

Public Comments Received
Between 7-1-20 and
10-15-20

Comments Received from Tribal Governments

MARSHALL Janelle * OPRD

From: Cassandra Rippee <CassandraRippee@coquilletribe.org>
Sent: Monday, August 31, 2020 4:02 PM
To: PUBLICCOMMENT * OPRD
Cc: CURRAN Chrissy * OPRD; OLGUIN Robert * OPRD; JOHNSON Ian * OPRD
Subject: NRHP rule change
Attachments: CRT20240_NRHP Rule Change Comments.pdf

Dv-ne xwv-nvsh-‘i! Greetings!

Attached are comments from the Coquille Indian Tribe on the proposed National Register rule changes.

I’ll highlight again that the Tribe is not merely a member of the public or a stakeholder, and so submission of comments bulked as members of the public is not appropriate. I look forward to speaking with you more on these concerns at your earliest convenience

Shuenhalni (take care),
Kassie

Kassandra Rippee

Tribal Historic Preservation Officer (THPO)
Coquille Indian Tribe
495 Miluk Drive
Coos Bay, Oregon 97420

m: 541-808-5554

o: 541-756-0904 x1216

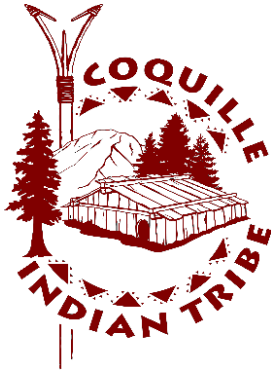
f: 541-888-2418

CassandraRippee@coquilletribe.org

THPO@coquilletribe.org

pronouns: she/her

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COQUILLE INDIAN TRIBE

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www.coquilletribe.org

August 28, 2020

Chrissy Curran
State Historic Preservation Office
725 Summer St NE, Suite C
Salem OR 97301-1266

re: National Register of Historic Properties Proposed Rule Comments

Dai s'la! We have reviewed the proposed National Register of Historic Places State rule changes. In 2019, the Coquille Indian Tribe's Tribal Historic Preservation Office (THPO) provided comments to these rule changes. Unfortunately, we do not see any of those comments reflected in the rule changes as proposed. The Tribe has repeatedly expressed interest in seeing these rules updated to address the State's responsibilities to cultural resources and to the Tribes. Our primary concerns regarding the proposed rule changes are outlined below:

First, evaluation and determination of eligibility for Native American sites/properties/resources should be conducted in consultation with the Tribes, regardless of landownership status. This consultation should precede nomination and public comment periods for listing on the National Register. SHPO staff should not elevate nominations for those resources until and unless good faith efforts to consult with the appropriate Tribes have been conducted.

Under Staff Activities: OAR 736-050-0250 (6) & (7) regarding confidentiality: The Coquille Indian Tribe requests to be involved through consultation in the development of procedures for applying conditions of confidentiality on National Register nominations.

In the same section, subsection 8(c) SHPO must mail public comment period notice to... and tribes: Which tribes? All nine federally recognized Tribes in Oregon? Only those identified by LCIS with interest in the area? Only those with adjacent property ownership? To whom within the Tribe will the letter be sent? The Coquille Indian Tribe requests direct notice to THPO in addition to any general or Council mailing. Additionally, we prefer electronic mail delivery to the THPO.

Subsection 8(g): Staff should ensure all redactions meet criteria for confidentiality prior to sending out for review/comment. The most recent document we reviewed included many arbitrary redactions which did not meet any applicable confidentiality regulations or rational and no correction to those redactions

was made prior to submission of the filing to the Keeper. Redactions, furthermore, should be made uniformly in black, rather than alternating between white and black. This consistency allows readers to identify where redactions are present rather than empty/whites space in the document.

Subsection 10: Will objections by Certified Local Governments be addressed/considered the same way if the resource is only partially within the boundaries of the CLG as if it were completely in the CLG boundaries? The Tribes, as sovereign nations whose boundaries fall within the boundaries of the State of Oregon, are not addressed or considered here. Why do Tribes not have the right to object to nominations in the same way that Certified Local Governments do, if the boundaries of a nominations fall within (partially or completely) Tribal lands?

Subsections 14 and 15: which tribes? All nine federally recognized Tribes in Oregon? Only those identified by LCIS with interest in the area? Only those with adjacent property ownership?

The Tribes and the State Historic Preservation Office are partners in the protection and preservation of cultural and historic resources within the State. We are not members of the public and should be consulted with as sovereign nations on matters affecting our interests and resources. We look forward to seeing the proposed rule changes clearly reflect the State's responsibilities. Please contact me at kassandraripee@coquilletribe.org or at 541-808-5554 to further discuss the concerns identified above.

Shuenhalni,

A handwritten signature in black ink, appearing to read 'K. Rippee', with a stylized flourish at the end.

Kassandra Rippee, M.A., M.L.S
Tribal Historic Preservation Officer

MARSHALL Janelle * OPRD

From: JOHNSON Ian * OPRD
Sent: Tuesday, August 4, 2020 6:37 PM
To: PUBLICCOMMENT * OPRD
Subject: FW: CTCLUSI Requests Extension to Comment Period for National Register Program Rules
Attachments: 8-4-20 NR rule comment extended.pdf; CTCLUSI Request for Extension of Comment Period for the Proposed Changes to State National Register Program Rules.pdf



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division

State Historic Preservation Office

Desk: 503.986.0678 cell: 971.718.1137

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From: JOHNSON Ian * OPRD
Sent: Tuesday, August 4, 2020 6:35 PM
To: Stacy Scott <sscott@ctclusi.org>; OLGUIN Robert * OPRD <Robert.Olguin@oregon.gov>
Cc: rick@wheatlawoffices.com; M Corvi <margaret.corvi@yuwe.co>; Roselynn Lwenya <RLwenya@ctclusi.org>
Subject: RE: CTCLUSI Requests Extension to Comment Period for National Register Program Rules

Thanks Stacy,

The agency just issued a press release, attached, extending the comment period through August 31st. Is this sufficient time, or should I present your letter to leadership as a request to extend the comment period beyond that date?

Thanks.

Ian



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division

State Historic Preservation Office

Desk: 503.986.0678 cell: 971.718.1137

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From: Stacy Scott <sscott@ctclusi.org>
Sent: Tuesday, August 4, 2020 5:46 PM
To: OLGUIN Robert * OPRD <Robert.Olguin@oregon.gov>; JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>
Cc: rick@wheatlawoffices.com; M Corvi <margaret.corvi@yuwe.co>; Roselynn Lwenya <RLwenya@ctclusi.org>
Subject: CTCLUSI Requests Extension to Comment Period for National Register Program Rules

Robert and Ian,

Please see the attached letter requesting an extension to the comment period for the proposed changes to the State's National Register program rules.

Sincerely,
Stacy

Stacy Scott, MA, RPA
Tribal Historic Preservation Officer &
Cultural Resources Protection Specialist
Confederated Tribes of
Coos, Lower Umpqua & Siuslaw Indians
1245 Fulton Avenue
Coos Bay, Oregon 97420
541.888.7513 (office)
541.297.5543 (cell)
541.888.2853 (fax)
SScott@ctclusi.org

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**CONFEDERATED TRIBES OF
COOS, LOWER UMPQUA AND SIUSLAW INDIANS
TRIBAL GOVERNMENT**

1245 Fulton Avenue - Coos Bay, OR 97420

Telephone: (541)888-9577 Toll Free 1-888-280-0726 Fax: (541)888-2853

August 4, 2020

Robert Olguin, National Register Program Coordinator
Heritage Division, Oregon Parks and Recreation Department
State Historic Preservation Office
725 Summer St. NE, Suite C
Salem, Oregon 97301

**RE: Request for Extension of Comment Period on National Register Program
Rules**

Dear Mr. Olguin:

This letter is sent on behalf of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians ("Tribe"). The Tribe request a thirty-day extension of the National Register Program Rules.

Given the scope of the changes to the Program Rules, the challenges that the COVID crisis has placed on the Tribe, the public and other, and other significant projects, such as the Jordan Cove Energy Project, that has taken time and attention of state and tribal staff, we believe the request for an extension is well warranted.

Thank you for your consideration of this request.

Sincerely,

Stacy Scott

Tribal Historic Preservation Officer
The Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians

MARSHALL Janelle * OPRD

From: Ashley Morton <AshleyMorton@ctuir.org>
Sent: Tuesday, August 25, 2020 9:25 AM
To: PUBLICCOMMENT * OPRD
Cc: Teara Farrow Ferman; Audie Huber
Subject: Updates for State Rules or National Register Program

The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) has reviewed the proposed updates to the Oregon Administrative Rules that govern how the state administers the federal National Register of Historic Places Program, made available on the website <https://www.oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx>. At this time, the CTUIR does not have any objections or concerns to the proposed updates.

CTUIR appreciates the opportunity to comment.

Sincerely,
Ashley Morton

Ashley M. Morton, M.A., RPA
Archaeologist II
Cultural Resources Protection Program
Confederated Tribes of the Umatilla Indian Reservation
46411 Timíne Way, Pendleton, OR 97801
Direct Line/Fax: (541) 429-7214
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AshleyMorton@ctuir.org



The opinions expressed by the author are his or her own and are not necessarily those of the Confederated Tribes of the Umatilla Indian Reservation. The information, contents and attachments in this email are Confidential and Private.

MARSHALL Janelle * OPRD

From: rick@wheatlawoffices.com
Sent: Monday, September 14, 2020 1:16 PM
To: PUBLICCOMMENT * OPRD; OLGUIN Robert * OPRD; CURRAN Chrissy * OPRD
Cc: 'Stacy Scott'; 'M Corvi'; 'Roselynn Lwenya'
Subject: CTCLUSI Comments on OAR 736-050 Rules Revision related to the National Register Program
Attachments: Comments of CTCLUSI to SHPO re National Program Rules 9.4.2020.pdf; CTCLUSI Edits and Specific Comments on National Program Rules 9.14.2020.pdf

Please find attached the comments of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw on AR 736-050 Rules Revision related to the National Register Program.

Please let me know if there are issues with opening these documents.

Thanks.

Rick Eichstaedt



**CONFEDERATED TRIBES OF
COOS, LOWER UMPQUA AND SIUSLAW INDIANS
TRIBAL GOVERNMENT**

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September 10, 2020

Robert Olguin, National Register Program Coordinator
Heritage Division, Oregon Parks and Recreation Department
State Historic Preservation Office
725 Summer St. NE, Suite C
Salem, Oregon 97301

RE: OAR 736-050 Rules Revision related to the National Register Program

Dear Mr. Olguin:

These comments are sent on behalf of the Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians ("Tribe") on the proposed changes to Oregon's National Register Program Rules ("proposed rules").

Attached to this letter are specific comments and suggested edits to the proposed rules. In addition to these proposed edits and comments, the Tribe has the following general comments on the proposed changes:

First, the definitions of "historic resource" and "historic property" in the rules should be revised to be consistent with National Historic Preservation Act (NHPA) federal regulations, 36 C.F.R. § 800.16, which defines a "historic property" as:

[A]ny prehistoric or historic district, site, building, structure, or object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.

Second, the Tribe recommends that the rules should be changed to require landmarks commissions ("Commissions") to include a local Tribal Nation representative with expertise in historic preservation if available. We firmly believe that many landmarks commissions lack necessary expertise in historic/cultural preservation and lack understanding of cultural resources of the Tribes. The addition of a Tribal Nation representative will strengthen the effectiveness of the commissions.

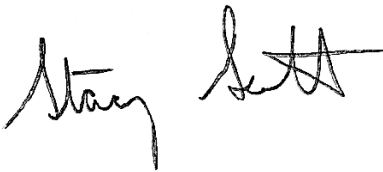
Third, the rules should be clarified to require certified local governments (CLGs) and landmarks commissions to have regular and appropriate training to meet the responsibilities of the rule. It is necessary that CLGs and Commissions participating in this process have the expertise to do so or can obtain it and are committed to State Historic Preservation Programs in Oregon, state wide planning goals or executive orders, which may be applicable. CLGs must be in good standing with respect to their commitment to the Program and protection of archaeological and cultural resources in their jurisdiction in order to provide comments on nominations in their jurisdiction. For more effective landmarks commissions this includes ensuring: (1) that commissions are not created solely to respond to a new nomination (nominations should be reviewed only by existing commissions that are in good standing at that time); (2) that the agency's requirements for the qualifications of the commission members should be included in the rules, as opposed to a separate document; (3) that the rules include measures for landmarks commissions that are not in compliance with requirements; and (4) that the rules include professional qualification standards that are established in the Secretary of the Interior's Standards and Guidelines.¹

Fourth, the rules should add a definition for "Tribal consultation" and specify when and how the agency will engage in consultation with Tribal Nations in Oregon. This should include a requirement for early notification of any nomination.

Lastly, the Tribe requests an opportunity to consult with your agency prior to the finalization of any new rules to understand what will be adopted and how changes may impact tribal resources.

Thank you for your consideration of these comments. Please contact my office with any further questions and to assist coordinating consultation at sscott@ctclusi.org or 541-888-7513.

Sincerely,

A handwritten signature in black ink, appearing to read "Stacy Scott". The signature is fluid and cursive, with the first name "Stacy" written in a larger, more prominent script than the last name "Scott".

Stacy Scott
Tribal Historic Preservation Officer

ATTACHMENT (1)

cc: Chrissy Curran, State Historic Preservation Office
Debbie Bossley, Tribal Chair, CTCLUSI

¹ Available at https://www.nps.gov/history/local-law/arch_stnds_9.htm.

OAR 736-050-0220, State Advisory Committee on Historic Preservation: Federal Requirements

- (1) The National Historic Preservation Act of 1966, as amended, ([16 USC §§ 470 et seq](#)) (Act), specifies basic requirements for state historic preservation programs. The requirements and responsibilities listed in the Act are incorporated into federal rule, [36 CFR § 60](#) (2012 edition), and [36 CFR § 61](#) (1998 edition), which are hereby adopted by reference into OAR 736-050-0230, OAR 736-050-0240, OAR 736-050-0250, OAR 736-050-0260, and OAR 736-050-0270.

OAR 736-050-0230, State Advisory Committee on Historic Preservation: Definitions

The following definitions apply to OAR 736-050-0220, OAR 736-050-0240, OAR 736-050-0250, OAR 736-050-0260, and OAR 736-050-0270:

- (1) "Act" means the [National Historic Preservation Act of 1966, as amended, \(16 USC §§ 470 et seq.\)](#) that establishes the federal historic preservation program.
- (2) "Associate Deputy SHPO" means the Associate Deputy State Historic Preservation Officer who serves under the delegated authority of the Deputy State Historic Preservation Officer.
- (3) "CLG" means Certified Local Government, which is a city or county government certified by the NPS to carry out responsibilities under the Act.
- (4) "Chief elected official" has the meaning provided in [36 CFR § 60.3\(b\)](#).
- (5) "Committee" means the State Advisory Committee on Historic Preservation appointed by the Governor as established in [ORS 358.622](#).
- (6) "Criteria for evaluation" means the National Register criteria for evaluation described in [36 CFR § 60.4](#) by which the CLG, Committee, SHPO, and NPS judge every historic resource proposed for nomination to the National Register.
- (7) "Deputy SHPO" means the Deputy State Historic Preservation Officer, who serves under the delegated authority of the State Historic Preservation Officer.
- (8) "Determination of eligibility" means a finding by the NPS that a property [either does or does not meet](#) the criteria for evaluation, ~~but is not listed in the National Register~~.
- (9) "Historic resource" means a building, district, object, site, or structure, as defined in [36 CFR § 60.3\(a\), \(d\), \(j\), \(l\), and \(p\)](#), or that ~~is that the NPS or SHPO finds is~~ potentially eligible for listing in the National Register, but is not listed in the National Register.
- (10) "Historic property" means a building, district, object, site, or structure that is listed in the National Register of Historic Places.
- (11) "Local landmarks commission" ~~or "Commission"~~ means an advisory or quasi-judicial body responsible for carrying out responsibilities under the Act on behalf of a CLG.
- (12) "National Register" means the National Register of Historic Places maintained by the United States Department of the Interior and administered by the NPS, which is the national list of historic properties significant in American history, architecture, archaeology, engineering, and culture. ~~The Oregon SHPO coordinates the National Register at the state level.~~

Commented [RL1]: This should clarify that the CLG must be recognized and in good standing at the time of a NR application submission to carry out these responsibilities and make comment. It is imperative that CLGs are trained and committed to implement this rule as part of State Historic Preservation Program in Oregon. It is important the NR specific responsibilities of the CLG be clarified in this rule in addition to other locations. Additionally, quarterly or semi-annual deadlines should be associated with enrollment or compliance to meet these responsibilities.

Commented [RL2]: Inconsistent with Sec of Interior standards definition "Historic Property—a district, site, building, structure or object significant in American history, architecture, engineering, archaeology or culture at the national, State, or local level."

https://www.nps.gov/history/local-law/arch_stnds_10.htm#:~:text=Historic%20Property%E2%80%94a%20district%2C%20site,%2C%20State%2C%20or%20local%20level.&text=It%20may%20include%20initial%20stabilization,o%20the%20historic%20building%20materials

Commented [RL3]: The rule needs to provide guidance on Commission membership. The Commission has a critical role in the rule as do CLGs. We recommend this guidance recommend minimum number of members and provide qualifications for commission members as well as provide training requirements and schedules for Commission members. It is our understanding that SHPO will already provide training but that it's optional for CLGs and Commission members and not required. We feel it should be mandatory to carry out the responsibilities called out by this rule.

Additionally, the Commission needs to exist and comply with guidance provided in rule prior to NR submission to SHPO

Commented [RL4]: And provides recommendations following review by the SACHP

(13) “NPS” means the National Park Service, the bureau of the United States Department of the Interior responsible for the administration of the Act.

(14) “National Register nomination form” means the federal form as defined in [36 CFR § 60.3\(i\)](#) approved by the NPS to nominate a historic resource for listing in the National Register or to amend or substantively revise a National Register nomination form previously accepted by the NPS for an historic property.

Objection: define

Commented [RL5]: Consider adding objection definition focusing on who can make an objection; reference specifics provided in this rule

(15) “Oregon SHPO” means the Oregon State Historic Preservation Office, an office of the Oregon Parks and Recreation Department.

(16) “Owner:”

(a) Includes “owner or owners” as defined in [36 CFR § 60.63\(k\)](#), and means:

(A) The owner of fee simple absolute or fee simple defeasible estate title to a property as shown in the property tax records of the county where the property is located, including, but not limited to, trusts, limited liability corporations, and any other legal entity that can hold fee simple absolute or fee simple defeasible title to real property within the state of Oregon;

(B) The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or

(C) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner; and

(b) Does not include:

(A) Individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature;

(B) The life tenant of a life estate; and

(c) Means, for a single property, building, structure, site, object, with or without secondary historic resources, or historic district with multiple owners, a majority of owners as defined in (a) and (b).

(17) “Person” means individuals, corporations, associations, firms, business trusts, estates, trusts, partnerships, limited liability companies, joint ventures, public and municipal organizations, joint stock companies, federal agencies, tribes, ~~a~~public ~~body~~-bodies as defined in [ORS 174.109](#), or any other legal or commercial entity.

(18) "Proponent" means the person that submits a National Register nomination form to the Oregon SHPO.

(19) "Public comment period" means the opportunity for a person to comment on the National Register nomination form submitted for review by the Committee. The public comment period begins on the date the Oregon SHPO notifies the proponent, owner, CLG, chief elected official, and tribes and ends the day that the NPS makes a final decision regarding listing a historic resource in the National Register.

Commented [RL6]: Is Tribal Nation Consultation not part of this process?

Commented [RL7]: Does owner include federal agency? If not add to list for public comment.

(20) "SHPO" means the Director of the Oregon Parks and Recreation Department and the State Historic Preservation Officer as defined in ~~ORS 358.653~~ [ORS 358.565](#).

(21) "Substantive revision" means:

(a) A request submitted to the ~~National Park Service~~ [NPS](#) to remove a still extant listed historic property from the National Register;

(b) A National Register nomination form is edited to ~~increase or decrease~~ the boundary of a historic resource nominated to or historic property listed in the National Register;

Commented [RL8]: If a decrease in boundary occurs, but the application criteria addressed does not change, why does it need to go through the process again? Maybe a threshold would be appropriate?

As we understand it, a decrease in boundary for an already listed property would go through a new application process..

(c) A National Register nomination form is edited to add one or more National Register Criteria or Criteria Considerations;

(d) a National Register nomination form is edited to the extent that the SHPO finds that the revisions require additional review; or

(e) Any combination of (a), (b), (c), or (d).

(f) Does not mean adding a National Register Criteria or Criteria Consideration when the SHPO or Committee determine that the narrative portions of the National Register nomination form as written sufficiently justify the addition.

(22) "Tribe" means one or more of the nine federally-recognized Indian tribes in Oregon.

