteria in the three-year plan, and any criteria developed by the committee to assist their evaluation and ranking of the applications.

4. Selection of Projects

Based on the anticipated HPF award for Washington State, the SHPO shall estimate the amount of funds available for CLG grants for the upcoming fiscal year. Within 30 days of the public meeting, the SHPO shall review the recommendations of the Grants Advisory Committee, determine which projects will receive HPF grant support, and notify the public and applicants of the awards.

The state shall maintain records concerning the amounts awarded, the rationale for selecting individual projects, and provide written justifications to the members of the Grants Advisory Committee. The state shall make the above mentioned records available to the public upon request.

In order to promote local preservation activities to an extent consistent with other program requirements, the state shall make reasonable efforts to distribute the CLG grant funds among the maximum number of eligible local jurisdictions. When there are four or more CLGs, no single local government shall receive more than 30 percent of the total CLG allocation available in any one year.

5. Local Government Notification

The SHPO shall notify the applicants of the grant awards within 30 days of the Grants Advisory Committee public meeting. The decision to assign grants to individual applicants shall remain contingent upon the award of federal funds to the state of Washington from the HPF appropriation. Following receipt of the federal grant award letter, the SHPO shall notify the chief local elected officials and CLG grant applicants of any special conditions which apply to the CLG grant required by Congress or the Secretary of the Interior.

VII. TRAINING/TECHNICAL ASSISTANCE

OAHF commits to regular training for all CLGs. All training and technical assistance commitments are contingent upon adequate funding and conditions that may be established by state or federal funding sources.

A. Training

It is the intent that the state shall provide regular training opportunities for CLGs to maintain levels of expertise, meet and communicate with other CLGs, and receive specialized training or opportunities to travel to specialized training to increase their level of expertise. Training shall be provided through regional workshops, annual conferences, and specialized training at a CLG or travel to specialized training within the state or nation.

1. Workshops:

Contingent upon the availability of funds, three workshops shall be provided annually on program basics conducted by state staff and/or qualified consultants. The three workshops will be based on expressed commissioner and staff needs. Workshops will be held in centrally located jurisdictions and when possible, conducted on each side of the state.

2. Annual conference for both staff and commission:

To the extent possible due to the funding, the state shall provide annual training for both CLG staff and commission members.

B. Technical Assistance:

It is the intent that the state provide adequate technical assistance to every CLG to increase the level of effectiveness of local programs, promote stability and independence, and support reviews and determinations on sensitive and specialized issues. Technical assistance shall be provided through telephone and written communication with limited, as-needed site visits.