

GOAL 5 HISTORIC RESOURCES RULES ADVISORY COMMITTEE NOTES

RAC Attendees: Melissa Cribbins; BA Beierle; Chris Bentley; Amanda Ferguson; John Goodenberger (phone); Brandon Spencer-Hartle; Jim Heuer; Cheryle Kennedy; George Kramer; Peggy Moretti; Julie Osborne

Absent: None

DLCD Staff: Rob Hallyburton, Casaria Taylor, and Amanda Punton

Other Staff: Ian Johnson, SHPO

Note Taker: Casaria Taylor

Guest: Brian Sheets

Introductions

New member Cheryle Kennedy

Agenda Review

No changes

Public Comment

Brian Sheets summarized his October 24 comment letter

Rob said that the department will not ask the commission to adopt the rules at their November meeting as previously expected.

Brandon asked, if there is not an adoption in November, would there still be an opportunity for additional public comment in January? Rob answered yes.

Rob reminded the group that no RAC member has given up their right to have a differing opinion from the one presented to the LCDC, but they need to make clear when they are not representing the RAC when they disagree.

Rob reminded the RAC that their role is to provide a recommendation to the department.

Brandon recommended that the LCDC be told not to adopt rules at their November meeting. Portland would like to talk with other bureaus to craft their public comment.

Rob reiterated the four points that this group was asked to work on by LCDC:

1. Achieve a well-articulated base level of protection for historic resources listed in the National Register of Historic Places (National Register) that can be applied directly without the need to amend local codes.
2. Clarify the circumstances under which the owner consent provisions in ORS 197.772(1) apply to resources listed in the National Register.
3. Better explain how the standard Goal 5 process described in OAR 660-023-0030 through -0050 is augmented by the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, published by the National Park Service (NPS).
4. Clarify who has standing under the owner consent provisions of ORS 197.772(2) and highlight an alternate path for removing a local historic designation.

Discussion of Draft Rule Amendments

- The rules wouldn't apply to Native Trust land but would apply to Fee land
- Prior to discussion of rule language, the RAC addressed overarching principles.
 - We need to honor the National Register process and apply it to historic districts and the owner consent provision. Owner consent in Oregon is not compatible with national register district listings. We don't recognize that disconnect.
 - The conversation needs to focus on districts; the RAC has most everything else ironed out. Experience shows that districts are a different kind of resource. Might be helpful to give some different guidelines for districts.
 - There is a logical problem with owner consent in a district.
 - It would be worthwhile to explore the question "can we create a local district if 51 percent of owners agree." If we cannot, we need to tell the legislature that we need that ability.
 - There would be no value to have the owner consent law apply to individual residences within the district resource.
 - Most states do not automatically protect National Register listings. Those properties also have to be on the local register in addition to the National Register.
- The RAC discussed notification of affected property owners.
 - There is concern about lack of notification of property owners during the nomination process for National Register districts. Local government is not required to send notice. There is a growing concern that a district could be created and a property owner never receive a notification that it is happening. Could we be clearer about how to support or oppose listings?
 - Owner nominations begin in a neighborhood but there is no way it would happen without notification.
 - Some cities require a hearing on a national Register nomination.

- SHPO will send individual notices if there are less than 75 owners. More than 75 owners and a notice goes in the paper. Then it is put in a press release to local papers for the public comment period then another for the hearing 10 days prior to the hearing.
- The RAC discussed adding to its earlier recommendation on the definition of “owner” to create language applicable to districts.
 - DLCD staff said one of the issues to be addressed is that the program is a disincentive to new nominations to the National Register.
 - SHPO staff recommended that a definition be based on characteristics of the owner (i.e., “multiple-owner”) instead of characteristics of the resource (i.e., “district”).
 - The RAC agreed to the definition of “owner” for multiple-owner properties should be a simple majority of the constituent owners.
 - Subsection (F) is left in reserve to determine if it belongs in this section or not.
 - The conversation moving forward is based on the assumption that formation of future districts, regardless of whether it is listed in the National Register, does not require 100 percent owner consent.
- The group moved to edit the draft rule section (8).
 - There needs to be something that keeps buildings from being torn down when they should not be but also a mechanism that allows building be demolished where there is an evident need for it.
 - ORS 197.772 allows an owner to withhold consent for designation except for National Register listings. Owner consent does not extend to protection of designated resources, so the statute does not limit protection of National Register resources.
 - “Protect” includes a process not just a time period (i.e., a 120-day delay is not protection)
 - The RAC agreed that subsection (8)(a) – the base level of protection for National Register resources – should protect all resources by establishing a process for review of applications for demolition or relocation and include, at a minimum, a public hearing process that considers specific factors. The outcome of that local process would be approval, approval with conditions, or denial.
 - Subsection 8(c) enables local protection in addition to the base level in subsection (a). The RAC agreed that local governments’ authority should not be limited by the rule.

Conclusion and Next Steps

- Review section 9
 - Rob will look into the burden of proof for “imposed” designations
- Rob will write the staff report for the November LCDC meeting
- Rob will set another RAC meeting
- Brandon thinks section (6) conflates inventory and designate
- Brandon would like to discuss notification for National Register nominations at the next meeting

Next meeting, November 15, 2016, 10am – 4pm