OAR 736-050-0240, State Advisory Committee on Historic Preservation: Organization and Duties

- (1) The Governor appoints committee members as described in [ORS 358.622](#).
- (2) Committee members appointed to fill unexpired terms may serve for the remainder of the term of the vacating member.
- (3) Committee members may serve no more than two consecutive terms of appointment ~~in their own right unless~~ the Governor approves another consecutive term. A committee member appointed under section (2) may be considered for reappointment as provided [in](#) this section. A committee member may serve beyond two consecutive terms of appointment until the Governor appoints a replacement.
- (4) The SHPO must nominate a chairperson and vice chairperson to the Governor for consideration. The Governor selects the chairperson and vice chairperson for a two-year term. The chairperson and vice chairperson may serve consecutively in either role through their terms.
- (5) The chairperson conducts Committee meetings. The vice chairperson must fulfill this role when the chairperson is unavailable. The SHPO must appoint a committee member to conduct the meeting when the chairperson and vice chairperson are both unavailable.
- (6) The Committee may define additional responsibilities for the chairperson and vice chairperson.
- (7) The SHPO must request that the Governor remove committee members absent for two consecutive meetings without the prior permission of the chairperson or, in the absence of the chairperson, the vice chairperson.
- (8) The Committee must carry out the duties described under [36 CFR § 61.4\(f\)\(6\)](#) and [ORS 358.622](#); and
 - (a) Meet at least three times annually;
 - (b) Review National Register nomination forms submitted to the Committee by the SHPO for review as provided in OAR 736-050-0260;
 - (c) May participate in the review of appeals to the NPS of National Register nomination forms rejected by the SHPO or the NPS;
 - (d) Review and make recommendations to the SHPO on amendments to the Oregon State Historic Preservation Plan, and provide advice on comprehensive historic preservation planning processes;

(e) Create advisory committees or subcommittees necessary to carry out the Committee's functions;

| (f) Appoint committee members to serve as ~~a~~-representatives to another body in the interest of carrying out the Committee's duties;

| (g) Adopt standard practices to carry out the duties ~~and business~~ of the Committee as necessary; and

(h) Perform other duties as requested by the SHPO.

**OAR 736-050-0250, State Advisory Committee on Historic Preservation: Staff Activities
Relating to the National Register Program**

- (1) The SHPO may delegate authority under this division to the Deputy SHPO, the Associate Deputy SHPO, the National Register Program Coordinator, or other staff.
- (2) The SHPO must appoint a National Register Program Coordinator to administer the state's National Register of Historic Places program.
- (3) A proponent may nominate a historic resource to the National Register regardless of ownership status by submitting a complete National Register nomination form to the SHPO.
- (4) The SHPO must evaluate the National Register nomination form and provide a written response to the proponent within 60 calendar days of receipt stating whether their submittal:
 - (a) Is adequately documented;
 - (b) Is technically and professionally correct and sufficient; and
 - (c) Demonstrates that the nominated historic resource meets the National Register criteria for evaluation.
- (5) A proponent may withdraw ~~a the~~ national register nomination form ~~that the proponent they~~ submitted ~~for consideration for listing in the National Register~~ at any time during the public comment period by submitting a written ~~withdrawal~~ request to the SHPO.
- (6) The Oregon SHPO ~~may shall~~ keep ~~all or~~ qualifying portions of a National Register nomination form confidential and conditionally exempt from ~~public disclosure~~ under the conditions established in [ORS 192.345](#). SHPO staff must establish a procedure for applying the conditions of [ORS 192.355\(4\)](#) to submitted National Register nomination forms.
- (7) The ~~Committee Oregon~~ SHPO may keep ~~all or qualifying portions of a~~ National Register nomination form submitted for review confidential and exempt from public disclosure ~~in its entirety or portions of the National Register nomination form may be redacted under the provisions of~~ section 304 of the Act ~~or ORS 192.345, as applicable~~. SHPO staff must establish a procedure for applying the conditions of ~~ORS 192.355(4) under~~ section 304 of the Act to submitted National Register nomination forms.
- (8) The SHPO must provide a public comment period for each National Register nomination form considered by the Committee. ~~The~~ copy provided for public comment may be redacted as provided for under subsections (6) and (7) as applicable. ~~The SHPO must:~~
 - (a) Open the public comment period not less than 30 calendar days nor more than 75 calendar days in advance of a scheduled ~~Committee~~ ~~committee~~ meeting.

Commented [RL9]: Should include a list of who is conditionally exempt. The rule needs to provide clarity to all that are engaged in a NR form submission.

(b) Include in the public comment period notice the date and location of the scheduled ~~Committee~~ ~~committee~~ meeting and the process for submitting comments on the National Register nomination form.

(c) Mail a written public comment period notice to the proponent, ~~owner~~, CLG, chief elected official, and ~~tribes~~. The SHPO may coordinate with local governments on the format, content, and distribution of the public comment period notice.

(d) May publish a public comment period notice in one or more local newspapers of general circulation in the area where the historic resource is located.

(e) Identify owners using county property tax records obtained within 90 calendar days prior to the beginning of the public comment period.

(f) Take ~~additional actions~~ to inform the public and interested parties of the nomination of a historic resource to the National Register or substantive revision of a National Register form for a historic property if the SHPO believes that such an action is in the public interest.

(g) Make available to the public, proponent, owner, CLG, chief elected official, and tribes a complete copy of the National Register nomination form during the public comment period except when a portion or the entirety of the National Register nomination form is redacted as provided in sections (6) and (7).

(9) Any person may provide comments on a National Register nomination form~~s~~ considered by the Committee.

(a) The Oregon SHPO must receive written comments at least five business days before the scheduled ~~Committee~~ ~~Ceommittee~~ meeting. Any written comments received after this time but before the meeting will be included in the public record, but the Oregon SHPO will not provide the comments to the Committee, except as provided for CLGs in section 10.

(b) A person may provide written materials or oral comment to the Committee for consideration the day of the committee meeting.

(c) The Committee will only consider written and oral comment submitted during the public comment period that address:

(A) substantive requirements for complete nominations described in section (4), or

(B) procedural requirements under state and federal rule and law.

(d) All comments received in any format are public records.

Commented [RL10]: and federal land managing agencies

Commented [RL11]: Tribal Sovereign Nations are not the public. Please include Tribal Consultation process or

Commented [RL12]: Please clarify what additional actions are- can examples be provided? It is critical an applicant understands the actions that the SHPO make take.

Additionally, this would provide transparency for the owners and public who want to review/comment.

(10) A CLG may object to nominating a historic resource within their jurisdiction to the National Register or the substantive revision of a National Register nomination form for a historic property as described in [54 USC § 302504](#) (2014).

(a) To be valid, an objection must meet the following [requirements](#):

~~(A)~~ Be submitted in writing and received by ~~the SHPO within 60~~ within 60 calendar days ~~following of dated~~ notice provided by the SHPO ~~as described in 736-050-0250(8), prior to the Committee meeting scheduled to consider a National Register nomination form;~~

~~(A)(B)~~ The chief elected official acting in their official capacity representing the majority opinion of the local government's legislative body recommends ~~that the historic resource not be nominated to the National Register or that the form for a historic property not be~~ substantially revised;

~~(B)(C)~~ The local landmarks commission recommends by majority opinion that the historic resource not be nominated to the National Register, or that the form for a historic property ~~not be~~ substantially revised. The local landmarks commission recommendation must include a report as to whether the property meets the National Register criteria described in OAR 736-050-0250(4). The local landmarks commission may find that the historic resource is eligible for listing in the National Register but not recommend that it be nominated to the National Register; and

~~(C)(D)~~ The public has a reasonable opportunity to comment.

(b) Upon receipt of a valid objection under subsection (a), SHPO must:

(A) Remove the National Register nomination form from Committee consideration and take no further action from the date the SHPO receives the objection;

(B) Take necessary actions to close the administrative process; and

(C) Provide written notice to the proponent, owner(s), CLG, chief elected official, and tribes within 10 calendar days of the action.

(c) Any person may appeal a CLG's objection by submitting a written appeal to the Oregon SHPO within 30 calendar days after the date the SHPO received the CLG's objection. The SHPO must submit the National Register nomination form for Committee consideration at the next regularly-scheduled committee meeting.

(d) A CLG may object each time a National Register nomination form is substantively revised [under the provisions of this section](#).

(11) State government as defined in [ORS 174.111](#) and political subdivisions of state government may comment on the National Register nomination form. State government and

Commented [RL13]: Do they need to provide a basis for recommending that a proposed historic property not be listed or revised? It seems this would be an important consideration within their recommendation.

Commented [RL14]: It is unclear why the elected official can recommend that a historic property not be substantially revised.

Considering the current national landscape of decolonizing and providing further context to historic properties it should be important that local governments are aligned with state planning goals, Executive Orders etc.

Commented [RL15]: Because the Commission, local elected and CLG recommendations carries weight in the NR process it is critical that they are qualified, compliant, timely and aligned with state goals, etc.

political subdivisions of state government may object to listing a historic resource in the National Register, but the SHPO must not count the objection toward the total number of private property owners needed to prevent the historic resource from being listed in the National Register as prohibited by the provisions of [36 CFR § 60.6\(g\)](#) (2011). As used in this section, “political subdivision” includes counties, cities, taxing districts and any other governmental unit within the state of Oregon.

(12) The SHPO must determine if the majority of owner(s) object to listing a nominated historic resource in the National Register by comparing the total number of owners identified on the property owner list to the number of notarized statements that object to listing the historic resource.

(a) The SHPO must create a property owner list that includes each owner within the boundary of a historic resource nominated for listing in the National Register using county property tax records obtained as provided in subsection (8)(~~e~~). That property owner list is the official list of property owners throughout the public comment period.

(A) The SHPO must take reasonable steps to correctly identify the total number of owners.

(B) The SHPO must assume that the property tax records provided by the county assessor are accurate when counting owners.

(C) The SHPO must include owners on the property owner list regardless of whether the owner can be contacted using the information included on the property owner list provided by the county assessor’s office.

(D) When encountering similar names, the SHPO will compare the name and mailing addresses to determine if there are one or more owners. - Jane Doe and Jane S. Doe must be considered as two distinct persons when the county property tax records identify differing mailing addresses. If the mailing address is the same, the SHPO must identify these individuals as the same person.

(E) The SHPO must count entities, such as named trusts, corporations, partnerships, etc., as individual owners when the owner name differs in any way, even when the mailing address is the same.

(F) The SHPO must count a trust as a single owner when multiple trustees are named, but no trust is identified.

(G) The SHPO must use any adopted system of abbreviations, symbols, or other codes used by the county assessor from the county providing property tax records to identify owners when creating the property owner list.

Commented [RL16]: Would this allow a landowner to buy more votes? Can the agency try to address this matter in the revision?

- (H) The SHPO must add or remove an owner from the property owner list upon submission of a notarized statement from the current property owner when the notarized statement meets the requirements of subsection (c).
- (b) At any time during the public comment period, an owner may take the following actions by submitting a notarized statement. An owner may object only once regardless of how many historic resources or what portion of a historic resource the owner owns:
- (A) Object to listing a historic resource in the National Register;
 - (B) Withdraw their own previous objection;
 - (C) Remove the previous owner as owner of record from the property owner list and withdraw the previous owner's objection;
 - (D) Assert ownership of a historic resource within the nominated area when the property owner list does not include the owner or property; or
 - (E) Any combination of (A), (B), (C) and (D).
- (c) To be valid notarized statements must meet the following criteria:
- (A) An owner must submit an original, notarized statement on a form provided by the SHPO;
 - (B) The notarized statement must identify private real property within the boundary of the nominated area;
 - (C) The notarized statement must clearly identify the intent of the owner as described in subsection (b);
 - (D) The owner must identify both the name they were previously known by and listed in the county property tax records and their current legal name as applicable;
 - (E) The notarized statement must clearly identify the nature of the owner's property right;
 - (F) The owner must sign and date the notarized statement; and
 - (G) A notary public must confirm, or "attest," the identity of the individual signing the notarized statement.
- (d) The SHPO must consider only the most recent valid notarized statement when determining the total number of owners on the property owner list and objections.
-

- (e) The SHPO will not consider ~~any notarized statement~~ an objection provided in any other manner, written or oral, or a notarized statement that ~~does not meet the requirements of OAR 736-050-0250(12)(c)~~ not valid, is incomplete, or is illegible.
 - (f) The legal representative of an owner may submit a notarized statement on an owner's behalf. The representative must provide documentation demonstrating that they legally represent the owner.
 - (g) A person not listed on the property owner list created in subsection (12)(a) and submitting a notarized statement must submit documentation demonstrating that they meet the definition of owner as described in this rule, including instruments used to create legal entities under Oregon State law such as trusts, limited liability corporations, and other legal entities.
 - (h) When removing the objection of a previous owner under subsection (b), a person must submit documentation demonstrating that the previous owner no longer has an ownership interest and that they themselves meet the definition of owner as described in this rule.
 - (i) The SHPO will not recognize any person as an owner who is unable or refuses to submit documentation as required by this rule.
 - (j) The SHPO will not recognize the authority of third parties to represent the intent of an owner whom the third party does not demonstrate that they legally represent as provided in subsection (e).
 - (k) All notarized statements and accompanying documentation are public records.
 - (l) The SHPO must acknowledge persons in writing within 30 days of the receipt of their notarized statement and any accompanying documents. Acknowledgements must indicate if the notarized statement and accompanying documents are valid under subsection (c) and if not valid, describe why and how to correct the error.
 - (m) The public comment period must remain open when the Committee defers making a recommendation under the provisions of OAR 736-050-0260(~~4011~~).
- (13) The SHPO may examine the property owner list and notarized statements to determine the accuracy of the property owner list and validity of notarized statements. This may occur when the SHPO determines that the reasonably possible outcome of identifying potential error(s) may change the total number of owners on the property owner list or objections to the extent that the outcome would determine if the nominated historic resource is or is not listed in the National Register.
- (a) Any person may request that the SHPO carry out an examination of the property owner list or submitted notarized statements under this section. Such a request must be in writing, and identify and document with evidence to establish one or more of the following:
-

(A) Factual inaccuracy;

(B) Error in the ~~manner in which~~ way SHPO prepared the property owner list; or

(C) Error in the tally of notarized statements.

- (b) In determining whether to undertake an examination under subsection (a), SHPO may consider whether such an examination could reasonably affect the outcome of the process.
- (c) The SHPO must determine how best to conduct an examination under this section on a case-by-case basis based on the nature of the identified concern.
- (d) An examination under subsection (a) is limited to the specific nature of the identified concern and does not include an evaluation of each entry in the property owner list or each submitted notarized statement unless the SHPO determines that this step is necessary.
- (e) The SHPO may choose to re-examine the property owner list and notarized statements against current property tax assessor records, the results of a title search, and any public record and make decisions based on these sources.
- (f) The SHPO may require that owners submit documentation to prove their ownership status or the validity of their submitted notarized statements. The SHPO will not acknowledge persons who are unable or refuse to submit documentation as required by this rule as owners for the purposes of this rule.
- (g) The SHPO must independently verify that documents provided by third parties that do not legally represent an owner as defined in this rule and under Oregon State law are valid and are themselves ~~sufficient~~ enough evidence before editing the property owner list or confirm or refute the validity of a notarized statement. The SHPO must notify the third party and the subject person of the SHPO's determination and provide the person an opportunity to provide additional documentation to demonstrate that they are an owner as defined in OAR 736-050-0230(16).
- (h) The SHPO may determine that a person not counted as an owner on the property owner list created under subsection (12)(a) is an owner as defined in OAR 736-050-0230(16) and correct the property owner list as described in this rule and accept the owner's notarized statement.
- (i) The SHPO may remove a person from the property owner list or invalidate notarized statements upon completion of an examination. The SHPO must inform a person in writing within 30 days of removing a person from the property owner list or invalidating the person's submitted notarized statement and the reason the SHPO took the action. A
-

person may appeal their removal from the property owner list by submitting documentation as described in this rule.

- (j) An examination is complete once the SHPO determines that further identification and correction of errors will not determine if the historic resource will or will not be listed in the National Register.
- (14) The SHPO must make a copy of the National Register nomination form as provided to the NPS available to the public, subject to the provisions of sections (6) and (7). The SHPO shall provide notice of this action to proponent, owner, CLG, chief elected official, and tribes. The SHPO may provide notice to owners by public press release or other means in place of written notice.
- (15) The NPS may correct a submitted National Register nomination form, require that the SHPO correct a submitted National Register nomination form, or deny listing a historic resource in the National Register.
 - (a) The NPS may correct a submitted National Register form and list the historic resource in the National Register.
 - (b) The SHPO must notify the Committee, proponent, owner(s), CLG, chief elected official, and tribes that the NPS returned the National Register nomination form, the reasons for the return, and whether the SHPO will resubmit the National Register nomination form to the Committee or the NPS.
 - (A) The SHPO may resubmit a National Register nomination form ~~is~~ not requiring substantial revisions to the NPS without Committee review.
 - (B) The SHPO may choose to resubmit a National Register nomination form returned by the NPS for amendment or substantive revision by the SHPO or denied listing in the National Register to the Committee. The SHPO must address the reasons the NPS returned the National Register nomination form before resubmission to the ~~committee~~ Committee.
 - (c) The SHPO may require that the proponent complete identified revisions before resubmission of the National Register nomination form to the Committee or the NPS. ~~or~~ The SHPO may complete needed revisions itself.
 - (d) If a historic resource is not listed in the National Register within two years from the date the NPS first returns the National Register nomination for correction the SHPO must decide whether to resubmit the National Register nomination form to the Committee or the NPS as described in this rule or end the National Register nomination process. If the SHPO does not resubmit a National Register nomination form to the Committee or the NPS as described in this rule, the public comment period and the nomination process are ended. The SHPO must consult with the proponent and consider their opinion before making a final decision. A written decision shall be provided to the proponent, owner,

CLG, chief elected official, and tribes. The SHPO may provide notice to owners by public press release or other means.

- (e) The SHPO must complete the following to continue with the National Register process after the NPS returns a National Register form:

(A) Review the National Register form as described in OAR 736-050-0250(4).

(B) If the SHPO determines that the National Register nomination form requires substantive revision or if it is in the public interest the public comment period must close and the nomination process must stop. A proponent may revise the National Register nomination form and submit the form ~~as a new nomination during a regular deadline~~ for a consideration at a future committee meeting as described in this rule;

(C) Provide a public comment period notice as described in OAR 736-050-0250(c)(d)(f) and (g);

(D) Create a new property owner list as described in section (12); and

(E) Compare notarized statements received throughout the public comment period and remove those persons not on the property owner list created in section ~~(4512)~~ ~~(F)(C)~~. The SHPO must not tally the notarized statements from persons removed from the property owner list in this manner. The SHPO must notify persons removed in this manner in writing using their last indicated mailing address on the original property owner list created during the public comment period for the prior submission. A person may appeal their removal from the property owner list by submitting documentation as described in this rule. Owners may submit notarized documents as described in section 12.

- (16) The SHPO must consider the Committee's comments and recommendation and comments received during the public comment period when making an independent recommendation under the provisions of 36 CFR § 60.6(o) and (p) regarding the eligibility of an historic resource for listing in the National Register.

- (17) The SHPO may make a recommendation to the NPS contrary to the Committee's recommendation. The SHPO must inform the Committee if making a recommendation to the NPS contrary to the Committee's recommendation at the next committee meeting following the SHPO's action.

- (18) The SHPO may petition the NPS to take the following actions without review by the Committee. The SHPO must notify the Committee of these actions at the next committee meeting following the SHPO's action~~Committee's next meeting~~:

- (a) Petition the NPS to remove a razed historic property from the National Register;

- (b) Amend [a](#) National Register nomination forms for a historic property when the amendments are not substantive revisions;
- (c) Change the contributing status of an individual historic property within a historic district listed in the National Register;
- (d) Change the contributing status of a secondary historic property, such as a garage, shed, or other small-scale building, structure, object or site that in the opinion of the SHPO does not qualify for listing in the National Register on its own merit included within the boundary of [a](#) historic property; or
- (e) Any combination of (a), (b), (c) and (d).

(19) Any person may appeal directly to the NPS any SHPO decision regarding the nomination of [a](#) historic resources to the National Register or amendments to National Register forms for historic properties under the provisions of [36 CFR § 60.12](#).

(20) The SHPO may refer a nomination submitted pursuant to section (3) to the [State of Oregon](#) Office of Administrative Hearings for a contested case hearing as provided in [ORS 183.413 to 183.425, 183.440 to 18.452, 183.457, 183.460 to 183.470](#). The proponent shall be a party to any contested case. The SHPO shall designate the scope of issues that may be addressed in the contested case, which may include:

- (a) The determination of whether a majority of owners objects as provided in section (12); and
- (b) The determination of the accuracy of the property owner list and validity of notarized statements as provided in section (13).

