

PROPOSED AMENDMENTS TO THE ADMINISTRATIVE RULE REGARDING PROTECTION OF HISTORIC RESOURCES UNDER STATEWIDE PLANNING GOAL 5 ([OAR 660-023-0020](#))

Frequently Asked Questions

August 18, 2016

1. Why are these amendments being considered?

Following several controversies regarding historic resource designation around the state, the Governor's Natural Resource Office requested that the Department of Land Conservation and Development and the State Historic Preservation Office survey local governments (i.e., cities and counties) regarding procedures for complying with Statewide Planning Goal 5 to protect significant historic resources. The survey found wide variation among local governments in how the current rules are applied, suggesting that the requirements and authorizations in the rule are not clear or complete. The Land Conservation and Development Commission initiated the rule amendments in order to provide additional clarity and remedy identified deficiencies in the rule.

2. What will the proposed amendments accomplish?

The survey of local governments found considerable variation regarding how local governments treat sites and districts listed in the National Register of Historic Places. Some historic resources are not receiving any protection while others are subject to local protection programs without proper local consideration. To address this variation, the proposed rule amendments are intended to:

1. Promote a consistent level of protection for historic resources that are considered significant by the state (that is, all historic resources listed in the National Register), and
2. Ensure an appropriate public process for consideration of additional local protection measures that supplement the state-required protection of historic resources listed in the National Register.

The proposed amendments will draw a clear distinction between rule *requirements* specific to National Register listings, and the *authorization* for local governments to apply additional historic resource protections to these sites and districts.

The survey also found that other provisions of the existing rule are not consistently applied across the state. The proposal includes amendments to clarify rights and responsibilities for local governments, property owners, and the public. These other proposed amendments include a definition of “owner” as that term is used for owner-consent purposes under state law, articulation of a path and sideboards for removing a local historic designation, a definition of what it means to “protect” historic sites listed in the National Register, and a better explanation of the role of the U.S. Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation in the design and implementation of local protection measures.

3. Will the amendments make it harder to designate or protect a new a historic district or site?

Historic districts and sites may be designated on the National Register, a local register of historic places, or both.

Regarding National Register listings, nomination of a historic district or site to the National Park Service is subject to federal criteria and processes for deciding whether the district or site qualifies for designation under this voluntary federal program. The state-level rule does not affect the federal program, so the answer to this question is “no” for National Register designations of historic districts or sites.

There is no single answer to this question as it applies to local designations because there is so much variation among local programs. Neither the current rule nor the proposed amendments impose criteria that a local government must use when deciding to designate a site or district as a significant historic resource, nor do the current or proposed rules prescribe particular protection measures. The rule will continue to recommend that local programs look to federal guidance for evaluating historic resources and selecting protection strategies.

Adding a definition of “owner” to the rule could affect a local process if a local government previously defined the term differently because owner-consent requirements affect whether a district or site can proceed through the local designation process. Whether having a definition for “owner” in the state rule makes it easier or harder to designate a district or site will depend on the particulars of a local process.

4. Will the amendments reduce the protection of a currently designated historic district or site?

No. The proposed rule amendments will not remove local code provisions that apply to currently designated historic resources. The proposed rule amendment will set a minimum standard of protection applicable to properties listed in the National Register. In jurisdictions with no protection measures for National Register sites and districts, the rule amendments will result in increased protection for resources currently listed in the National Register. Appropriate state protection standards for National Register historic districts and sites will be an important topic to be addressed by the rule advisory committee.

5. How will a historic district or site that is newly listed in the National Register be protected under the proposed rule?

The proposal is to set a state baseline level of protection for National Register districts and sites and to ensure there will be a public process by the local government when it considers supplemental protection measures. The local process would allow for public comment and application of the state owner consent law. In jurisdictions where local protection measures are currently applied automatically to new National Register listings, a requirement for a separate local process step may result in owners not consenting to a local designation of historic significance. In jurisdictions that already include a local review process before local protection measures are applied, the proposed amendments should not make it any more or less difficult to supplement state-required protections with local protection measures for a new National Register listing.

6. How will the recent Oregon Supreme Court decision, Lake Oswego Preservation Society v. City of Lake Oswego, factor into the rulemaking process?

The existing rule, OAR 660-023-0200(6), provides: “The local government shall allow a property owner to remove from the property a historic property designation that was imposed on the property by the local government.” An amendment would use the court’s ruling to clarify the basis for a finding that a designation was imposed and define who has standing to request removal of an imposed designation.

7. How will the proposed rule amendments affect the process of removing a historic resource from a register for reasons other than a claim of an imposed designation?

The proposed amendment will have no effect on the process to remove a resource from the National Register of Historic Places since federal law directs this process.

Under the current rule, local governments already have the authority to remove a site from a local register using locally determined criteria. The proposed rule amendment would provide an additional directive that a decision to remove a local designation must be based on a finding that: (1) the value of a resource has diminished since its listing, (2) conflicting priorities supersede the value of maintaining the designation, or (3) the original designation was based on erroneous historical information.