**OAR 736-050-0260 State Advisory Committee on Historic Preservation: Committee
Procedures for
Review and Approval of Nominations to the National Register**

- (1) The Committee must review all National Register nomination forms except for those prepared under OAR 736-050-0250(18).
 - (2) The Committee must make a recommendation to the SHPO whether the National Register nomination form meets the following criteria:
 - (a) All procedural requirements are met;
 - (b) The National Register nomination form is adequately documented;
 - (c) The National Register nomination form is technically and professionally correct and sufficient; and
 - (d) The National Register nomination form demonstrates that the nominated historic resource meets the National Register criteria for evaluation.
 - (3) Neither the SHPO nor the Committee chairperson or vice chairperson will consider a National Register nomination form submitted after the opening of the public comment period.
 - (4) The owner(s) and chief elected official may waive the CLG comment opportunity described in OAR 736-050-0250(10) ~~by submitting a written statement to the SHPO writing~~ at least 15 calendar days before ~~the a scheduled~~ Committee meeting. The remaining provisions of OAR 736-050-0250 must be met. ~~meeting to allow the Committee to review a National Register nomination form.~~
 - (5) Committee members must disclose actual and potential conflicts of interest in accordance with state law.
 - (6) Committee members will not recuse themselves for a potential conflict of interest.
 - (7) A quorum of five (5) Committee members are required to conduct business. The Committee retains a quorum ~~to conduct business~~ if by the removal of committee members for declared actual conflicts of interest the Committee falls below five present voting committee members.
 - (8) For each historic resource nominated to the National Register, the National Register Program Coordinator must present the Committee a summary of:
 - (a) The argument presented in the National Register nomination form, and
-

- (b) Public comment received prior to the Committee meeting pursuant to OAR 736-050-0250(9)(a).
- (9) The chairperson must call for comments from the proponent(s), opponents, and other interested parties present following the National Register Program Coordinator's presentation. The total time allowed for comments must be determined by the chairperson or by procedures adopted by the Committee.
- (10) The SHPO, Deputy SHPO, Associate DSHPO, and Oregon SHPO staff may participate in committee discussions, but are not voting committee members.
- (11) The Committee must take one of the following actions when considering a National Register nomination form based on the Committee's deliberations and comments received during the public comment period:
- (a) Recommend that the SHPO find that the National Register nomination form meets the criteria in subsections (~~4~~2)(a)-(d) as presented to the Committee with no revisions;
 - (b) Recommend that the SHPO find that the National Register nomination form meets the criteria in subsections (~~4~~2)(a)-(d) after making less than substantive revisions to the National Register nomination form; or
 - (c) Defer making a recommendation until a future committee meeting to allow the proponent to make revision(s) or for any other reason deemed appropriate by the Committee related to the criteria in subsections (~~4~~2)(a)-(d).
 - (d) Recommend that the SHPO find that the National Register nomination form does not meet the criteria in subsections (~~4~~2)(a)-(d). The Committee must provide reasons for the recommendation. The Committee may re-consider a recommendation at a later meeting after the SHPO determines that the proponent resolved the Committee's objections.
- (12) The Committee must defer making a recommendation until a future committee meeting if the National Register nomination form requires substantive revisions.
- (13) The Committee may provide courtesy comments on National Register nomination forms submitted to the SHPO for historic resources on lands held in trust by the United States of America on behalf of a tribe or an individual allotment held by a tribal member or administered by a U.S. federal agency. SHPO staff must establish a procedure for applying the conditions of this subsection.
-

OAR 736-050-0270 State Advisory Committee on Preservation: Incorporation of Publications by Reference and Effective Date of Rule

- (1) The publication(s) referred to or incorporated by reference in ~~this~~ OAR 736-050-0220 through OAR 736-050-0270 are available from the Oregon State Historic Preservation Office, Oregon Parks and Recreation Department.
- (2) This Division adopts by reference the following publications of the National Park Service:
“The National Register of Historic Places Regulations (36 CFR Part 60): A Brief History and Annotated Guide,” August 2012; “Historic Preservation Fund Grant Manual,” June 2007; National Register Bulletin 15, “How to Apply the National Register Criteria for Evaluation,” 1995 revision; National Register Bulletin 16A, “How to Complete the National Register Form,” 1997; National Register Bulletin 16B, “How to Complete the National Register Multiple Documentation Form,” 1999 revision; and National Register Bulletin 21 and 12, “Defining Boundaries for National Register Properties,” 1997 revision.
- (3) OAR 736-050-0220 through OAR 736-050-0270 are effective upon filing of the rule with the Secretary of State.
- (4) OAR 736-050-~~02600250~~(15)(d) and 736-050-~~02600250~~(15)(e)(B) are not applicable to National Register forms submitted before the effective date of this Division.

MARSHALL Janelle * OPRD

From: OLGUIN Robert * OPRD
Sent: Thursday, September 24, 2020 4:39 PM
To: MARSHALL Janelle * OPRD
Cc: PUBLICCOMMENT * OPRD
Subject: FW: Revision of State Rules for the Administration of the Federal National Register Program in Oregon
Attachments: Oregon Parks and Recreation Department re Revision of State Rules for Administration of Federal National Register Program in Oregon dtd 091520.pdf; PRP-RUL-6-26-2020-NR-Rulemaking-Filing-Documents CTGR comments.pdf; OPRD - proposed rules for NRHP 9.24.20 signed.pdf

Here is another one that we just received. That it does not look like it made to you.



Robert Olguin | National Register and Tax Programs Coordinator
Heritage Division, Oregon Parks and Recreation Department
State Historic Preservation Office
725 Summer St. NE, Suite C, Salem, Oregon 97301
(503) 602-2468

From: Cheryl Pouley <Cheryl.Pouley@grandronde.org>
Sent: Thursday, September 24, 2020 2:41 PM
To: WARBURTON Denise * OPRD <Denise.Warburton@oregon.gov>
Cc: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>; CURRAN Chrissy * OPRD <Chrissy.Curran@oregon.gov>; Briece Edwards <Briece.Edwards@grandronde.org>
Subject: Revision of State Rules for the Administration of the Federal National Register Program in Oregon

Dear Ms. Warburton,
On behalf of Briece Edwards, Manager, Historic Preservation Office, Confederated Tribes of Grand Ronde, please find attached comments on the proposed Revision of State Rules for the Administration of the Federal National Register Program in Oregon.
Please feel free to contact Briece or myself with any questions.
Best,
Cheryl



Cheryl K. Pouley
Cultural Protection Coordinator
Historic Preservation Office | Cultural Resources Department
The Confederated Tribes of the Grand Ronde Community of Oregon
9615 Grand Ronde Road, Grand Ronde, OR 97347
Phone: (503) 879-1667
Please submit consultation requests to: THPO@grandronde.org

COVID-19 – Historic Preservation Office staff are operating in a modified format until further notice. We will continue with review and compliance procedures as available. We will return calls and emails as soon as possible, and continue to participate in remote meetings. We look forward to insuring the best outcome for cultural resources as everyone continues to meet their responsibilities during this period. Hayu-masi (thank you).

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disclosing this information to any other party and is required to destroy the information after its stated need has been fulfilled, unless otherwise required by state law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution, or action taken in reliance on the contents of these documents is strictly prohibited. If you have received this email in error, please notify the sender immediately to arrange for return of these documents.



Oregon

Kate Brown, Governor

Parks and Recreation Department

725 Summer St. NE, Suite C

Salem, OR 97301-1271

(503) 986-0980

Fax (503) 986-0794

www.oregonstateparks.org



September 15, 2020

Chairwoman Cheryle A. Kennedy
Confederated Tribes of Grand Ronde
9615 Grand Ronde Road
Grand Ronde, OR 97347

RE: Government-to-Government Consultation Regarding the Revision of State Rules for the
Administration of the Federal National Register Program in Oregon

Dear Chairwoman Kennedy:

I invite the Confederated Tribes of Grand Ronde on behalf of the Oregon Parks and Recreation Department to participate in government-to-government consultation regarding the local administration of the federal National Register of Historic Places program in Oregon. I previously extended an invitation in December 2019 and June 2020. Established in 1966, the National Register is a program of the National Park Service that recognizes properties important to the nation's history.

The agency proposes revising the state rule to address issues raised during the nomination process of several controversial properties over the last few years. In early 2020 the agency convened a Rule Advisory Committee (RAC) to consider a draft rule provided by staff. The RAC considered how the rule addressed counting owners and objections; how tribal governments, state agencies, and local jurisdictions participate in the nomination process; unclear administrative functions, such as staff duties and public notice and hearing procedures; and under what circumstances nominations may be exempt from public disclosure to protect culturally-sensitive information, among other issues. The agency extended an invitation to the Oregon Legislative Commission on Indian Services (LCIS) to appoint a representative to the RAC. Unfortunately, the agency was unable to provide a volunteer.

The provisions of the state rule do not apply to reservation lands. Properties in federal ownership are subject to a separate process, defined in the 1966 National Historic Preservation Act, as amended, and implementing regulations.

The Oregon Parks and Recreation Commission reviewed the proposed draft rule and approved the request to open rulemaking for the National Register program rule at their June 17, 2020 meeting. The public comment period closed at 5 p.m. on Sept. 14, 2020. Following the conclusion of the public comment period, the Commission may consider a final rule for adoption.

*Ready to Historic Preservation
To Added Lands
Legal
- until 9-18-20*



Oregon

Kate Brown, Governor

Parks and Recreation Department

725 Summer St. NE, Suite C

Salem, OR 97301-1271

(503) 986-0980

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I would be pleased to meet with you or your representative to discuss any questions, recommendations, or concerns regarding the content of the rule or the process. Please contact my Executive Assistant, Denise Warburton at Denise.Warburton@Oregon.gov or (503) 986-0719 to arrange for a convenient date to meet. I look forward to working with the Confederated Tribes of Grand Ronde on this important issue.

Sincerely,

Lisa Sumption (Sep 15, 2020 09:35 PDT)

Lisa Sumption

Director, Oregon Parks and Recreation Department

cc. by email: David Harrelson, Tribal Historic Preservation Officer, Cultural Resources Department



NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 736
PARKS AND RECREATION DEPARTMENT

FILED

06/26/2020 4:36 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Revising state rules for National Register of Historic Places program in Oregon

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/14/2020 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Katie Gauthier
503-510-9678
katie.gauthier@oregon.gov

725 SUMMER ST NE
SALEM, OR 97301

Filed By:
Katie Gauthier
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 07/23/2020

TIME: 2:00 PM

OFFICER: staff

ADDRESS:

CALL IN/ VIDEO MEETING

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Following direction of the Gov/CDC public meetings are via conference call and video. The phone number and link to participate will be posted on the Oregon Parks and Recreation Department rulemaking website. Anyone needing a special accommodation to participate in the meeting please contact staff at least 72 hours prior to the meeting.

DATE: 07/23/2020

TIME: 7:00 PM

OFFICER: staff

ADDRESS:

CALL IN/VIDEO MEETING

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Following direction of the Gov/CDC public meetings are via conference call and video. The phone number and link to participate will be posted on the Oregon Parks and Recreation Department rulemaking website. Anyone needing a special accommodation to participate in the meeting please contact staff at least 72 hours prior to the meeting.

NEED FOR THE RULE(S):

In the last several years proponents nominated several high-profile, controversial properties to the federal National Register of Historic Places. These projects exposed discrepancies between federal and state laws and rules governing the National Register Program and gaps in administrative processes. Especially controversial is counting property owners and objections to establish owner consent as required by federal rule, specifically trusts, but also other ownership arrangements. The result of uncertainty is costly substantive process delays and legal proceedings. Revisions to the state rules guiding the procedures and responsibilities of staff and the State Advisory Committee on Historic Preservation (SACHP) for the National Register program are needed to align the federal and state processes and

provide general clarity.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

National Park Service, National Register of Historic Places Guidance,
<https://www.nps.gov/subjects/nationalregister/regulations.htm>

"The National Register of Historic Places Regulations (36 CFR Part 60): A Brief History and Annotated Guide," August 2012, available from the Oregon SHPO upon request.

"Historic Preservation Fund Grant Manual," June 2007, <https://www.nps.gov/preservation-grants/>
National Register Bulletin 15, "How to Apply the National Register Criteria for Evaluation," 1995 revision,
<https://www.nps.gov/subjects/nationalregister/publications.htm>

National Register Bulletin 16A, "How to Complete the National Register Form," 1997,
<https://www.nps.gov/subjects/nationalregister/publications.htm>

National Register Bulletin 16B, "How to Complete the National Register Multiple Documentation Form," 1999 revision,
<https://www.nps.gov/subjects/nationalregister/publications.htm>

National Register Bulletin 21 and 12, "Defining Boundaries for National Register Properties," 1997 revision,
<https://www.nps.gov/subjects/nationalregister/publications.htm>

FISCAL AND ECONOMIC IMPACT:

Reducing the uncertainty and process delays for National Register program nominations may reduce preparation and administrative costs, and avoid legal fees associated with litigation for local governments, state agencies and individuals involved in the nomination process. Increased clarity around administrative requirements for program operation will raise program administration costs for the Oregon State Historic Preservation Office. However, it is expected that these costs will be offset over time because it is likely that legal costs associated with controversial nominations will be reduced or avoided in future nomination efforts.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) The State Historic Preservation Office of the Oregon Parks and Recreation Department is the state agency economically affected by these rules. The rules directly address the SHPO's administration of the federal National Register of Historic Places program, providing for specific processes that the agency must follow. These additional processes will increase the cost of administering the program. Tribes, cities, counties, other subdivisions of Oregon State government, and organizations and individuals nominating properties for listing in the National Register of Historic Places will be subject to the timelines and processes described in the rule. However, there are no direct costs associated with participation in the program, and the increased clarity of the proposed rule is expected to offset any potential process delays.

(2) The small businesses impacted by the proposed rules include historic preservation consultants and their clients, including local government, property developers, and organizations, and individuals. There are fewer than 50 small businesses that prepare National Register of Historic Places nominations in Oregon. (b) The rule does not require small businesses to create reports, records, complete any specific administrative activity, or pay for a service. The requirements for participation in the program and a complete National Register of Historic Places document remain the same. (c) There is no additional increase in costs for professional services, equipment supplies, labor or administration

for small businesses to comply with the proposed rules. The requirements for participation in the program and a complete nomination National Register of Historic Places document remain the same.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

A small business owner with experience in preparing National Register of Historic Places was included on the Rule Advisory Committee as well as a representative from the Oregon Home Builders Association and the Oregon Farm Bureau, who both include small business owners in their membership.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

736-050-0220, 736-050-0230, 736-050-0240, 736-050-0250, 736-050-0260, 736-050-0270

AMEND: 736-050-0220

RULE SUMMARY: Adopts federal requirements for state historic preservation programs by reference.

CHANGES TO RULE:

736-050-0220

State Advisory Committee on Historic Preservation: Federal Requirements **II**

~~The National Historic Preservation Act of 1966, as amended, (16 U.S.C. SC ?? 470 et seq.) (Act), specifies basic requirements for approval of state historic preservation programs. The requirements and responsibilities listed in the Act are incorporated into federal rule, 36 CFR Parts? 60 (19942012 edition), and 36 CFR Part? 61 (19998 edition), which are hereby adopted by reference into this administrative rule~~OAR 736-050-0230, OAR 736-050-0240, OAR 736-050-0250, OAR 736-050-0260, and OAR 736-050-0270.

Statutory/Other Authority: ORS 358.617

Statutes/Other Implemented: ORS 358.605

RULE SUMMARY: Defines terms used within specified rules in this division.

CHANGES TO RULE:

736-050-0230

State Advisory Committee on Historic Preservation: Definitions ¶¶

~~(1) "Actual conflict of interest" (ORS 244.020(1)) – means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit~~
The following definitions apply to OAR 736-050-0220, OAR 736-050-0240, OAR 736-050-0250, OAR 736-050-0260, and OAR 736-050-0270: ¶¶

(1) "Act" means the National Historic Preservation Act of 1966, as amended, (16 USC 470 et seq.) that establishes the federal historic preservation program.¶¶

(2) "Associate Deputy SHPO" means the Associate Deputy State Historic Preservation Officer who serves under the delegated authority or detriment arises out of circumstances described in subsection (12) of this section of the Deputy State Historic Preservation Officer.¶¶

(23) "CLG" means Certified Local Government (CLG) – A, which is a city or county that has been government certified by the National Park Service, Department of the Interior PS to carry out the purposes of the National Historic Preservation Act, as amended. The CLG program is administered by the SHPO responsibilities under the Act.¶¶

(4) "Chief elected official" has the meaning provided in 36 CFR 60.3(b).¶¶

(35) "Committee" – ¶¶ means the State Advisory Committee on Historic Preservation, a nine member body appointed by the Governor pursuant to as established in ORS 358.622.¶¶

(46) "Criteria for Evaluation" – ¶¶ means the National Register Criteria for Evaluation are those published criteria by which every proposed historic resource proposed for nomination to the National Register is judged.¶¶

(57) "Deputy SHPO" – ¶¶ means the Deputy State Historic Preservation Officer, who serves as SHPO staff manager under the delegated authority of the State Historic Preservation Officer.¶¶

(68) "Determination of Eligibility" – A decision by the U.S. Department of the Interior that a property meets the National Register criteria for evaluation although the property is not listed in the National Register. A determination of eligibility does not make the property eligible for grants or tax incentives for which listing in the National Register is a prerequisite means a finding by the NPS that a property either does or does not meet the criteria for evaluation.¶¶

(9) "Historic resource" means a building, district, object, site, or structure, as defined in 36 CFR 60.3(a), (d), (j), (l), and (p), or that that the NPS or SHPO finds is potentially eligible for listing in the National Register, but is not listed in the National Register.¶¶

(710) "Handbook" – Compiled by SHPO staff, the guide is a publication on how to prepare nominations to historic property" means a building, district, object, site, or structure that is listed in the National Register based on National Register Bulletin 16 of Historic Places.¶¶

(811) "Historic District" – A geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of historic sites, buildings, structures, or objects united by past events or visually by plan or physical development Local landmarks commission" means an advisory or quasi-judicial body responsible for carrying out responsibilities under the Act on behalf of a CLG.¶¶

(912) "Multiple Property Submission" – Includes all or a portion of the Register-eligible resources identified in a specific rural area, county, town, or section of a town or city, which are related to one another in a clearly distinguishable way. The resources may be of one building type or use, designed by a single architect, of a given National Register" means the National Register of Historic Places maintained by the United States Department of the Interior and administered by the NPS, which is the national list of historic properties significant in American

history, architecture, archaeological period, or all these, engineering, and culture. The Oregon SHPO coordinates to a single historical site the National Register at the state level.¶

(103) "NPS" means the National Park Service (NPS) – The federal agency, housed in the U.S. Department of the Interior, which oversees historic preservation programs enabled by the National Historic Preservation Act of 1966, as amended, the bureau of the United States Department of the Interior responsible for the administration of the Act. ¶

(114) "National Register of Historic Places" – The national list of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture, maintained by the Secretary of the Interior. The Keeper of the National Register of Historic Places is nomination form" means the federal form as defined in 36 CFR § 60.3(i) approved by the NPS to nominate a historic resource for listing in the National Register or to amend or substantively revise a National Register nomination form previously accepted by the NPS for an historic property.¶

(15) "Oregon SHPO" means the Oregon State Historic Preservation Office, an official of the National Park Service Oregon Parks and Recreation Department. ¶

(126) "Potential conflict of interest" (ORS 244.020(7)) – means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:¶

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position. Owner:" ¶

(a) Includes "owner or owners" as defined in 36 CFR § 60.3(k), and means:¶

(A) The owner of fee simple absolute or fee simple defeasible estate title to a property as shown in the property tax records of the county where the property is located, including, but not limited to, trusts, limited liability corporations, and any other legal entity that can hold fee simple absolute or fee simple defeasible title to real property within the state of Oregon; ¶

(B) The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or ¶

(C) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner; and ¶

(b) Does not include:¶

(bA) Any action in the person's official capacity which would affect to the same degree a class consisting of all inhabited public agencies holding easements or less than fee interests (including leaseholds) of any nature;¶

(B) The life tenants of the life estate, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or person's relative is associated, is a member or is engaged. The committee may by rule limit the minimum size of or otherwise establish criteria for or identify the smaller classes that qualify under this exception.¶

(c) Membership; and¶

(c) Means, for a single property, building, structure, site, object, with or without secondary historic resources, or historic district with multiple owners, a majority of owners as defined in (a) and (b).¶

(17) "Person" means individuals, corporations, associations, firms, business trusts, estates, trusts, partnerships, limited liability companies, joint ventures, public and municipal organizations, joint stock companies, federal agencies, tribes, public bodies as defined in ORS 174.109, or any other legal or commercial entity.¶

(18) "Proponent" means the person that submits a National Register nomination form to the Oregon SHPO.¶

(19) "Public comment period" means the opportunity for a person to comment on the National Register nomination form submitted for review by the Committee. The public comment period begins or membership on the board of directors of a nonprofit corporation that is tax-exempt under Section 501(c) of the Internal Revenue Code.¶

(13) "SHPO" – From the date the Oregon SHPO notifies the proponent, owner, CLG, chief elected official, and tribes and ends the day that the NPS makes a final decision regarding listing a historic resource in the National Register.

¶

(20) "SHPO" means the Director of the Oregon Parks and Recreation Department and the State Historic Preservation Officer appointed by the Governor pursuant to ORS 358.565 and 36 CFR 61.4 in ORS 358.565.¶

(21) "Substantive revision" means:¶

(a): Also used to mean State Historic Preservation Office.¶

(14) "Special Assessment" - A state sponsor request submitted to the NPS to remove a still extant listed historic property from the National Register; ¶

(b) A National Register nomination form is edited to increase or decrease the boundary of a historic resource nominated to or historic property listed financial incentive program (ORS 358.425 et seq.) which provides for a fifteen year "freeze" in the true cash value of National Register properties the National Register; ¶

(c) A National Register nomination form is edited to add one or more National Register Criteria or Criteria Considerations;¶

(d) a National Register nomination form is edited to the extent that the SHPO finds that the revisions require additional review; or¶

(e) Any combination of (a), (b), (c), or (d). ¶

(f) Does not mean adding a National Register Criteria or Criteria Consideration when the SHPO or Committee determine that the narrative portions of the National Register nomination form as written sufficiently justify the addition.¶

(22) "Tribe" means one or more of the nine federally-recognized Indian tribes in Oregon.¶

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 358.617

Statutes/Other Implemented: ORS 358.617

AMEND: 736-050-0240

RULE SUMMARY: Describes the governing structure and responsibilities for the State Advisory Committee on Historic Preservation.

CHANGES TO RULE:

736-050-0240

State Advisory Committee on Historic Preservation: Organization and Duties ¶

- (1) ~~Members of the~~ The Governor appoints committee members as described in ORS 358.622.¶
- (2) Committee members appointed to fill unexpired terms ~~shall~~ may serve for the remainder of the term of the vacating member.¶
- (23) ~~Unless the policy is waived by the Governor under extenuating circumstances (e.g., lack of qualified professionals to represent a required discipline), a C~~ Committee members may serve no more than two consecutive terms of appointment unless the Governor approves another consecutive term. A committee member appointed under section (2) may be considered for reappointment as provided in this section. A committee member may serve ~~no more than~~ beyond two consecutive terms of appointment in his or her own right. If the member's original appointment fulfilled the unexpired term of another, he or she may be considered for ~~reappointment twice in succession thereafter~~ until the Governor appoints a replacement.¶
- (4) The SHPO must nominate a chairperson and vice chairperson to the Governor for consideration. The Governor selects the chairperson and vice chairperson for a two-year term. The chairperson and vice chairperson may serve consecutively in either role through their terms.¶
- (35) ~~Each member shall sign an affidavit acknowledging that he or sh~~ The chairperson conducts Committee meetings. The vice chairperson must fulfill this role when the chairperson is unavailable. The SHPO must appoint a committee member to conduct the meeting when the chairperson and vice ~~chair~~ has read applicable conflict-of-interest provisions in state and federal rules. Affidavits are maintained by the nominations coordinator ~~ir person~~ are both unavailable.¶
- (6) The Committee may define additional responsibilities for the chairperson and vice chairperson.¶
- (7) The SHPO must request that the Governor remove committee members absent for two consecutive meetings without the prior permission of the chairperson or, in the absence of the chairperson, the vice chairperson.¶
- (48) ~~Pursuant to~~ The Committee must carry out the duties described under 36 CFR § 61.4(f)(6) and ORS 358.622. the Committee shall:¶
- (a) ~~Review all proposed nominations to the National Register of Historic Places to determine whether or not the property meets the criteria; and~~¶
- (a) Meet at least three times annually;¶
- (b) ~~Review National Register nomination forms submitted to the Committee by the SHPO for reevaluation~~ review as provided in OAR 736-050-0260;¶
- (b) ~~May participate in the review of appeals to the Keeper of the NPS of National Register of nomination forms rejected by the SHPO, and provide written opinions on the significance of the properties or the NPS;~~¶
- (e) ~~Periodically r~~ Review and make recommendations to the SHPO on amendments to the Oregon State Historic Preservation Plan, and provide advice on comprehensive historic preservation planning processes;¶
- (de) ~~Provide advice, guidance, and professional recommendations to the SHPO on matters relating to federal and state historic~~ Create advisory committees or subcommittees necessary to carry out the Committee's functions;¶
- (f) ~~Appoint committee members to serve as representation programs, policies and budgets, includes to another body in the interest of carrying bout not li~~ The Committee to grant applications, annual staff work programs, and matters relating to the special assessment of historic property under provisions of ORS 358.475 et seqe's duties;¶
- (g) Adopt standard practices to carry out the duties of the Committee as necessary; and¶
- (h) Perform other duties as requested by the SHPO.

Statutory/Other Authority: ORS 358.617

Statutes/Other Implemented: ORS 358.622

AMEND: 736-050-0250

RULE SUMMARY: Outlines staff process in administering the National Register program.

CHANGES TO RULE:

736-050-0250

State Advisory Committee on Historic Preservation: Staff Activities Relating to the National Register Program ¶

- (1) Pursuant to ORS 358.565, ~~the~~ The SHPO may delegate authority under this division to the Deputy SHPO, the Associate Deputy SHPO, the National Register Program Coordinator, or other staff. ¶
- (2) ~~The SHPO must appoints the National Register Nominations Coordinator as the staff professional who is qualified to coordinate a National Register Program Coordinator to administer the state's National Register of Historic Places program.~~ ¶
- (3) A proponent may nominate a historic resource to the National Register regardless of ownership status by submitting a complete National Register nomination form to the SHPO. ¶
- (4) The SHPO must evaluate the National Register nomination form and provide a written response to the proponent within 60 calendar days of receipt stating whether their submittal: ¶
- (a) Is adequately documented; ¶
- (b) Is technically and professionally correct and sufficient; and ¶
- (c) Demonstrates that the nominated historic resource meets the National Register criteria for evaluation. ¶
- (5) A proponent may withdraw the national register nomination form they state's National Register nominations program, including serving as staff to the State Advisory Committee on Historic Preservation. ¶
- (2) ~~Notification letters must be issued to property owners and affected public officials submitted r at any time during the public comment period by submitting a written request to the SHPO.~~ ¶
- (6) The Oregon SHPO may keep all or qualifying portions of a National Register nomination form confidential and conditionally exempt from public disclosure under the conditions established in ORS 192.345. SHPO staff must establish a procedure for applying the conditions of ORS 192.355(4) to submitted National Register nomination forms. ¶
- (7) The Oregon SHPO may keep all or qualifying portions of a National Register nomination form submitted for review confidential and exempt from public disclosure under the provisions of section 304 of the Act. SHPO staff must establish a procedure for applying the conditions of section 304 of the Act to submitted National Register nomination forms. ¶
- (8) The SHPO must provide a public comment period for each National Register nomination form considered by the Committee. The copy provided for public comment may be redacted as provided for under subsections (6) and (7) as applicable. The SHPO must: ¶
- (a) Open the public comment period not less than 30 calendar days nor more than 75 calendar days in advance of the nomination review date a scheduled committee meeting. ¶
- (b) Include in the public comment period notice the date and location of the scheduled committee meeting and the process for submitting comments on the National Register nomination form. ¶
- (3c) ~~Individuals,~~ Mail a written public comment period notice to the proponent, owner, CLG, chief elected official, and tribes. The SHPO may coordinate with local governments officials, landmark commissions, or CLGs on the format, content, and distribution of the public comment period notice. ¶
- (d) May publish a public comment period notice in one or more local newspapers of general circulation in the area where the historic resource is located. ¶
- (e) Identify owners using county property tax records obtained within 90 calendar days provide comments on the proposed nomination to the SHPO, Deputy SHPO, or nominations coordinator in advance of the meeting. Written or oral comments must be received not later than the announced date or to the beginning of the public comment period. ¶
- (f) Take additional actions to inform the public and interested parties of the nomination of a historic resource to the National Register or substantive revision of a National Register form for a historic property if the SHPO

believes that such an action is in the public interest.

(g) Make available to the public, proponent, owner, CLG, chief elected official, and tribes a complete copy of the National Register nomination form during the public comment period except when a portion or the entirety of the National Register nomination form is redacted as provided in sections (6) and (7).

(9) Any person may provide comments on a National Register nomination form considered by the Committee.

(a) The Oregon SHPO must receive written comments at least five business days before the scheduled committee meeting. Any written comments received after this time but before the meeting will be included in the public record, but the Oregon SHPO will not provide the comments to the Committee, except as provided for CLGs in section 10.

(b) A person may provide written materials or oral comment to the Committee for consideration the day of the Committee meeting.

(c) The period for public comment shall not be less than 30 days. For properties located Committee will only consider written and oral comment submitted during the public comment period that address:

(A) substantive requirements for complete nominations described in section (4), or

(B) procedural requirements under state and federal rule and law.

(d) All comments received in any format are public records.

(10) A CLG may object to nominating a historic resource within their jurisdiction of a CLG, and for properties in public ownership, the period for public comment shall not be less than 60 days. Objections to the National Register or the substantive revision of a National Register nomination form for a historic property as described in 54 USC § 302504 (2014).

(a) To be valid, an objection must meet the following requirements:

(A) Be submitted in writing and received by the SHPO within 60 calendar days following notice provided by the SHPO as described in 736-050-0250(8);

(B) The chief elected official acting in their official capacity representing the majority opinion of the local government's legislative body recommends that the historic resource not be nominated to the National Register or that the form for a historic property not be substantially revised;

(C) The local landmarks commission recommends by majority opinion that the historic resource not be nominated to the National Register, or that the form for a historic property not be substantially revised. The local landmarks commission recommendation must include a report as to whether the property meets the National Register criteria described in OAR 736-050-0250(4). The local landmarks commission may find that the historic resource is eligible for listing in the National Register by the owners of private property must be in the form of a notarized written statement certifying the correct not recommend that it be nominated to the National Register; and

(D) The public has a reasonable opportunity to comment.

(b) Upon receipt of a valid objection under subsection (a), SHPO must:

(A) Remove the National Register nomination form from Committee consideration and take no further action from the date the SHPO receives the objection;

(B) Take necessary actions to close the administrative process; and

(C) Provide written notice to the proponent's, ownership interest and the basis for objection. The coordinator will acknowledge receipt of written comments by form letter. Statements of objection on the part of owner(s), CLG, chief elected official, and tribes within 10 calendar days of the action.

(c) Any person may appeal a CLG's objection by submitting a written appeal to the Oregon SHPO within 30 calendar days after the date the SHPO received the CLG's objection. The SHPO must submit the National Register nomination form for Committee consideration at the next regularly-scheduled committee meeting.

(d) A CLG may object each time a National Register nomination form is substantively revised under the provisions of this section.

(11) State government as defined in ORS 174.111 and political subdivisions of state government may comment on the National Register nomination form. State government and political subdivisions of state government may object to listing a historic resource in the National Register, but the SHPO must not count the objection toward the total numbers of public/private property which the Committee finds to meet criteria of the National Register

will be forwarded for consideration by the Keeper of the National Register. However, under federal rule, a statement of objection will not automatically preclude listing in the National Register of a property that is in public ownership unless the owner(s) needed to prevent the historic resource from being listed in the National Register as prohibited by the provisions of 36 CFR § 60.6(g) (2011). As used in this section, "political subdivision" includes counties, cities, taxing districts and any other governmental unit within the state of Oregon.

(12) The SHPO must determine if the majority of owner(s) object to listing a nominated historic resource in the National Register by comparing the total number of owners identified on the property owner list to the number of notarized statements that object to listing the historic resource.

(a) The SHPO must create a property owner list that includes each owner within the boundary of a historic resource nominated for listing in the National Register using county property tax records obtained as provided in subsection (8)(e). That property owner list is the official list of property owners throughout the public comment period.

(A) The SHPO must take reasonable steps to correctly identify the total number of owners.

(B) The SHPO must assume that the property tax records provided by the county assessor are accurate when counting owners.

(C) The SHPO must include owners on the property owner list regardless of whether the owner can be contacted using the information included on the property owner list provided by the county assessor's office.

(D) When encountering similar names, the SHPO will compare the name and mailing addresses to determine if there are one or more owners. Jane Doe and Jane S. Doe must be considered as two distinct persons when the county property tax records identify differing mailing addresses. If the mailing address is the same, the SHPO must identify these individuals as the same person.

(E) The SHPO must count entities, such as named trusts, corporations, partnerships, etc., as individual owners when the owner name differs in any way, even when the mailing address is the same.

(4E) The coordinator shall conduct a substantive review of all proposed nominations and prepare written summary comments for presentation to the Committee. This review shall apply the National Register Criteria for Evaluation to the nomination, focusing on physical characteristics, integrity, the applicable criteria and context for evaluation. The coordinator shall make recommendations concerning the eligibility of properties proposed for nomination. These comments shall be retained in individual nomination files.

(5) Notification letters to property owners/proponents shall be prepared to confirm SHPO must count a trust as a single owner when multiple trustees are named, but no trust is identified.

(G) The SHPO must use any adopted system of abbreviations, symbols, or other codes used by the county assessor from the county providing property tax records to identify owners when creating the property owner list.

(H) The SHPO must add or remove an owner from the property owner list upon submission of a notarized statement from the current property owner when the notarized statement meets the requirements of subsection (c).

(b) At any time during the public comment period, an owner may take the following actions by submitting a notarized statement. An owner may object only once regardless of how many historic resources or what portion of a historic resource the owner owns:

(A) Object to listing a historic resource in the National Register;

(B) Withdraw their own previous objection;

(C) Remove the previous owner as owner of record from the property owner list and withdraw the previous owner's objection;

(D) Assert ownership of a historic resource within the nominated area when the property owner list does not include the owner or property; or

(E) Any combination of (A), (B), (C) and (D).

(c) To be valid notarized statements must meet the following criteria:

(A) An owner must submit an original, notarized statement on a form provided by the SHPO;

(B) The notarized statement must identify private real property within the boundary of the nominated area;

(C) The notarized statement must clearly identify the intent of the owner as described in subsection (b);

(D) The owner must identify both the name they were previously known by and listed in the county property tax records and their current legal name as applicable.

(E) The notarized statement must clearly identify the nature of the owner's property right.

(F) The owner must sign and date the notarized statement; and

(G) A notary public must confirm, or "attest," the identity of the individual signing the notarized statement.

(d) The SHPO must consider only the most recent valid notarized statement when determining the total number of owners on the property owner list and objections.

(e) The SHPO will not consider an objection provided in any other manner, written or oral, or a notarized statement that does not meet the requirements of OAR 736-050-0250(12)(c), is incomplete, or is illegible.

(f) The legal representative of an owner may submit a notarized statement on an owner's behalf. The representative must provide documentation demonstrating that they legally represent the owner.

(g) A person not listed on the property owner list created in subsection (12)(a) and submitting a notarized statement must submit documentation demonstrating that they meet the definition of owner as described in this rule, including instruments used to create legal entities under Oregon State law such as trusts, limited liability corporations, and other legal entities.

(h) When removing the objection of a previous owner under subsection (b), a person must submit documentation demonstrating that the previous owner no longer has an ownership interest and that they themselves meet the definition of owner as described in this rule.

(i) The SHPO will not recognize any person as an owner who is unable or refuses to submit documentation as required by this rule.

(j) The SHPO will not recognize the authority of third parties to represent the intent of an owner whom the third party does not demonstrate that they legally represent as provided in subsection (e).

(k) All notarized statements and accompanying documentation are public records.

(l) The SHPO must acknowledge persons in writing within 30 days of the receipt of their notarized statement and any accompanying documents. Acknowledgements must indicate if the notarized statement and accompanying documents are valid under subsection (c) and if not valid, describe why and how to correct the error.

(m) The public comment period must remain open when the Committee defers making a recommendation under the provisions of OAR 736-050-0260(11).

(13) The SHPO may examine the property owner list and notarized statements to determine the accuracy of the property owner list and validity of notarized statements. This may occur when the SHPO determines that the reasonably possible outcome of identifying potential error(s) may change the total number of owners on the property owner list or objections to the extent that the outcome would determine if the nominated historic resource is or is not listed in the National Register of Historic Places. Separate form letters for approval, deferral, or denial shall be used. Approval letters may be accompanied by a list of needed supplemental documentation. Deferral or denial letters shall be accompanied by an explanation of why the action was deferred or denied and what steps might be taken to make a valid re-submission of the nomination, if any.

(6) Once forwarded to the Keeper of the National Register, nominations may be returned to the SHPO for additional information, or can be subject to a supplementary listing record that provides for minor technical corrections without return of the registration form.

(a) Any person may request that the SHPO carry out an examination of the property owner list or submitted notarized statements under this section. Such a request must be in writing, and identify and document with evidence to establish one or more of the following:

(A) Factual inaccuracy;

(B) Error in the way SHPO prepared the property owner list; or

(C) Error in the tally of notarized statements.

(b) In determining whether to undertake an examination under subsection (a), SHPO may consider whether such an examination could reasonably affect the outcome of the process.

(c) The SHPO must determine how best to conduct an examination under this section on a case-by-case basis based on the nature of the identified concern.

(d) An examination under subsection (a) is limited to the specific nature of the identified concern and does not include an evaluation of each entry in the property owner list or each submitted notarized statement unless the SHPO determines that this step is necessary.¶

(e) The SHPO may choose to re-examine the property owner list and notarized statements against current property tax assessor records, the results of a title search, and any public record and make decisions based on these sources.¶

(f) The SHPO may require that owners submit documentation to prove their ownership status or the validity of their submitted notarized statements. The SHPO will not acknowledge persons who are unable or refuse to submit documentation as required by this rule as owners for the purposes of this rule.¶

(g) The SHPO must independently verify that documents provided by third parties that do not legally represent an owner as defined in this rule and under Oregon State law are valid and are themselves enough evidence before editing the property owner list or confirm or refute the validity of a notarized statement. The SHPO must notify the third party and the subject person of the SHPO's determination and provide the person an opportunity to provide additional documentation to demonstrate that they are an owner as defined in OAR 736-050-0230(16).¶

(h) The SHPO may determine that a person not counted as an owner on the property owner list created under subsection (12)(a) is an owner as defined in OAR 736-050-0230(16) and correct the property owner list as described in this rule and accept the owner's notarized statement.¶

(i) The SHPO may remove a person from the property owner list or invalidate notarized statements upon completion of an examination. The SHPO must inform a person in writing within 30 days of removing a person from the property owner list or invalidating the person's submitted notarized statement and the reason the SHPO took the action. A person may appeal their removal from the property owner list by submitting documentation as described in this rule.¶

(j) An examination is complete once the SHPO determines that further identification and correction of errors will not determine if the historic resource will or will not be listed in the National Register.¶

(14) The SHPO must make a copy of the National Register nomination form as provided to the NPS available to the public, subject to the provisions of sections (6) and (7). The SHPO shall provide notice of this action to proponent, owner, CLG, chief elected official, and tribes. The SHPO may provide notice to owners by public press release or other means in place of written notice.¶

(15) The NPS may correct a submitted National Register nomination form, require that the SHPO correct a submitted National Register nomination form, or deny listing a historic resource in the National Register.¶

(a) The NPS may correct a submitted National Register form and list the historic resource in the National Register.¶

(b) The SHPO must notify the Committee, proponent, owner(s), CLG, chief elected official, and tribes that the NPS returned the National Register nomination form, the reasons for the return, and whether the SHPO will resubmit the National Register nomination form to the Committee or the NPS.¶

(A) The SHPO may resubmit a National Register nomination form not requiring substantial revisions to the NPS without Committee review.¶

(B) The SHPO may choose to resubmit a National Register nomination form returned by the NPS for amendment or substantive revision by the SHPO or denied listing in the National Register to the Committee. The SHPO must address the reasons the NPS returned the National Register nomination form before resubmission to the Committee.¶

(c) The SHPO may require that the proponent complete identified revisions before resubmission of the National Register nomination form to the Committee or the NPS. The SHPO may complete needed revisions itself.¶

(d) If a historic resource is not listed in the National Register within two years from the date the NPS first returns the National Register nomination for correction the SHPO must decide whether to resubmit the National Register nomination form to the Committee or the NPS as described in this rule or end the National Register nomination process. If the SHPO does not resubmit a National Register nomination form to the Committee or the NPS as described in this rule, the public comment period and the nomination process are ended. The SHPO must consult with the proponent and consider their opinion before making a final decision. A written decision shall be provided

to the proponent, owner, CLG, chief elected official, and tribes. The SHPO may provide notice to owners by public press release or other means.¶

(e) The SHPO must complete the following to continue with the National Register process after the NPS returns a National Register form:¶

(A) Review the National Register form as described in OAR 736-050-0250(4).¶

~~(7B) Formal notification of listing is sent to the affected property owner, with copies to the appropriate public officials and landmarks commissions. Notices are mailed to each owner of~~ If the SHPO determines that the National Register nomination form requires substantive revision or if it is in the public interest the public comment period must close and the nomination process must stop. A proponent may revise the National Register nomination form and submit the form for a consideration at a future committee meeting as described in this rule;¶

(C) Provide a public comment period notice as described in OAR 736-050-0250(c)(d)(f) and (g);¶

(D) Create a new property owner list as described in section (12); and¶

(E) Compare notarized statements received throughout the public comment period and remove those persons not on the property owner list created in section (12). The SHPO must not tally the notarized statements from persons removed from the property owner list in this manner. The SHPO must notify persons removed in this manner in writing using their last indicated mailing address on the original property owner list created during the public comment period for the prior submission. A person may appeal their removal from the property owner list by submitting documentation as described in this rule. Owners may submit notarized documents as described in section 12.¶

(16) The SHPO must consider the Committee's comments and recommendation and comments received during the public comment period when making an independent recommendation under the provisions of 36 CFR 60.6(o) and (p) regarding the eligibility of an historic resource for listing in the National Register.¶

(17) The SHPO may make a recommendation to the NPS contrary to the Committee's recommendation. The SHPO must inform the Committee if making a recommendation to the NPS contrary to the Committee's recommendation at the next committee meeting following the SHPO's action.¶

(18) The SHPO may petition the NPS to take the following actions without review by the Committee. The SHPO must notify the Committee of these actions at the next committee meeting following the SHPO's action:¶

(a) Petition the NPS to remove a razed historic property from the National Register;¶

(b) Amend a National Register nomination form for a historic property when the amendments are not substantive revisions;¶

~~(c) Change the contributing status of an individual historic property within a historic districts or in multiple property submissions listed in the National Register;¶~~

(d) Change the contributing status of a secondary historic property, such as a garage, shed, or other small-scale building, structure, object or site that in the opinion of the SHPO does not qualify for listing in the National Register on its own merit included within the boundary of a historic property; or¶

(e) Any combination of (a), (b), (c) and (d).¶

(19) Any person may appeal directly to the NPS any SHPO decision regarding the nomination of a historic resource to the National Register or amendments to National Register forms for historic properties under the provisions of 36 CFR 60.12.¶

(20) The SHPO may refer a nomination submitted pursuant to section (3) to the State of Oregon Office of Administrative Hearings for a contested case hearing as provided in ORS 183.413 to 183.425, 183.440 to 18.452, 183.457, 183.460 to 183.470. The proponent shall be a party to any contested case. The SHPO shall designate the scope of issues that may be addressed in the contested case, which may include:¶

(a) The determination of whether a majority of owners objects as provided in section (12); and¶

(b) The determination of the accuracy of the property owner list and validity of notarized statements as provided in section (13).

Statutory/Other Authority: ORS 358.617

Statutes/Other Implemented: ORS 358.565(3)

AMEND: 736-050-0260

RULE SUMMARY: Outlines the process for the State Advisory Committee on Historic Preservation to consider nominations.

CHANGES TO RULE:

736-050-0260

State Advisory Committee on Historic Preservation: Committee Procedures for Review and Approval of Nominations to the National Register ¶

(1) The Committee ~~shall~~must review all National Register nominations ~~meeting the documentation requirements of the National Park Service and shall~~ forms except for those prepared under OAR 736-050-0250(18).¶

(2) The Committee ~~must make a recommendation to the SHPO whether or not each~~the National Register nomination form meets the National Register Criteria for Evaluation following criteria:¶

(a) All procedural requirements are met;¶

(2b) ~~Due~~The d~~ates for receipt of nominations are not less than 80 days prior to a scheduled meeting and are published in the Handbook.~~ional Register nomination form is adequately documented;¶

(3c) ~~Neither the SHPO nor the Committee chairman shall entertain a request to add a nomination proposal to a closed agenda unless both the property owner(s) and head of the affected local jurisdiction(s) waive the normal commenting period.~~The National Register nomination form is technically and professionally correct and sufficient; and¶

(4d) ~~During Committee meetings, the nominations coordinator or other SHPO staff shall present a summary statement to introduce the nomination proposal, using slides for illustration and noting any writ~~The National Register nomination form demonstrates that the nominated historic resource meets the National Register c
~~omments received prior to the meeting. Staff shall recite the criteria under which the nomination proposal is appropriately evaluated and shall provide recommendations concerning eligibility of the nominated property.~~¶

(5) ~~Members of the Committee shall disclose and act upon actual or potential conflicts of interest in accordance with state law, and shall avoid even the appearance of conflict of interest. Conflict of interest is described as any action taken by a Committee member in the course of Committee business that results in, or might result in a direct pecuniary benefit or detriment to the Committee member, to a member of the Committee member's household, or to the Committee member's business as defined by statute (ORS 244). As this relates to meetings of the Committee the following applies:~~¶

(a) ~~A member shall publicly announce an~~riteria for evaluation.¶

(3) ~~Neither the SHPO nor the Committee chairperson or vice chairperson will consider a National Register nomination form submitted after the opening of the public comment period.~~¶

(4) ~~The owner(s) and chief elected official may waive the CLG comment opportunity described in OAR 736-050-0250(10) by submitting a written statement to the SHPO at least 15 calendar days before a scheduled committee meeting. The remaining provisions of OAR 736-050-0250 must be met.~~¶

(5) ~~Committee members must disclose actual or~~and ~~potential conflict-s of interest prior to any Committee action on the matter in conflict but need not disclose any monetary value involved. The member shall disclose the nature of the conflict. Each member is responsible for ascertaining and disclosing his or her respective actual or~~in accordance with state law.¶

(6) ~~Committee members will not recuse themselves for a potential conflicts- of- interest, but not conflicts of other members;~~¶

(b) ~~In order to avoid even the appearance of conflict of interest in the conduct of t.~~¶

(7) ~~A quorum of five~~ (5) ~~Committee members are required to conduct business. The Committee's affairs, each member shall publicly announce the existence of any circumstances that might appear to a reasonable person to pose an actual or potenti~~ retains a quorum if by the removal of committee members for declared actual conflict-s of- interest as that term is defined in this rule. Upon such disclosure, the remaining members shall determine on a case-by-case basis by a majority vote whether the appearance of a conflict exists;¶

(c) A member having an actual or potential conflict of interest, as confirmed by vote of the Committee, may not vote concerning the matter in conflict and must absent himself or herself from the meeting during the discussion, review, scoring of, and voting of the Committee falls below five present voting committee members.¶¶

(8) For each historic resource nominated to the National Register, the National Register Program Coordinator must present the Committee a summary of:¶¶

(a) The argument presented in the matter in apparent conflict. If removal of a member(s) from discussion and voting would result in loss of a quorumal Register nomination forum, as defined by statute, the members(s) shall not withdraw and shall vote. If a quorum is present, a majority vote of the five-member quorum or a majority vote of the remaining members voting, whichever is greater, shall be required to approve an action;nd¶¶

(b) Public comment received prior to the Committee meeting pursuant to OAR 736-050-0250(9)(a).¶¶

(d) The nature of any actual, potential, or apparent conflict of interest disclosed by a committee member and the disposition of the matter in conflict by the committee shall be recorded in the meeting's minutes.¶¶

(6) In order to avoid even the appearance of conflict of interest chairperson must call for comments from the proponent(s), opponents, and other interested parties present following the conduct of the Committee's affairs, a member shall not:¶¶

(a) State or imply that he or she is able to influence any action by the Committee;¶¶

(b) Accept anything of value from any person when the member knows or should know, or that it may be perceived by the public, that it is for the purpose of influencing his or her action as a Committee member;¶¶

(7) Failure to observe conflict of interest provisions of this rule shall be considered due cause for the State Historic Preservation Officer to recommend the Governor's request for a member's resignation.¶¶

(8) In regard to historic district or multiple property submissions, the following applies:¶¶

(a) The chairman may, at his or her option, assign a Committee member to monitor the progress of each historic district or multiple property nomination. Members responsibilities in this regard can include: Meeting with the proponents or consultants, inspecting properties (with owner consent) and proposed boundaries, or review of draft nomination documents;¶¶

(b) The proponent shall present a draft of the nomination to the Committee at a regularly scheduled meeting of the Committee. At that time, the proponent shall provide the justified National Register Program Coordinator's presentation. The total time allowed for comments must be determined by the chairperson or by procedures adopted by the Committee.¶¶

(10) The SHPO, Deputy SHPO, Associate DSHPO, and Oregon SHPO staff may participate in committee discussions, but are not voting committee members.¶¶

(11) The Committee must take one of the following actions when considering a National Register nomination form based on the Committee's deliberation for and geographic scope of the proposed nomination and an overview of the contributing and non-contributing resources with comments received during the district or property group using slides for illustration. The proponent may report on such other aspects of the work in progress as may be appropriate or called for by the Committee;¶¶

(c) The Committee may approve a district or multiple property nomination at its first reading, or choose to hold over the district or multiple property nomination to a subsequent meeting.¶¶

(9) Once staff has presented a nomination, the chairman shall call for comments from the proponent, opponent or other interested parties present. The total time allowed for testimony shall be determined by the chair.¶¶

(10) Tpublic comment period:¶¶

(a) Recommend that the SHPO find that the National Register nomination form meets the criteria in subsections (2)-(d) as presented to the Committee with no revisions;¶¶

(b) Recommend that the SHPO afind DSHPO may participate in discussion of a nomination, but shall not be voting members of the Committee.¶¶

(11) Members of the Committee should not abstain from voting except on a matter involving conflict of interest, in which case the reason for abstention will have been disclosed.¶¶

(12) A nomination for which approval has been denied may be reconsidered by ththat the National Register nomination form meets the criteria in subsections (2)(a)-(d) after making less than substantive revisions to the

National Register nomination form; or¶

~~(c) Defer making a recommendation until a future Committee at a later meeting if meeting to allow the proponent has resolved the objections or deficiencies in a revised nomination. To make revision(s) or for any other reason(s) for the Committee's vote to deny approval can be explained or reviewed for the proponent at the meeting, or deemed appropriate by the Committee relayed to the proponent in writing after the meeting.¶~~

~~(13) Pursuant to 36 CFR 60.12, a proponent or local government may appeal directly to the Keeper of criteria in subsections (2)(a)-(d).¶~~

~~(d) Recommend that the SHPO find that the National Register to evaluate a nomination for which a recommendation has been denied by vote of nomination form does not meet the Committee. An appeal to the Keeper also may be made, for any Committee-recommended property which the State Historic Preservation Officer has failed to nominate to the National Register.¶~~

~~(14) If tcriteria in subsections (2)(a)-. The Committee must provide reasons for the recommendation. The Committee hasmay re-commended nomininsider a recommendation ofat a property and the property owner (or majority of owlater meeting after the SHPO determiners of property within a district or multiple property group) has objectthat the proponent resolved to the nComination by notarized statement pursuant to 36 CFR 60.6(s), the registration form nonetheless should be forwarded to thmittee's objections.¶~~

~~(12) The Committee must defer making a recommendation until a future committee Kmeeper otting if the National Register for a Determination of Eligibility. A property determined eligible is not listed in the National Register, and the property may not be listed until the Keeper receives a notarized statement from the property owner(s) that he or she (or they) no longer objects to listing.¶~~

~~(15) Nominations of federally-owned property which are submitted to the State Historic Preservation Officer for a signature of concurrence in accordance with federal Executive Order 11593 may be reviewed by the Committee following normal procedures or may be deferred to the next regular meeting. In such cases, the Committee shall vote on whether or not the property meets the criteria of the National Register and the nomination should have the State Historic Preservation Officer's signature of concurrence nomination form requires substantive revisions.¶~~

~~(13) The Committee may provide courtesy comments on National Register nomination forms submitted to the SHPO for historic resources on lands held in trust by the United States of America on behalf of a tribe or an individual allotment held by a tribal member or administered by a U.S. federal agency. SHPO staff must establish a procedure for applying the conditions of this subsection.~~

Statutory/Other Authority: ORS 358.617

Statutes/Other Implemented: ORS 358.622(2)

ADOPT: 736-050-0270

RULE SUMMARY: Establishes the effective date of the rules and outlines publications used in the division.

CHANGES TO RULE:

736-050-0270

State Advisory Committee on Preservation: Incorporation of Publications by Reference and Effective Date of Rule
(1) The publication(s) referred to or incorporated by reference in OAR 736-050-0220 through OAR 736-050-
0270 are available from the Oregon State Historic Preservation Office, Oregon Parks and Recreation
Department.[¶]

(2) This Division adopts by reference the following publications of the National Park Service: "The National
Register of Historic Places Regulations (36 CFR Part 60): A Brief History and Annotated Guide," August 2012;
"Historic Preservation Fund Grant Manual," June 2007; National Register Bulletin 15, "How to Apply the National
Register Criteria for Evaluation," 1995 revision; National Register Bulletin 16A, "How to Complete the National
Register Form," 1997; National Register Bulletin 16B, "How to Complete the National Register Multiple
Documentation Form," 1999 revision; and National Register Bulletin 21 and 12, "Defining Boundaries for National
Register Properties," 1997 revision.[¶]

(3) OAR 736-050-0220 through OAR 736-050-0270 are effective upon filing of the rule with the Secretary of
State.[¶]

(4) OAR 736-050-0250(15)(d) and 736-050-0250(15)(e)(B) are not applicable to National Register forms
submitted before the effective date of this Division.

Statutory/Other Authority: ORS 358.617

Statutes/Other Implemented: ORS 358.605



The Confederated Tribes of the Grand Ronde Community of Oregon

Cultural Resources Department
Historic Preservation Office
9615 Grand Ronde Road
Grand Ronde, OR 97347-9712

Phone: (503) 879-2226
Toll Free: 1-800-422-0232
Fax: (503) 879-2126
Email: THPO@grandronde.org

September 24, 2020

Lisa Sumption, Director
Oregon Parks and Recreation Department
725 Summer St. NE, Suite C
Salem, OR 97301-1271

Sent via email to:
denise.warburton@oregon.gov

RE: Revision of State Rules for the Administration of the Federal National Register Program in Oregon

Dear Ms. Sumption,

On behalf of The Confederated Tribes of the Grand Ronde Community of Oregon (Grand Ronde or Tribe), thank you for the opportunity to comment on the proposed rule revisions for the Administration of the Federal National Register Program in Oregon.

Our Office has reviewed the proposed rule changes, and have provided specific line-by-line comments in the attached document. Overall, we are concerned that the language in the rule changes does not specifically address historic properties of religious and cultural significance to Indian Tribes. While 36CFR800.16(l)(1) states that the term "historic property" includes properties of traditional religious and cultural importance to an Indian tribe, this is not made clear in the proposed rule revisions. In an effort to reinforce consistency our Office encourages the inclusion of this language in the rule. Additionally, we ask to consult and engage with the agency as it develops the procedures identified in the proposed rule.

We would appreciate an opportunity to meet with you and/or appropriate technical staff to discuss these comments in more detail. Given the current Tribal State of Emergency due to the Covid-19 pandemic, in person meetings are now being conducted virtually. Please coordinate with our Historic Preservation Office staff at THPO@grandronde.org to schedule a time and platform.

Sincerely,

A handwritten signature in black ink, appearing to read "Briece Edwards", with a stylized flourish at the end.

Briece Edwards, Manager & Deputy THPO

ecc: chrissy.curran@oregon.gov
ian.johnson@oregon.gov

Comments Received from the General Public

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Wednesday, July 1, 2020 10:50 AM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	Laurie
Last Name	Matthews
Email	lauriem@migcom.com
Public Comment	Thank you for taking on the work of clarifying the rules and procedures. I have no substantive comments since all of the changes seem appropriate.

Submission ID: 304ee54f-ebee-47e9-a412-ce2583a957d1

Record ID: 51

MARSHALL Janelle * OPRD

From: Nancy Brown <nancyjbrown23@gmail.com>
Sent: Tuesday, July 7, 2020 4:04 PM
To: PUBLICCOMMENT * OPRD
Subject: Re: Public Hearing on July 23 for Proposal for National Register Rulemaking

Thank you for the information, Katie.

Who and when was it decided to move from (what I thought was) FOUR different hearings—to TWO on the SAME day?

I would think there would be (more) inclusivity and accommodation with the pandemic and it being the middle of summer?

Unfortunately the location (where I'll be on the 23rd) also has really poor cell service. There has been an incredible amount of time and expense invested to get to this point in the process...

Respectively,
Nancy Brown

On Tue, Jul 7, 2020 at 3:42 PM PUBLICCOMMENT * OPRD <OPRD.Publiccomment@oregon.gov> wrote:

Nancy,

Thank you for asking about the public hearing on the National Register rulemaking. Currently, we have hearings scheduled for 2 pm and 7 pm on July 23. You can participate either by computer or telephone. If you do not have access to internet, you can call in via telephone and still provide comment.

We are taking comments in writing, below is the information for submitting comments in writing. We will also be recording the public hearing and sharing it online so you can listen to it at another time if that works better.

Thanks,
Katie

- Online: <https://www.oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx>
- In writing: Oregon Parks and Recreation Department, attn. Katie Gauthier, [725 Summer St NE, Suite C, Salem OR 97301](#)
- Email: OPRD.publiccomment@oregon.gov
- Via video or telephone in a public hearing on July 23 at 2 PM or 7 PM. Information on registering to provide comments during the public hearing will be available at: <https://www.oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx>

-----Original Message-----

From: Nancy Brown <nancyla23@aol.com>
Sent: Monday, July 6, 2020 9:00 AM
To: PUBLICCOMMENT * OPRD <OPRD.Publiccomment@oregon.gov>
Subject: Public Hearing on July 23 for Proposal for National Register Rulemaking

I thought four public hearings were going to occur? I understand modifications because of COVID, but limiting the number of hearings?

I am unavailable on July 23 and without internet and intended to participate. I'm sure I am not alone.

~Nancy Brown



DEPARTMENT OF THE AIR FORCE
173D FIGHTER WING
KINGSLEY FIELD OREGON

10 July 2020

Captain Joseph A. Young
Environmental Manager
Kingsley Field
221 Wagner Street Suite 16
Klamath Falls OR 97603

Katie Gauthier
Oregon Parks and Recreation Department
725 Summer Street NE Suite C
Salem OR 97301

Dear Ms. Gauthier,

Thank you for the opportunity to comment on the proposed changes to the rules governing how the state protects historical places. After reviewing the proposed changes presented, we have no concerns at this time.

Sincerely

JOSEPH A. YOUNG, Capt, ORANG
Environmental Manager, 173d Civil Engineer Flight

MARSHALL Janelle * OPRD

From: YOUNG, JOSEPH A Capt USAF ANG 173 AMXS/CEV <joseph.young.4@us.af.mil>
Sent: Wednesday, July 15, 2020 9:14 AM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rule comment period opens - Kingsley Field, Klamath Falls OR
Attachments: Oregon Parks and Rec Letter.pdf

No concerns from us, thanks for the opportunity to comment.

V/R

Joe Young, CAPT
173FW Civil Engineers
Kingsley Field, OR
DSN 830-6326
COMM 541-885-6326

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Tuesday, July 21, 2020 9:19 AM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	Dennis
Last Name	Strayer
Email	kerbymuseum@cavenet.com
Public Comment	<p>I am the current Historian and grant writer and administrator of the Kerbyville Museum board, doing business as the Kerbyville Museum in Kerby, Josephine County, Oregon. On our museum property is the historic 1880 Wilhelm/William and Nancy Naucke House that was listed on the National Register of Historic Places in 1997/1999. We are3 a small rural history museum located in a high poverty area of Southern Oregon. Having the historic 1880 Naucke House listed on the National Register of Historic Places has been a real benefit to our museum and our community. This designation helped our museum obtain several historic preservation grants over a three year period (20010-2012) that helped us hire a professional historic house contractor who repaired all 24 windows and replaced the front porch with all new wood, and the third year hire a professional painting contractor who removed all the old lead paint and apply new paint. I just want to voice me appreciation to the State Historic Preservation Office and support updated the State Historic Preservation guidelines to match those at the Federal level so there is consistent guidelines to follow. Thank you.</p>

Submission ID: cd0e5b7e-1871-4d72-8b0c-be8c035c31fc

Record ID: 78

MARSHALL Janelle * OPRD

From: JOHNSON Ian * OPRD
Sent: Thursday, July 23, 2020 9:07 AM
To: PATTY BRANDT; HAVEL Chris * OPRD
Cc: PUBLICCOMMENT * OPRD
Subject: RE: RAC Meetings

Patty,

Thanks for your question. Some members of the Rule Advisory Committee suggested that the provisions requiring that the nomination process be halted and restarted for nominations returned from the National Park Service as described in OAR736-050-0250(15)(d) and 736-050-0250(15)(e)(B) not apply to nomination documents in process submitted before the draft rule would take effect. The RAC discussed the issue at their meetings, and you can find the recordings on our agency web page here <https://www.oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx>. Based on that conversation, we considered the suggestion and included it in the draft rule. If you have any thoughts or suggestions about this provision or any other part of the draft rule please attend one of today's public meetings or send in written comments.

I've copied OPRD's public comment email box so that we can capture your question and my response as part of the public record. Please send all questions and comments regarding the rule to that email box.

Thanks.

Ian



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division
State Historic Preservation Office
Desk: 503.986.0678 cell: 971.718.1137

Visit our [website](#), Like us on [Facebook](#), Visit our [Blog](#).

From: PATTY BRANDT <tpbrandt@comcast.net>
Sent: Wednesday, July 22, 2020 4:04 PM
To: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>; HAVEL Chris * OPRD <Chris.Havel@oregon.gov>
Subject: RE: RAC Meetings

When looking at the draft, see OAR 736-050-0270, "State Advisory Committee on Preservation: Incorporation of Publications by Reference and Effective Date of Rule," sub (4). This is the last page of the draft. As currently written, this provisions states that two specific provisions of the draft rule do not apply to nominations submitted before the rule is filed with the Secretary of State.

Why do these two rules not apply?

On 06/09/2020 11:42 AM JOHNSON Ian * OPRD <ian.johnson@oregon.gov> wrote:

Patty,

A good question. Yes, there are parts of the rule that would apply retroactively.

When looking at the draft, see OAR 736-050-0270, "State Advisory Committee on Preservation: Incorporation of Publications by Reference and Effective Date of Rule," sub (4). This is the last page of the draft. As currently written, this provisions states that two specific provisions of the draft rule do not apply to nominations submitted before the rule is filed with the Secretary of State. The two noted provisions in sub 4 relate to restarting the nomination process. Other provisions regarding notice and review of a nomination in process more than two years or returned by the NPS would still apply to any nomination in process.

Keep in mind that the draft rule that the Commission will consider may change following the public comment period. Following the public comment period, the Commission may also choose to not adopt the rule or ask for additional outreach. A lot will depend on what types of comments and recommendations we receive.

Ian

Ian P. Johnson | Associate Deputy State Historic Preservation Officer



Oregon Parks and Recreation Department, Heritage Division

State Historic Preservation Office

Desk: 503.986.0678 cell: 971.718.1137

Visit our [website](#), Like us on [Facebook](#), Visit our [Blog](#).

From: PATTY BRANDT <tpbrandt@comcast.net>

Sent: Tuesday, June 9, 2020 11:24 AM

To: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>; HAVEL Chris * OPRD <Chris.Havel@oregon.gov>

Subject: RE: RAC Meetings

Thanks, Ian, for your response. I found the information on the rules...thank you.

If the new rules are issued, will they be applied retroactively to pending historic district nominations?

If new rules are applied retroactively, what would happen with old historic district nominations, like the one for Eastmoreland, which is more than three years old?

Thank you,

Patty

On June 8, 2020 at 8:50 AM JOHNSON Ian * OPRD <ian.johnson@oregon.gov> wrote:

Hello Patty,

Thanks for contacting me. The role of the RAC is to provide feedback to staff on the draft rule staff wrote. The group does not act as a single body nor make group recommendations. You can find all the recordings for the RAC meetings here: <https://www.oregon.gov/oprd/PRP/pages/PRP-rulemaking.aspx>

The RAC finished their discussions in March. SHPO staff and DOJ reviewed the comments, and then we revised the text of the rule. Some recommendations were accepted and incorporated, others were not. We then submitted these for consideration by the Oregon Parks and Recreation Commission who will decide at their June 17th online meeting if they will grant staff permission to open the public rulemaking process.

You can find the draft rule and the accompanying staff report describing the process and how recommendations from the RAC were addressed on the Oregon Parks and Recreation Commission page here: <https://www.oregon.gov/oprd/CAC/Pages/CAC-oprc.aspx>. See the page for the June meeting. The next meeting is June 17th. You and anyone else who is interested can attend the meeting. See the details on the webpage.

Let me know if you have any other questions.

Ian

Ian P. Johnson | Associate Deputy State Historic Preservation Officer



Oregon Parks and Recreation Department, Heritage Division

State Historic Preservation Office

Desk: 503.986.0678 cell: 971.718.1137

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From: PATTY BRANDT <tpbrandt@comcast.net>

Sent: Sunday, June 7, 2020 2:13 PM

To: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>; HAVEL Chris * OPRD
<Chris.Havel@oregon.gov>

Subject: RAC Meetings

Ian or Chris,

Rob Merrick is posting in the newsletter and in the board meeting minutes what the position was for the RAC committee. I don't believe that this is true, but we have had no contact with SHPO or any written minutes from the meetings. I appreciate the video, but it could not be heard or clear from several computers I tried.

I don't think it is fair to begin this way with Rob's hearsay...could you clarify for me?

Thank you both!

From Rod:

This is from Rob Merrick in the April Board Meeting Minutes:

Historic District— R. Merrick abbreviated his report from the recently published newsletter. During the winter months, the Oregon SHPO initiated a RAC or Rulemaking Advisory Commission to address a number of issues in their rules for managing National Register Nominations. The need to define “owner” and account for “trusts” was precipitated by challenges to the Eastmoreland nomination. RAC members were emphatic in their opposition to allowing the use of trusts to manipulate the outcome of nominations. RAC members favored empowering the SHPO to validate the legitimacy of “trusts.” One notable exception, ‘representing’ 1000 Friends of Oregon, objected to this change as an invasion of privacy. It was further agreed that nominations previously submitted to the National Park Service would not have to restart their nomination process. Along with other clarifications to the rules, the RAC approved the draft prepared by SHPO staff. Before formal adoption, the draft rules will undergo review by the DOJ followed by a formal public review process that will likely be further delayed until the pandemic is under control. Our appeal to NPS has been delayed (due to the pandemic) but it’s still on the burner.

MARSHALL Janelle * OPRD

From: PATTY BRANDT <tpbrandt@comcast.net>
Sent: Friday, July 24, 2020 3:25 PM
To: PUBLICCOMMENT * OPRD
Subject: Rule Change 736-050-0270

When looking at the draft rule OAR 736-050-0270, "State Advisory Committee on Preservation: Incorporation of Publications by Reference and Effective Date of Rule," sub (4).

As currently written, this states that two specific provisions of the draft rule OAR 736-0500250 (15)(d) and 736-050-0250(15)(e)(B) do not apply to nominations submitted before the rule is filed with the Secretary of State.

Why do these two rules not apply to nominations submitted before the rule?
What is the affect of the rule changes on the process for the Eastmoreland Historic District if draft (4) passes as written or if all the rules apply to the Eastmoreland Historic District?

Patty Brandt

MARSHALL Janelle * OPRD

From: JOHNSON Ian * OPRD
Sent: Tuesday, July 28, 2020 10:40 AM
To: PATTY BRANDT
Cc: PUBLICCOMMENT * OPRD
Subject: RE: Rule Change 736-050-0270

Patty,

Thank you for your question. Some members of the Rule Advisory Committee suggested that the provisions requiring that the nomination process be halted and restarted for nominations returned from the National Park Service as described in OAR736-050-0250(15)(d) and 736-050-0250(15)(e)(B) not apply to nomination documents in process submitted before the draft rule would take effect. The RAC discussed the issue at their meetings, and you can find the recordings on our agency web page here <https://www.oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx>. Based on that conversation, we considered the suggestion and included it in the draft rule.

Under the provisions of the draft rule as written, staff would treat the Eastmoreland Historic District nomination as a nomination "submitted before the effective date" (OAR 736-050-0270(4) because the nomination has not been withdrawn by the project proponent, the Eastmoreland Neighborhood Association (ENA). This of course assumes that ENA does not withdraw the nomination. In this case, the SHPO would resubmit the Eastmoreland Historic District nomination after completing the processes outlined in the rule.

If (OAR 736-050-0270(4) were removed from the draft the Eastmoreland Historic District nomination would be subject to all the provisions of OAR736-050-0250(15), which, among other provisions, requires that the SHPO decide to either resubmit the nomination to NPS or end the process as described in OAR736-050-0250(15)(d). If the SHPO decides to continue with the nomination process, 736-050-0250(15)(e)(B) requires the SHPO to resubmit the nomination to be reviewed by the State Advisory Committee on Historic Preservation, the review board for nominations, if there are "substantive revisions," or if the SHPO deems that another hearing is in the public interest.

I've copied OPRD's public comment email box so that we can capture your question and my response as part of the public record. Please send all questions and comments regarding the rule to that email box.

Thanks.

Ian



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division
State Historic Preservation Office
Desk: 503.986.0678 cell: 971.718.1137

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From: PUBLICCOMMENT * OPRD
Sent: Tuesday, July 28, 2020 9:47 AM

To: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>

Subject: FW: Rule Change 736-050-0270

From: PATTY BRANDT <tpbrandt@comcast.net>

Sent: Friday, July 24, 2020 3:25 PM

To: PUBLICCOMMENT * OPRD <OPRD.Publiccomment@oregon.gov>

Subject: Rule Change 736-050-0270

When looking at the draft rule OAR 736-050-0270, "State Advisory Committee on Preservation: Incorporation of Publications by Reference and Effective Date of Rule," sub (4).

As currently written, this states that two specific provisions of the draft rule OAR 736-0500250 (15)(d) and 736-050-0250(15)(e)(B) do not apply to nominations submitted before the rule is filed with the Secretary of State.

Why do these two rules not apply to nominations submitted before the rule?

What is the affect of the rule changes on the process for the Eastmoreland Historic District if draft (4) passes as written or if all the rules apply to the Eastmoreland Historic District?

Patty Brandt

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Sunday, July 26, 2020 12:34 PM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	Michele
Last Name	Bradley
Email	mbradley@potb.org
Public Comment	Hi Katie - We have no issue or comments on any of the proposed changes. Thanks, Michele

Submission ID: 63b51c54-f549-4804-a190-091761edd06c

Record ID: 86

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Sunday, July 26, 2020 10:19 AM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	Midge
Last Name	McGinnis
Email	midgemcginnis@yahoo.com
Public Comment	Not a comment, have a question. If a county park currently has buildings on the National Register, will this new ruling have any impact?

Submission ID: 4084d706-fed9-43e8-a11c-8de7569df741

Record ID: 84

MARSHALL Janelle * OPRD

From: JOHNSON Ian * OPRD
Sent: Monday, July 27, 2020 3:44 PM
To: midgemcginnis@yahoo.com
Cc: PUBLICCOMMENT * OPRD
Subject: Your comment on the National Register rule

Hello,

You recently submitted a question regarding the draft rule for the National Register of Historic Places in Oregon.

The rule only addresses the process of nominating properties to the National Register of Historic Places. It does not address what happens once they are listed.

Properties listed in the National Register are subject to local review of demolition and relocation, and may apply additional "protections," through a local land-use hearing process. See Oregon Administrative Rule (OAR) 660-023-0200. You can contact your local county planning office for more information on how they would approach this process.

Thank you for your question. I have copied our rulemaking mailbox so that our conversation is included in the public record for the process.

Ian Johnson



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division

State Historic Preservation Office

Desk: 503.986.0678 cell: 971.718.1137

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MARSHALL Janelle * OPRD

From: JOHNSON Ian * OPRD
Sent: Monday, July 27, 2020 3:55 PM
To: Kirk Ranzetta
Cc: PUBLICCOMMENT * OPRD
Subject: RE: Coos Bay TCP

Hello Kirk,

Thanks for your questions. I sent the original copy considered by the Rule Advisory Committee and the current draft published for the public comment period to Joy Beasley, Serena Bellew, and Paul Lusignan at NPS. NPS acknowledged that they received the documents, but I have not received a response.

We have a public hearing tomorrow at 7pm. Please consider attending and sharing any comments regarding potential conflict between the federal and state processes or other issues. You can also provide us comments in writing. More details about the meeting and how to comment are on the agency website here:

<https://www.oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx>.

I have copied our public rulemaking email box so that our conversation is part of the public record for the rulemaking process.

Take care.

Ian



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division

State Historic Preservation Office

Desk: 503.986.0678 cell: 971.718.1137

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From: Kirk Ranzetta <kranzetta@gmail.com>
Sent: Monday, July 27, 2020 3:10 PM
To: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>
Subject: Re: Coos Bay TCP

Hi Ian,

Just wanted to double check. Have you 1) coordinated with NPS on this draft of the OPRC's National Register nomination process rules and 2) have you sent this draft of the rules to NPS for them to identify any potential NR nomination process timing conflicts with 36 CFR Part 60? If you have, who at the NRHP have you been coordinating with? I am seeing some extra procedures here that would appear to intentionally conflict with the timely federal review of nominations as the state's rules and administrative hearings process would appear to preempt the federal rules governing the timing of the nomination process.

Stay safe.

Regards,

Kirk Ranzetta

On Fri, Feb 28, 2020 at 3:53 PM JOHNSON Ian * OPRD <ian.johnson@oregon.gov> wrote:

Kirk,

I hope you are doing well. The return letter is attached.

Ian

Ian P. Johnson | Associate Deputy State Historic Preservation Officer



Oregon Parks and Recreation Department, Heritage Division

State Historic Preservation Office

Desk: 503.986.0678 cell: 971.718.1137

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From: Kirk Ranzetta <kranzetta@gmail.com>

Sent: Friday, February 28, 2020 3:17 PM

To: JOHNSON Ian * OPRD <ian.johnson@oregon.gov>

Subject: re: Coos Bay TCP

Hi Ian,

Could you send me the NPS return letter for the Coos Bay TCP by any chance?

Regards,

Kirk Ranzetta

MARSHALL Janelle * OPRD

From: JOHNSON Ian * OPRD
Sent: Monday, July 27, 2020 4:21 PM
To: Beth Warner
Cc: PUBLICCOMMENT * OPRD
Subject: RE: Is this post factual?

Beth,

Yes, the attendance at the last two meetings was low. Staff can answer questions about the rulemaking process. However, during the official public comment period staff cannot answer questions either about the rule or the rulemaking process. Instead, we encourage commenters to phrase their questions as concerns. For example, instead of asking, "Why did you include Section 5?," state, "It is unclear why Section 5 is included because" You can find more information about tomorrow's public meeting and how to comment here:
<https://www.oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx> .

I have copied our public comment email box so that our conversation is part of the public record for the rulemaking process.

Thanks.

Ian

Ian P. Johnson | Associate Deputy State Historic Preservation Officer Oregon Parks and Recreation Department,
Heritage Division State Historic Preservation Office
Desk: 503.986.0678 cell: 971.718.1137

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-----Original Message-----

From: Beth Warner <beth.warner48@comcast.net>
Sent: Saturday, July 25, 2020 11:52 AM
To: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>
Subject: Re: Is this post factual?

Sorry, that's suppose to be Warner.



> On Jul 24, 2020, at 10:09 PM, Beth Warner <beth.warner48@comcast.net> wrote:

>

> This was posted by Patty Brandt on Nextdoor Eastmoreland. Is it true that we can't ask questions and staff can't give information?

>

> Beth Warnet

>

>

> " It would be helpful if you sent your statement above to ORPD.publiccomment@oregon.gov. This process changing state rules is suppose to have an agency outreach plan. The calls yesterday had less than 10 attendees total...we were told no questions could be asked and no information could be given by staff attending. It was hardly clear, fair or transparent and really not helpful for residents who find themselves in a pending nomination.t"

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Tuesday, July 28, 2020 1:41 PM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	Russell
Last Name	Monson
Email	monson721@hotmail.com
Public Comment	<p>I would like to enter my support for the proposed state rule changes concerning the administration of the federal National Register of Historic Places program in Oregon. I am a resident of the Eastmoreland neighborhood in Portland, and I have watched closely as the application for Historic District designation has been submitted and considered, during several cycles, by the State Historic Preservation Office (SHPO) and the National Park Service. I support the Eastmoreland application for historic district status, and I support the state rule changes as currently proposed. I have watched with frustration as several parties have attempted to impose agendas, other than those intended for Historic District status, on the proceedings involving the Eastmoreland application and, more recently, the state rule change deliberations. In my opinion, the Eastmoreland application and associated consideration for protections by the National Park Service, are intended to preserve the unique architectural history of the Eastmoreland neighborhood. I believe that the decision on the outstanding application should be made on that basis alone. I further believe that the application before SHPO and the NPS presents a strong case for protecting that architecture. Over the past few years, I have watched as property development, without historic district protections in place, has destroyed several homes with classic design features from the 1920s and 1930s. During the past two years groups, driven mostly by financial interests, have attempted to stall the Eastmoreland application with questionable tactics, which led to the requirement for a rule change. Please allow the rule change to go through as currently stated, and allow the existing Eastmoreland application to proceed as soon as possible, so that we can move forward from this divisive process and protect these homes from further destruction. Thank you for this consideration.</p>

Submission ID: 41159d74-1979-4e30-82e9-7ae658bcada3

Record ID: 89

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Wednesday, July 29, 2020 2:41 PM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	Kristen
Last Name	Minor
Email	kristen.minor.pdx@gmail.com
Public Comment	<p>As the owner of a small historic consulting business in Portland, I offer the following comments: Under "Staff Activities..." on p9, a very minor edit under (5) is required to remove a stray letter r ("submitted r at any time"). Continuing with this section, under (10) "A CLG may object..." I do want to be very certain that all of the provisions must be met under (a): (A), (B), and (C). Without the "and" it might be contestable. (D) seems like it does not belong as a "requirement." Under (10)(d) at the bottom of page 10 it says "A CLG may object each time a National Register nomination form is substantively revised." I would like to see language added that limits and clarifies what the CLG may object to: "...object to the listing of a new nomination or to the substantive alteration of an existing nomination" perhaps. I would not want the CLG to be able to object to an existing nomination. Thank you very much for the opportunity to comment! Kristen Minor</p>

Submission ID: bf1b3edb-f2dd-4934-9fc5-c7705aa0fbe8

Record ID: 91

MARSHALL Janelle * OPRD

From: Derek Blum <derekb@stanfordalumni.org>
Sent: Thursday, July 30, 2020 12:00 AM
To: PUBLICCOMMENT * OPRD
Subject: Comments on Proposed National Register State Rules

My name is Derek Blum and I'm a resident in the Eastmoreland neighborhood in Portland, Oregon. I have been directly involved in the nomination process for the proposed Eastmoreland Historic District, which I'm sure you're aware of. Due to a myriad of issues, I think that nomination is largely responsible for many of the proposed rule changes currently before the Parks & Recreation Department (OP&RD).

I'd like to commend the hard-work of the OR SHPO and the Rules Advisory Committee (RAC) that produced the rule changes now under consideration. As we saw, the current rules are fraught with ambiguity and opportunities for abuse. The existing rules were exploited in unprecedented ways by those who refused to accept the desire of the majority of the Eastmoreland neighborhood and decades of accepted precedent and process for National Register nominations.

You are undoubtedly aware of the 5,000 trusts created for the sole purposes of preventing the listing of the Eastmoreland Historic District on the National Register. Unfortunately, these and other actions were effective and we find ourselves still in limbo nearly 4 years since the process began in Eastmoreland. Despite my many frustrations with the State Historic Preservation Office (SHPO), OP&RD, and the National Park Service (NPS) over this period, I am appreciative of the effort undertaken to bring greater clarity to the process and closure of loopholes.

There are several aspects of the proposed rules which I would like to call attention to at this time.

1. **“Owner” Definition and interpretation.** While efforts have been taken to clarify what an owner is, I am concerned that there is still ambiguity.
 - a. OAR 736-050-0230(16)(a)(A) and OAR 736-050-0230(16)(a)(C) both make reference to trusts. In (A) it suggests trusts are owners, but (C) indicates that depending on the type of trust, the settlor or the trustee is the owner. Clarity is needed here to specify whether the trusts are treated as the owners or whether the trustee/settlor is treated as the owner as they are within Oregon state law.
 - b. Section OAR 736-050-0250(12) is particularly problematic. It makes no reference to the Owner definition from OAR 736-050-0230 and includes language suggesting that it is trusts that are the owners. OAR 736-050-0250(12)(a)(E) states that “The SHPO must count entities, such as named trusts, corporations, partnerships, etc., as individual owners when the owner name differs in any way, even when the mailing address is the same.” The problem here is that it indicates that SHPO would count named trusts as individual owners. This is at odds with OAR 736-050-0230(16)(a)(C) which notes that the settlor or the trustee is the owner depending on the type of trust.

Similarly OAR 736-050-0250(12)(a)(F) again suggests that trusts are counted as owners rather than the trustee or settlor of the trust.

While 3,000 of the 5,000 Eastmoreland sham trusts were unwound from the property ownership records, there are still 2,000 that remain. It is imperative that Trusts should NOT be counted as owners or potential objectors.
 - c. Earlier drafts of the rules included language that offered SHPO a mechanism to reject abusing, fraudulent or otherwise manipulative approaches to inflate owner or objector counts. Given the history of historic district opponents in Eastmoreland, it would be essential to incorporate this language as future tactics tantamount to cheating are almost certain to be employed in Eastmoreland or elsewhere.

3. **Powers of the Certified Local Government (CLG).** I am happy to see in OAR 736-050-0250(10) that in order for the CLG's objection to be valid, it must also be the opinion of the local landmarks commission that a historic resource not be listed. The politicization of local governments and land use and the increasing involvement of special interest groups that use their positions and financial contributions to exert influence at even the local level, makes it all the more important that their power to squash a nomination before it can even get through the process is checked. Furthermore, the ability of citizens to appeal such a decision is a critical element of the rules that should be retained.

One potential conflict in the rules is that in the case of a valid objection per 736-050-0250(10), SHPO must remove the National Register nomination form from Committee consideration and take no further action. But according to 736-050-0260(1) and 736-050-0260(2), the Committee must review all National Register nomination forms and make a recommendation to SHPO. By shelving a nomination form, a valid CLG objection would prevent the Committee from fulfilling its obligations.

3. **Owner Substantiation and Forms.** OAR 736-050-0250(12)(c)(A) indicates that notarized statements must use a form provided by the SHPO. Previously, SHPO made a form available but did not require the use of their form and the proposed rules now suggest there will be a new form which is clear and collects all the necessary data and information to avoid many of the problems encountered before. Since prior nominations, including Eastmoreland, would have used variations or old versions of the old form, I am curious whether an owner's prior actions and notarized statements can be used.

a. This form, as per OAR 736-050-0250(12)(c)(E) further requires that the owner "clearly identify the nature of the owner's property right". Presumably, this means the owner must indicate whether the property is owned in trust, and if so, the nature of trust ownership which allows the SHPO to correctly apply the definition of owner as specified in 736-050-0230(16)(a).

b. OAR 736-050-0250(12)(g) indicates that persons not listed on the property owner list must submit documentation to show that they meet the definition of owner including instruments used to create legal entities including trusts. Why are only entities NOT listed on the owner list required to provide this documentation, while entities on the property owner list initially obtained by the SHPO are not?

4. **Examination of property owner list and notarized statements.** OAR 736-050-0250(13)(a) allows any person to request SHPO carry out an examination of notarized statements or the owner list. Further, per OAR 736-050-0250(13)(j), "An examination is complete once the SHPO determines that further identification and correction of errors will not determine if the historic resource will or will not be listed in the National Register." As we've seen by activists on both sides of the Eastmoreland nomination, there have been and will continue to be dozens or hundreds of challenges to the owner list and notarized statements. It is assured that opponents of the Eastmoreland nomination will abuse this rule in an effort to overwhelm the SHPO. Given the large number of requests for review that could come late in the process before the SHPO must submit the nomination to the NPS to comply with the timeline indicated in 36 CFR 60.11(e), how will the SHPO ensure it can satisfy the timeline for submission as well as examine or investigate issues raised by someone other than the property owner? My concern is that we will find ourselves in a situation much like the one that led to Eastmoreland's original NPS submission in which SHPO could not reach a count of owners or objectors.

5. **NPS Returns and Ending Nomination Processes.**

OAR 736-050-0250(15)(d), indicates that the SHPO may choose not to resubmit a nomination returned by the NPS. In such cases, the public comment period and nomination are ended. The Rules are quiet, however, on returned nominations and the recourse for the proponent or anyone else wishing to appeal this at the state level. Should the nomination end and a new nomination form is submitted to the SHPO, I would assume that this is treated as a new nomination and that all prior Committee approvals and notarized statements from owners for the earlier nomination become void and must be obtained again. Is this the case? Truly starting over (including approval by SACHP and the local landmarks commission should) should void all prior notarized statements.

a. In the case of a return by the NPS, to continue with the National Register process, SHPO must take several actions as defined in OAR 736-050-0250(15)(e). Among other activities, SHPO must provide a public comment period notice and generate a new property owner list. However, the public comment period opened during the original submission of the nomination form to the SHPO would not have closed. The language here is confusing and it's unclear the dates of the owner list and whether that would be the same owner list generated at the start of the nomination process or a new owner list generated after the return of the nomination from the NPS.

6. **Eastmoreland Next Steps.** According to 736-050-0270(4), Eastmoreland's ongoing nomination would be exempt from revising the nomination form. But it is not clear what additional steps would be taken for

Eastmoreland or any other ongoing nomination. It is in everyone's best interest that the Eastmoreland nomination is resubmitted to the NPS as quickly as possible. That said, the NPS' most recent return of the Eastmoreland nomination was based partially on how trusts were treated and this is hopefully easily resolved and can make for a speedy resubmission. But there are also a variety of new rules that have changed mid-process that must now be applied and this could extend the timeline for Eastmoreland quite a bit. I would hope that SHPO takes quick action to shepherd Eastmoreland through the process.

7. **Post-Submission Process.** One glaring hole in the submission and decision process is how the nomination is handled after SHPO submits it to the NPS. When the NPS returned the Eastmoreland nomination in July 2019, one of the reasons was the overwhelming volume of material submitted by proponents and opponents. Despite the various proposed rule changes, it is still likely that notarized statements will continue to be sent in by owners after the SHPO has submitted a nomination to the NPS. But the NPS seems entirely unprepared to address any volume of material much less apply SHPO's new rules for counting owners and objections. Previously, SHPO has taken the position that they can only pass along owner comments and notarized statements to the NPS during that period. So if SHPO can't act and NPS won't act, how can SHPO or the NPS ensure that nominations are handled judiciously? There must be some accountability. I expect that the SHPO will coordinate with the NPS in order to avoid additional iterations of the Eastmoreland nomination.

Many of the proposed rule changes as well as my concerns are not based on hypotheticals -- they are based, in part, on specific activities, actions, or questions arising out of Eastmoreland's nomination. While I am certain that staunch opponents of the Eastmoreland Historic District will continue to look for creative and unsavory ways to block the nomination, I can only hope that when drafting the new rules, the SHPO has considered ways to prevent a broad range of potential abuses.

Sincerely,

Derek Blum

7920 SE Reed College Place
Portland, OR 97202
(510) 565-8525

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Thursday, July 30, 2020 2:56 PM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	Chris
Last Name	Friess
Email	cchrisfriess@gmail.com
Public Comment	I chair the Old Bend Neighbor that borders Drake Park along the Deschutes River and adjacent to the downtown commercial district. Our neighbor hood is interested in preserving this park including the rock wall where the park abuts Mirror Pond. Please keep me posted on rule changes in park preservaton. Thanks, Chris Friess

Submission ID: 36fa39d3-28e2-4c6a-a702-981ae7710ef9

Record ID: 94

MARSHALL Janelle * OPRD

From: PATTY BRANDT <tpbrandt@comcast.net>
Sent: Thursday, July 30, 2020 2:01 PM
To: JOHNSON Ian * OPRD; Julie Earnstein; Paul Lusignan; PUBLICCOMMENT * OPRD
Subject: Oregon Rule Changes for the National Register

This week's three rulemaking conference calls, with less than 25 people attending, of which three were staff, provided three oral testimonies. Also very little written testimony has been submitted to date. This is a "poor" showing by any standard.

Obviously SHPO cannot provide the outreach to assist interested parties who want to participate in the needed statewide rule changes during a time of Covid. It should also be noted that the National Register has taken a pause accepting new nominations due to the Covid crisis. **So why not SHPO in Oregon?**

In my opinion this process is not fair, clear or transparent with all the restrictions SHPO is placing on attendees on the calls. On the first two calls, we were instructed that there would be **no questions, no answers from staff.**

On the first two calls attendees are not given the opportunity to ask questions or gain clarification on many critical components to the proposed changes.

After sharing my frustration, attendees were told we could ask questions on the last call.

There is no way for the residents of Oregon, to gain the information they need, to understand the rule changes that affect all of them.

From the Oregon Parks and Recreation Commission, Request to open rulemaking, presented by Christine Curran, the Rule Advisory Committee recommended:

"The group also reviewed the agency outreach plan for the rulemaking process. The outreach effort will include public meetings in the Portland and Bend metro areas, Astoria, and Coos Bay. The agency will provide notice of the meetings and rule making through broad and specific press releases, and the agency website and various social media outlets, publications, and relevant events."

Other than a press release...what other actions have you taken for outreach?

This outreach process is not working at least for the residents...it may be working for SHPO.

Patty Brandt
6819 SE 29th Ave
Portland, OR 97202

MARSHALL Janelle * OPRD

From: JOHNSON Ian * OPRD
Sent: Tuesday, August 4, 2020 9:01 AM
To: tpbrandt@comcast.net
Cc: julie_ernstein@nps.gov; paul_lusignan@nps.gov; PUBLICCOMMENT * OPRD
Subject: FW: Please review and comment on Ian's response. FW: Oregon Rule Changes for the National Register

Patty,

Thankyou for your comment.

As you point out the COVID-19 pandemic significantly impacted Oregon State Government. In response to the Governor's order to state employees to limit non-essential travel through August 31st our office cancelled the previously-planned community meetings. It remains unclear if the state order will be lifted or extended, or how continuing local orders for gatherings may impact future meetings. Amid this uncertainty we choose to continue the business of state government to resolve long-standing issues that impact current nomination efforts and potential future projects. In the last several years multiple controversial projects raised issues regarding our administration of the federal National Register of Historic Places Program in Oregon, including how to count owners and objections to establish owner consent under federal law, how local governments can participate in the nomination process, under what circumstances all or part of a nomination document can be kept confidential, and other administrative process issues. It is our opinion that further delay for an undetermined amount of time is not in the interest of the general public who use the program to recognize important historic places and access federal and state grant, tax, and assistance programs.

While the pandemic complicated our outreach efforts, we have sent direct email to a wide range of contacts, including federal, state, and local government employees and officials, as well as individual citizens who interact with our programs. We've also posted messages in our regular list serves and social media accounts, and encouraged our partners to do the same. As you noted below, we also changed our meeting format in response to feedback received after earlier meetings. Unfortunately, it is our agency experience that the rulemaking process generally does not generate a lot of general interest. However, our efforts have so far generated a greater response than we would normally anticipate. We'll be re-evaluating our outreach process before the close of the comment period on August 14th and we will consider what additional efforts may be appropriate.

While the SHPO is responsible for carrying out the provisions of the 1966 Historic Preservation Act, as amended, and administered by the National Park Service, our office is solely responsible for the state rulemaking process. The National Park Service has no oversight or administrative role in this process. However, we invited the National Park Service to comment on the draft rule and welcome any insights they may choose to offer, which would be considered along with any comments we receive. While it is appropriate to contact the National Park Service regarding the National Register program, please direct all future comments regarding the state rulemaking process to our office only.

Ian Johnson



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division

State Historic Preservation Office

Desk: 503.986.0678 cell: 971.718.1137

Visit our [website](#), Like us on [Facebook](#), Visit our [Blog](#).

From: PATTY BRANDT <tpbrandt@comcast.net>

Sent: Thursday, July 30, 2020 2:01 PM

To: JOHNSON Ian * OPRD <ian.Johnson@oregon.gov>; Julie Ernstein <julie_ernstein@nps.gov>; Paul Lusignan <paul_lusignan@nps.gov>; PUBLICCOMMENT * OPRD <OPRD.Publiccomment@oregon.gov>

Subject: Oregon Rule Changes for the National Register

This week's three rulemaking conference calls, with less than 25 people attending, of which three were staff, provided three oral testimonies. Also very little written testimony has been submitted to date. This is a "poor" showing by any standard.

Obviously SHPO cannot provide the outreach to assist interested parties who want to participate in the needed statewide rule changes during a time of Covid. It should also be noted that the National Register has taken a pause accepting new nominations due to the Covid crisis. **So why not SHPO in Oregon?**

In my opinion this process is not fair, clear or transparent with all the restrictions SHPO is placing on attendees on the calls. On the first two calls, we were instructed that there would be **no questions, no answers from staff.**

On the first two calls attendees are not given the opportunity to ask questions or gain clarification on many critical components to the proposed changes.

After sharing my frustration, attendees were told we could ask questions on the last call.

There is no way for the residents of Oregon, to gain the information they need, to understand the rule changes that affect all of them.

From the Oregon Parks and Recreation Commission, Request to open rulemaking, presented by Christine Curran, the Rule Advisory Committee recommended:

"The group also reviewed the agency outreach plan for the rulemaking process. The outreach effort will include public meetings in the Portland and Bend metro areas, Astoria, and Coos Bay. The agency will provide notice of the meetings and rule making through broad and specific press releases, and the agency website and various social media outlets, publications, and relevant events."

Other than a press release...what other actions have you taken for outreach?

This outreach process is not working at least for the residents...it may be working for SHPO.

Patty Brandt
6819 SE 29th Ave
Portland, OR 97202

MARSHALL Janelle * OPRD

From: JOHNSON Ian * OPRD
Sent: Friday, July 31, 2020 3:34 PM
To: Napack, Jan
Cc: PUBLICCOMMENT * OPRD
Subject: RE: Web Link Error re Update to State Rules for National Register Program

Thanks Jan, I appreciate you letting us know.

Ian

Ian P. Johnson | Associate Deputy State Historic Preservation Officer Oregon Parks and Recreation Department,
Heritage Division State Historic Preservation Office
Desk: 503.986.0678 cell: 971.718.1137

Visit our website, Like us on Facebook, Visit our Blog.

-----Original Message-----

From: Napack, Jan <jan.napack@corvallisoregon.gov>
Sent: Friday, July 31, 2020 3:17 PM
To: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>
Subject: Web Link Error re Update to State Rules for National Register Program

Hello, Ian.

I received the July 17 press release regarding updating the national Register Program.

Within the body of the release is the following text and a link:

"The full text of the proposed change is available online:

[oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx](https://www.oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx)

The link does not work as embedded but eventually can be found by inserting the full address.

<<https://www.oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx>>

Cheers,

[1594666846652]

Jan Napack

Ward 1 Corvallis City Council

541-745-5335 (mobile / text)

Disclaimer: This e-mail message is a public record of the City of Corvallis. The contents may be subject to public disclosure under Oregon Public Records Law and subject to the State of Oregon Records Retention Schedules. (OAR:166.200.0200-405)

MARSHALL Janelle * OPRD

From: TomKim <hansenmanley@comcast.net>
Sent: Friday, July 31, 2020 5:39 PM
To: PUBLICCOMMENT * OPRD
Subject: National Register of Historic Places rule changes

Hello,

My particular interest is in the process of designating historic districts.

I attempted to read the proposed changes and found them to be very difficult to understand (in part because of the identified deletions, but more so because of repetition and lack of clarity). There have been various federal initiatives to make forms shorter and easier to understand, but that may not apply here.

From reading the proposed changes to the OARs, I think I read that nominations and submissions will not be public documents so citizens will not know who submitted what claims. In general, transparency demands that information be made available to the public, so I do not support hiding this information.

Also, I could not tell, given all the references to trusts and notaries confirming interest, whether the new rules will be fair and not subject to legal manipulation (for instance, setting up very large trusts for a given property to provide many votes for a single property). I hope that the changed rule will boil down to one vote per property, even if it means giving named property owners a partial vote. For instance, if three people are on the deed and don't agree with the change, each should register 0.33 of a single vote.

Thank you,

Tom Hansen
hansenmanley@comcast.net

Please note that the "reply to" entry is the email for both my wife, Kim Manley, and myself. Kim agrees with my two comments.

MARSHALL Janelle * OPRD

From: ENA President <president@eastmorelandpdx.org>
Sent: Friday, July 31, 2020 11:56 PM
To: PUBLICCOMMENT * OPRD
Subject: National Registration Rule making comment
Attachments: 2020.08 NRRRule making testimonyVs.pdf

Katie, please see the attached expanded written version of our testimony. Thanks. Rod

--

Rod Merrick AIA, President

ENA Board of Directors

president@eastmorlandpdx.org

eastmorelandpdx.org

Eastmoreland Neighborhood Association

August 1, 2020

Oregon Parks and Recreation Commission
725 Summer Street NE, Suite C
Salem, OR 97301

Re: Proposed Revisions to Oregon Administrative Rules for National Register Program,

Dear OPRD Commissioners:

My name is Rod Merrick, President of the Board of the Eastmoreland sponsor for the Eastmoreland historic district nomination.

Our organization and the great majority of our neighbors who support the nomination have been repeatedly frustrated by having the nomination returned to SHPO four times for problems related to counting eligible owners and objectors under the existing State rules.

It is especially important to us that, as a result of this rule making process, the Eastmoreland Neighborhood Association is from advancing our existing nomination. For us it has been a wrenching, time consuming, and costly effort. The nomination has met all technical criteria for approval by the National Park Service and OPDR; it has been penalized only as a result of the unethical tactics of objectors whose challenges exposed a lack of clarity in the existing rules.

That said, we are pleased that the rule making process is positively addressing numerous issues in the existing regulations. We have followed the drafts prepared by staff and the constructive contributions from the Rule Making Advisory Committee. We support the significant improvements in the draft rules but are not fully satisfied and have the following concerns.

1. **DEFINITION OF OWNER.** A bullet proof definition of owner especially around the issue of trust ownership is essential. I have suggested that staff utilize an experienced Oregon trust attorney to review the draft to ensure that “objection” or “advancement” trusts are definitively written out of the process. The use of such trusts fundamentally compromises the nomination process.
2. **COUNTY RECORDS.** While they may be a consistent source for indicating ownership, they indicate only information that the owners have provided. They can be manipulated as we have witnessed. The SHPO must be empowered to require supporting documentation to verify validity where there is doubt. The language around the use of these records should be cross referenced with section 13 to clearly indicate a verification process is available and may be exercised. *(Contrary to claims of historic district opponents, this is not an invasion of privacy. Their intent is to conceal misrepresentation and abuse of loopholes in the existing regulations.)*
3. **LIMITATION OF THE POWERS OF THE CERTIFIED LOCAL GOVERNMENT (CLG)** in terminating a listing. It is critical to maintain or enhance the protection of nominations from unreasonable influence in the nomination process. Special interest groups, like 1000 Friends, are funded to politicize issues that serve their own interests and influence local government. NPS regulations

Eastmoreland Neighborhood Association

recognize that local governments too often have little or no appreciation of preservation or history nor do they have a corner on wisdom in the face of competing local priorities. When it comes to terminating a nomination, their decision making should not trump the opinion of the local landmarks commission (appointed by those same CLGs for their expertise), the statewide commission, and the nomination sponsor. Proposed **OAR 736-050-0250, (10) d** allowing repeated objections should be struck from the regulations. Conditions limiting termination of a nomination by CLGs should be maintained or increased.

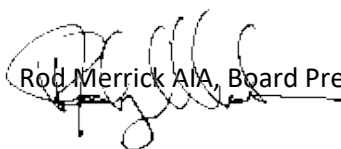
4. EXCEPTION TO PROPOSED TWO YEAR LIMITATION for nominations returned by the NPS. The exception should be clear: If a nomination is returned to the SHPO for procedural *failures related to counting* as determined by the NPS there shall be no limit. It is unfair to penalize the proposed historic district sponsors for the inability of the SHPO to satisfy the NPS for ascertaining a legitimate count.
5. CLOSURE FOR COUNTING is a significant known issue to resolve. SHPO needs to work with NPS to clarify what rules the Oregon SHPO can institute to prevent last minute flooding of objections and rescissions at the NPS level despite the “open” comment period. Last minute information submittals reflect competing parties’ efforts to win the process and crowd the ability of the NPS to process a nomination within their statutory limitations.

We urge that this rulemaking process stay focused on resolving the issues at hand without opening the process to debating a variety of tangential issues intended to delay and disrupt approval of these clarifications.

As a specific example, I cite the letter submitted July 20, 2020 by our neighbor and nomination opponent, Ms. McCurdy under the banner of 1000 Friends of Oregon. It advocates a Pandora’s Box of “Friends” favorite social and land use policy issues to disrupt the rulemaking. Not the least of their strategies is to conflate racism and long outlawed racist covenants with the formation of historic districts - a dog whistle in this racially charged moment. The “red herring” association 1000 Friends presumes between historic preservation and discriminatory practices is false, offensive, and inflammatory. Justifying the use of 5,000 objection trusts to terminate the nomination fits the same go-low unethical standard used by their opposition team in our neighborhood .

A National Register listing is about history and preservation. The limited protections provided under historic preservation laws in our state are for the purpose of providing public recognition and at least some level of protection against raw market forces that can bring the wrecking ball to every neighborhood, rich and poor and irrespective of race, that otherwise meet the stringent standards for historic significance and cultural value.

Thanks for considering our testimony,



Rod Merrick AIA, Board President Eastmoreland NA

MARSHALL Janelle * OPRD

From: muzikant@aol.com
Sent: Sunday, August 2, 2020 11:45 AM
To: PUBLICCOMMENT * OPRD
Subject: Testimony on the proposed rules for the National Registry of Historic Places

To Whom It May Concern

My husband and I have lived in the Eastmoreland neighborhood since 1996 and are submitting the following testimony in favor of allowing our neighborhood becoming an Historic District.

Here are her concerns:

Definition of "Owner" is Still Ambiguous -- Please take more time to improve the definition of owner, especially as it pertains to trusts. The proposed rules have created some ambiguity and are not clear whether trusts are treated as owners and allowed to object, or whether it is the trustee or settlor of the trust who is counted. Eastmoreland still has 2,000 sham trusts and if they are allowed to object, will again influence the outcome of the nomination.

* Prevent Cheating -- Opponents of the Eastmoreland Historic District have, time and again, taken steps to ensure that the historic district nomination is not approved by the NPS. From generating thousands of sham trusts, to coercing neighbors, to submitting volumes of unsubstantiated statements to the NPS, these opponents will certainly look for other loopholes or tactics to deny Eastmoreland's listing on the National Register. It is now quite obvious that there is not a majority who object to the historic district, but a few ringleaders continue to use unethical means to deny the majority.

* Keep Politics out of the process -- The proposed rules allow the Certified Local Government (CLG) a means to prevent a nomination from advancing, but only if the local landmarks commission agrees. And even if that happens, anyone can appeal to ensure that a nomination can advance to the NPS. The proposed rule is good, however special interest group 1,000 Friends of Oregon is pushing hard to inject politics into the process. They know that they can likely convince the CLG to object to nominations which is why they are pushing to have the other checks and balances (landmarks commission and appeal options) removed. Please do not give into them.

* Proceed with Eastmoreland -- The Eastmoreland historic district nomination began about 4 years ago and remains in limbo. If, and when, the new rules are adopted, please proceed quickly with Eastmoreland's nomination.

We ask that you consider these concerns seriously and proceed so we can have a historic district.

Our thanks

Diane Lund and Michael Muzikant
7421 SE 30th Ave.
Portland

MARSHALL Janelle * OPRD

From: Diana Shenk <dianashenk@gmail.com>
Sent: Sunday, August 2, 2020 11:49 AM
To: PUBLICCOMMENT * OPRD
Subject: Eastmoreland Historic District

* Prevent Cheating -- Opponents of the Eastmoreland Historic District have, time and again, taken steps to ensure that the historic district nomination is not approved by the NPS. From generating thousands of sham trusts, to coercing neighbors, to submitting volumes of unsubstantiated statements to the NPS, these opponents will certainly look for other loopholes or tactics to deny Eastmoreland's listing on the National Register. It is now quite obvious that there is not a majority who object to the historic district, but a few ringleaders continue to use unethical means to deny the majority.

Respectfully,

Diana Shenk
3043 SE Carlton Street
Portland, OR 97202
503-775-8449

MARSHALL Janelle * OPRD

From: Sue Van Brocklin <sue@coateskokes.com>
Sent: Sunday, August 2, 2020 5:30 PM
To: PUBLICCOMMENT * OPRD
Subject: Two comments on Oregon revisions to rules for listing on National Register of Historic Places

NOTE: PLEASE LET ME KNOW IF THESE COMMENTS ARE RECEIVED AND ADMITTED INTO YOUR PUBLIC COMMENT PERIOD

Hello,

I want to write about the effort to revise the rules that apply to the administration of nominations for listing on the National Register of Historic Places via the National Park Service. I am submitting these 2 comments to be included in the public comment period to review the proposed rules.

Comment # 1 from me:

*** Definition of "Owner" is Still Ambiguous** – It would be helpful to strengthen the definition of owner, especially as it pertains to trusts. The proposed rules have created some ambiguity and are not clear whether trusts are treated as owners and allowed to object, or whether it is the trustee or settlor of the trust who is counted. **Eastmoreland still has 2,000 sham trusts and if they are allowed to object, will again influence the outcome of the nomination.**

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*** Proceed with Eastmoreland** -- The Eastmoreland historic district nomination **began four years ago** and remains in limbo. If, and when, the new rules are adopted, please proceed quickly with Eastmoreland's nomination.

Sue Van Brocklin
6259 SE 32nd Ave
Portland, OR 97202
sue@coateskokes.com

Comment #2:

I also want to submit this from my father, who is Arnold Cogan, now 87 years old. For those of you who may not know, Arnold Cogan was instrumental in **helping craft Oregon's revered land use laws, Senate Bill 100**. He served as Oregon's first Planning Coordinator under **Governor Tom McCall**, was **the first Director of the State Department of Land Conservation and Development**, and first Planning Director for the Port of Portland. He is a Fellow of the American

Institute of Certified Planners (FAICP) and served on the Board of Governors of the City Club of Portland. He lives in Mt. Tabor in Southeast Portland.

Statement from Arnold Cogan re: Eastmoreland Historic District and new rules that apply to submitting applications for the National Register of Historic Places

Those who are using Oregon's land use planning legacy to oppose the Eastmoreland Historic District are being intellectually dishonest. The opposition's tactics are a distortion of what land use planning is all about.

In fact, Oregon's land use goals value historic districts and support these designations. Oregon's Statewide Planning Goals & Guidelines, Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces OAR 660-015-0000(5) aims: "To protect natural resources and conserve scenic and historic areas and open spaces. Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability."

Goal 5 goes on to say, "The National Register of Historic Places and the recommendations of the State Advisory Committee on Historic Preservation should be utilized in designating historic sites."

I find it extremely unfortunate that some are distorting the principles of sound land use planning to oppose historic districts and furthermore, to imply that those who favor them are discriminatory and racist. I am also saddened by the efforts of 1000 Friends of Oregon to discredit the Eastmoreland Historic District nomination. Once a respected organization that I helped support, 1000 Friends of Oregon is engaged in an ambitious if slanderous campaign to remove protections from residential historic districts in Oregon. Please keep this in mind and do not let politics enter this decision as you weigh new changes to Oregon's rules that apply to the administration of nominations for listing on the National Register of Historic Places via the National Park Service.

Arnold Cogan
6436 SE Morrison
Portland, OR 97215

MARSHALL Janelle * OPRD

From: Sue Van Brocklin <sue@coateskokes.com>
Sent: Monday, August 3, 2020 1:21 PM
To: PUBLICCOMMENT * OPRD
Subject: RE: Two comments on Oregon revisions to rules for listing on National Register of Historic Places

Thank you.

From: PUBLICCOMMENT * OPRD <OPRD.Publiccomment@oregon.gov>
Sent: Monday, August 3, 2020 12:32 PM
To: Sue Van Brocklin <sue@coateskokes.com>; PUBLICCOMMENT * OPRD <OPRD.Publiccomment@oregon.gov>
Subject: RE: Two comments on Oregon revisions to rules for listing on National Register of Historic Places

Your comments were received and are being admitted in the public comment period.

From: Sue Van Brocklin <sue@coateskokes.com>
Sent: Sunday, August 2, 2020 5:30 PM
To: PUBLICCOMMENT * OPRD <OPRD.Publiccomment@oregon.gov>
Subject: Two comments on Oregon revisions to rules for listing on National Register of Historic Places

NOTE: PLEASE LET ME KNOW IF THESE COMMENTS ARE RECEIVED AND ADMITTED INTO YOUR PUBLIC COMMENT PERIOD

Hello,

I want to write about the effort to revise the rules that apply to the administration of nominations for listing on the National Register of Historic Places via the National Park Service. I am submitting these 2 comments to be included in the public comment period to review the proposed rules.

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*** Definition of "Owner" is Still Ambiguous** – It would be helpful to strengthen the definition of owner, especially as it pertains to trusts. The proposed rules have created some ambiguity and are not clear whether trusts are treated as owners and allowed to object, or whether it is the trustee or settlor of the trust who is counted. **Eastmoreland still has 2,000 sham trusts and if they are allowed to object, will again influence the outcome of the nomination.**

*** Prevent Cheating** -- Opponents of the Eastmoreland Historic District have, time and again, taken steps to ensure that the historic district nomination is not approved by the NPS. From **generating thousands of sham trusts**, to coercing neighbors, to submitting volumes of unsubstantiated statements to the NPS, these opponents will certainly look for other loopholes or tactics to deny Eastmoreland's listing on the National Register. It is now quite obvious that **there is not a majority who object to the historic district**, but a few ringleaders continue to use unethical means to deny the majority.

*** Keep Politics out of the process** -- The proposed rules allow the Certified Local Government (CLG) a means to prevent a nomination from advancing, but only if the local landmarks commission agrees. And even if that happens, anyone can appeal to ensure that a nomination can advance to the NPS. The proposed rule is good, however **special interest group 1,000 Friends of Oregon is pushing hard to inject politics into the process. They know that they can likely convince the CLG to object to nominations which is why they are pushing to have the other checks and balances (landmarks commission and appeal options) removed. Please do not give into them.**

*** Proceed with Eastmoreland** -- The Eastmoreland historic district nomination **began four years ago** and remains in limbo. If, and when, the new rules are adopted, please proceed quickly with Eastmoreland's nomination.

Sue Van Brocklin
6259 SE 32nd Ave
Portland, OR 97202
sue@coateskokes.com

Comment #2:

I also want to submit this from my father, who is Arnold Cogan, now 87 years old. For those of you who may not know, Arnold Cogan was instrumental in **helping craft Oregon's revered land use laws, Senate Bill 100**. He served as Oregon's first Planning Coordinator under **Governor Tom McCall**, was **the first Director of the State Department of Land Conservation and Development**, and first Planning Director for the Port of Portland. He is a Fellow of the American Institute of Certified Planners (FAICP) and served on the Board of Governors of the City Club of Portland. He lives in Mt. Tabor in Southeast Portland.

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Goal 5 goes on to say, "The National Register of Historic Places and the recommendations of the State Advisory Committee on Historic Preservation should be utilized in designating historic sites."

I find it extremely unfortunate that some are distorting the principles of sound land use planning to oppose historic districts and furthermore, to imply that those who favor them are discriminatory and racist. I am also saddened by the efforts of 1000 Friends of Oregon to discredit the Eastmoreland Historic District nomination. Once a respected organization that I helped support, 1000 Friends of Oregon is engaged in an ambitious if slanderous campaign to remove protections from residential historic districts in Oregon. Please keep this in mind and do not let politics enter this decision as you weigh new changes to Oregon's rules that apply to the administration of nominations for listing on the National Register of Historic Places via the National Park Service.

Arnold Cogan
6436 SE Morrison
Portland, OR 97215

MARSHALL Janelle * OPRD

From: Paul Henson <pchenson@comcast.net>
Sent: Sunday, August 2, 2020 5:41 PM
To: PUBLICCOMMENT * OPRD
Subject: comments on (OPRD) revising the state rules for the administration of the federal National Register of Historic Places program in Oregon.
Attachments: Paul Henson letter to OPRD Aug 2 2020.pdf

Please see the attached PDF with my comments

Paul Henson
pchenson@comcast.net

Oregon Parks and Recreation Commission

Re: Proposed administrative rules for National Register Program, 736-050-0220 to 736-050- 0270

Dear Commissioners:

I have read through the public comments provided by other members of the community on the draft historic resources administrative rules, and I feel compelled to respond to the comments provided by M.K. McCurdy, Deputy Director of 1,000 Friends of Oregon. Her comments on several key points are pejorative and unreasonably conflate distinct issues in an attempt to devalue current historic preservation efforts. I address her main points below.

Role of Elected Officials

1,000 Friends' recommendations would unduly politicize the decision-making process, and in the end this approach may lead to "profits over preservation."

Empowering local elected politicians to have final approval authority over the historic designation process – as advocated by Ms. McCurdy -- would inject political considerations into the decision-making process. Local, state, and national politicians are often disproportionately influenced by profit-driven, economic considerations. I do not doubt the sincerity of 1000 Friends' goals for environmental and social justice, but their support for ceding authority to local elected officials on this issue will likely have long-lasting negative consequences for historic preservation. Who has the most to gain or lose from a historic designation? Most often, it is developers and those in the real estate and construction sectors who most vociferously oppose historic designations. Likewise, these players also have a disproportionately large influence on elected officials due to their financial support of political campaigns. Therefore, if one is truly concerned with evaluating historic preservation in a way that stays true to its mission and that is not corrupted by the political process, it is appropriate for a commission of expert and appointed officials to retain their approval authority. There is ample opportunity for the local landmarks commission, and then the State and the NPS, to reconcile competing policy issues as they normally do without handing the decision off to elected officials who are subject to undue influence by powerful political donors.

Historic Designations can be Reconciled with Other Environmental Policy Goals

Ms. McCurdy makes a sweeping suggestion that historic designations will be incompatible with other legitimate and worthwhile public policy goals unless, again, politicians are given ultimate authority over the process. This is a dangerous precedent to set. Taken to its logical extreme, why not take all policy decisions away from agencies and commissions and give final decision-making authority to elected politicians? The politicians could also decide which endangered species to

list, which streets need traffic-calming infrastructure, and set hunting regulations, to suggest a few.

There is good reason commission and agencies are delegated authorities to make these decisions. They are usually comprised of knowledgeable experts with specialized training or relevant experience, and they are less biased because they are better insulated from the whims of political pressure and corrupting financial interests, when compared to elected politicians.

To illustrate her point, Ms. McCurdy suggests that energy efficient modifications could not be made to historical structures. There may be siting and aesthetic challenges, to be sure. However, there are numerous examples across the country where historic buildings have been updated with energy efficient features such as solar panels and new windows while retaining historical values. Likewise, a simple Google search shows that multiple government and private organizations have published documents and guidelines regarding how to reconcile those worthwhile policy objectives. I agree this is a challenge in Oregon and elsewhere, but it is not a valid reason to discourage historic districts or cede authority and expertise to politicians.

1,000 Friends Could Weaken the Process for All Types of Historic Designations With Wide-reaching Consequences

Although 1,000 Friends focuses its current opposition on the designation of residential neighborhoods, their proposed remedy would inject politics into the process that could affect how other types of historical resources are – or are not – protected.

According to The National Trust for Historic Preservation (2012): “Spurred by the alarming loss of historic properties and neighborhoods in the wake of “urban reform” and the push to construct interstate highways, Congress passed the National Historic Preservation Act (NHPA) in 1966... A project might be as focused as working to restore a single historic theater marquee or modest cottage, for example, or as broad as turning a massive industrial site into a mixed-use development, or establishing guidelines on how residents can maintain the historic character of an entire neighborhood (*emphasis added*)...

...There is a common perception among the general public that historic preservation is only about saving sites associated with rich white men’s history. Historically, there’s truth in that perception; preservation began as an attempt to memorialize the founding fathers. In the past few decades, however, more focus has been on sites that tell the story of all Americans—African Americans, Latinos, Native Americans, Asian Pacific Islander Americans, women, and gays and lesbians.”

New Historic Districts Should Not Be Conflated with Institutionalized Racism

Ms. McCurdy makes the highly pejorative suggestion, emboldened in her concluding statement, that OPRD should not proceed with historic district designations in residential neighborhoods because the designation process “was born out of institutionalized racism.” This type of inflammatory rhetoric may work for 1,000 Friends as political theater, but it is a misleading and unfortunate use of history and language.

Historic “redlining” and other unethical real estate practices described by Ms. McCurdy did occur in Oregon and were clearly racist and exclusionary. But Ms. McCurdy’s conclusion paints with a very broad brush, and she makes a bizarre leap from outlawed historic redlining practices to today’s process for designation of historic districts, as if they are one and the same. She essentially suggests that if you are for a historic district, you must be a racist. This is absurd and unfair.

Commentators are saying similar things about longstanding environmental organizations – such as 1,000 Friends – and the environmental movement generally being made up of the white and privileged classes (see, e.g., <https://www.nytimes.com/interactive/2020/06/05/climate/racism-climate-change-reading-list.html> or <https://grist.org/justice/responding-to-george-floyd-protests-green-groups-reckon-with-a-racist-past/>). In my view these are very legitimate concerns, but addressing them does not mean we stop implementing sound conservation policy in an unbiased, humane, and color-blind manner while learning from our flawed past. Should 1,000 Friends not move forward with its otherwise pressing environmental agenda because of the past racist practices of the conservation movement or its leaders (see John Muir)? Of course not.

I trust the commission to be more – not less – sensitive to these issues than elected officials who come and go and are more directly influenced by economic and other competing political forces.

Conclusion

In summary, I appreciate 1,000 Friends’ agenda to preserve the Urban Growth Boundary while also advancing more fair housing options. I believe they are sincere but misguided in their goals. Meeting these worthwhile goals does not mean we must demolish our architectural treasures and abdicate our responsibility to preserve historical resources for future generations. We can and must do better.

Therefore, I urge you to reject the unsound recommendations of Ms. McCurdy and 1,000 Friends regarding the process for designation of historic districts for the following reasons:

1. Do not subject the final decision for whether or not to preserve irreplaceable historic resources to the whims of elected politicians who may be influenced by ulterior motives or supporters with financial conflicts;
2. Historic districts can and have been made compatible with implementing other policy goals such as energy efficient technology and new construction; as in other policy debates, Oregon can be a national leader in this field; and
3. Historical neighborhood districts are not inherently racist, and in fact the historical district designation process is now being used across the country to preserve neighborhoods of a variety of cultural and ethnic histories. Reject the pejorative suggestion that conserving historic resources is incompatible with policies promoting racial equality and fair housing practices.

Thank you.

Sincerely,

Paul Henson
Paul Henson

Aug 2, 2020

MARSHALL Janelle * OPRD

From: GAUTHIER Katie * OPRD
Sent: Monday, August 3, 2020 8:08 AM
To: PUBLICCOMMENT * OPRD
Subject: FW: Comments on SHPO Chapter 736
Attachments: shpo comment.pdf

From: watermanranch@frontier.com <watermanranch@frontier.com>
Sent: Saturday, August 1, 2020 10:21 AM
To: GAUTHIER Katie * OPRD <Katie.Gauthier@oregon.gov>
Subject: Comments on SHPO Chapter 736

Attached are my comments.

August 1, 2020

Katie Gauthier, Rules Coordinator
Parks and Recreation Department
725 Summer Street, NE
Salem, Oregon 97301

RE: Comments for Rulemaking, Chapter 736

Dear Ms. Gauthier:

As a landowner having gone through a "Historic District" nomination process, I appreciate the clarification provided under these rules. However, I also have some issues which I would like to address.

736-050-0230: "Historic District" has been replaced with "Historic Resource" broadening the scope of what can be labeled "historic". This change is concerning.

736-050-0250 (3): Add: The proponent must notify owner prior to submitting the National Register nomination form to SHPO. Owner's approval at this point would be beneficial to the process saving time and money devoted to nomination.

(6) & (7): The qualifying portions of a National Register nomination form should **NOT** "be confidential and conditionally exempt from public disclosure". Owners need to know what the applicant is saying about their property to ensure "truthfulness" of the application. In the process which I was involved in, the applicant provided inaccurate information in the application which was noted by one of the State Advisory Committee members. The rest of us did not have access to the information since it was redacted. There must be a process for the public/owners to vet the historic accuracy provided in the application and that cannot be done when the dialogue in the application is redacted.

12 (F): During the "Historic District" process we went through, we were told at the information meeting if you were a married couple who owned property, each person would be a single owner who would have one vote each. The same needs to be true for Trusts. Many married people transfer land to trusts for estate planning purposes. Therefore, each trustee of a trust should be a single owner for voting.

Finally, the National Register nomination should require exact boundaries for the historic district or resource and not leave the boundary open for interpretation. This is essential to provide all "owners" due process.

Thank you for the opportunity to comment on these proposed rules.

Sincerely,



Sharon Waterman, landowner
Coos County

MARSHALL Janelle * OPRD

From: Jane Monson <monson721@hotmail.com>
Sent: Monday, August 3, 2020 10:32 AM
To: PUBLICCOMMENT * OPRD
Subject: Public Comment on Proposal for National Register Rulemaking

Dear ORPD Commissioners,

I am writing in **support** of the changes to the rules, including the condition that the Eastmoreland neighborhood does not have to reapply for a historic district under the new rules. I agree with the concern raised in the public hearing on July 28 that property ownership should be clearly defined to avoid another scenario with bogus trusts being created by opponents of the historic district to skew the vote in their favor.

The loudest objections to the new rules are coming from individuals who claim to be proponents of affordable housing, but they forget to mention their financial interest in developing this type of housing. Defeating the historic district will advance their financial interests and their comments should be considered with this in mind.

Respectfully,

Jane Monson

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Saturday, August 1, 2020 1:48 PM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	Jim
Last Name	Wygant
Email	jrwygant@gmail.com
Public Comment	<p>The proposed Historic District designation for the Eastmoreland neighborhood has been in limbo for several years. As a 40-year resident of Eastmoreland and a former president of the Eastmoreland Neighborhood Association I have an strong interest in seeing this issue resolved without further delay. Several years ago an election was held about the historic district. The voting rules that were declared in advance of the vote were simple and reasonable. They were that anyone who lived in the neighborhood was entitled to a single vote. The key consideration was residence, not ownership. It was specifically pointed out before the vote that someone who owned a house in Eastmoreland but lived outside the neighborhood could not vote, although a renter living within the neighborhood could. After the vote showed that the proposed historic district had passed, five property owners placed their properties in trusts: 1,000 owners each, and for each of those five properties the same original property owner named himself 1,000 times. Those five argued that their votes overwhelmed all the other neighborhood residents who had voted in favor of the historic district. Rather than resolving this issue, the State simply passed it on to the National Parks Service, which makes the final designation. The Feds refused to sort it out and sent it back to the State, where it has languished since then. Eastmoreland is known for its beautiful landscaping and interesting architecture. This proposal originated because developers were buying homes, tearing them down, removing landscaping, and building monstrosities that were pushed out to the legal property setbacks. The end result was replacing a beautiful \$600,000 home with something ugly that did not match neighboring properties and was then marketed for over \$1,000,000. This was neither "affordable housing" nor "residential infill." I have been told that the Laurelhurst neighborhood wanted to undertake the same historic district process but gave up after they saw what had happened in Eastmoreland. Please restore the original rule: if you live in the neighborhood you are entitled to one vote. It's simple and reasonable.</p>

Submission ID: 6a5a8234-0157-4a39-a697-c5377ddec76a

Record ID: 96

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Sunday, August 2, 2020 8:44 AM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	Matthew
Last Name	Hicks
Email	matthicks@comcast.net
Public Comment	<p>Hello, I am an Eastmoreland resident in support of fair and equitable revision of the rules that apply to the administration of nominations for listing on the National Register of Historic Places via the National Park Service. Please consider the following comments when drafting the final rules: * Definition of "Owner" is Still Ambiguous -- Please take more time to improve the definition of owner, especially as it pertains to trusts. The proposed rules have created some ambiguity and are not clear whether trusts are treated as owners and allowed to object, or whether it is the trustee or settlor of the trust who is counted. Eastmoreland still has 2,000 sham trusts and if they are allowed to object, will again influence the outcome of the nomination. * Prevent Cheating -- Opponents of the Eastmoreland Historic District have, time and again, taken steps to ensure that the historic district nomination is not approved by the NPS. From generating thousands of sham trusts, to coercing neighbors, to submitting volumes of unsubstantiated statements to the NPS, these opponents will certainly look for other loopholes or tactics to deny Eastmoreland's listing on the National Register. It is now quite obvious that there is not a majority who object to the historic district, but a few ringleaders who continue to use unethical means to deny the majority. * Keep Politics out of the process -- The proposed rules allow the Certified Local Government (CLG) a means to prevent a nomination from advancing, but only if the local landmarks commission agrees. And even if that happens, anyone can appeal to ensure that a nomination can advance to the NPS. The proposed rule is good, however special interest group 1,000 Friends of Oregon is pushing hard to inject politics into the process. They know that they can likely convince the CLG to object to nominations which is why they are pushing to have the other checks and balances (landmarks commission and appeal options) removed. Please do not give into them. * Proceed with Eastmoreland - The Eastmoreland historic district nomination began about 4 years ago and remains in limbo. If, and when, the new rules are adopted, please proceed quickly with Eastmoreland's nomination. Thank you for your consideration and work on this matter. Matt Hicks 3530 SE Lambert St Portland OR 97202</p>

Submission ID: ca4e4005-ab13-4bfc-b5e7-0ab7f31e9d51

Record ID: 98

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Sunday, August 2, 2020 1:19 PM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	paul
Last Name	henson
Email	pchenson@comcast.net
Public Comment	<p>Dear OPRD, I am a longtime Portland resident who has lived in three historic neighborhoods over 30 years: Ladd's Addition, Sellwood, and, for the last 13 years, Eastmoreland. For me and the great majority of my neighbors, conserving the historical character of these neighborhoods against poorly planned development is one of the key local policy issues facing us. Therefore, it is imperative that the State corrects the process for selecting and designating historical resources that deserve protection, such as the Eastmoreland neighborhood. At a minimum, please address the following issues: 1. The Definition of "Owner" is Still Ambiguous -- Please take more time to improve the definition of owner, especially as it pertains to trusts. The proposed rules have created some ambiguity and are not clear whether trusts are treated as owners and allowed to object, or whether it is the trustee or settlor of the trust who is counted. Eastmoreland still has 2,000 sham trusts and if they are allowed to object, they will again influence the outcome of the nomination in an extremely biased and misleading fashion. 2. Prevent Cheating -- Opponents of the Eastmoreland Historic District have, time and again, taken steps to ensure that the historic district nomination is not approved by the NPS. From generating thousands of sham trusts, to coercing neighbors, to submitting volumes of unsubstantiated statements to the NPS, these opponents will certainly look for other loopholes or tactics to deny Eastmoreland's listing on the National Register. It is now quite obvious that there is not a majority who object to the historic district, but a few ringleaders continue to use unethical means to deny the majority. 3. Keep Politics out of the Process -- The proposed rules allow the Certified Local Government (CLG) a means to prevent a nomination from advancing, but only if the local landmarks commission agrees. And even if that happens, anyone can appeal to ensure that a nomination can advance to the NPS. The proposed rule is good, however special interest group 1,000 Friends of Oregon is pushing hard to inject politics into the process. They know that they can likely convince the CLG to object to nominations which is why they are pushing to have the other checks and balances (landmarks commission and appeal options) removed. Please do not give into them. 4. Proceed with Eastmoreland -- The Eastmoreland historic district nomination began about 4 years ago and remains in limbo. If, and when, the new rules are adopted, please proceed quickly with Eastmoreland's nomination. As another clear indicator of overwhelming neighborhood support for the HD, during this same timeframe the Eastmoreland Neighborhood Association has held its annual elections to the Board. At over a 2 to 1 ratio, residents have consistently elected pro-historic district members to the Board, while anti-HD candidates consistently lose. This outcome gives reliable insight into the preference of the majority of the neighborhood regarding support for the HD. Thank you.</p>

Submission ID: 9049a7ec-31c4-4e44-a62d-8cad0af9cca4

Record ID: 99

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Sunday, August 2, 2020 8:26 PM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	Jay
Last Name	Goodman
Email	sandjgoodman@gmail.com
Public Comment	As a 76 year old resident of Eastmorland, I would love to see this neighborhood put on the Historic Registry. Over the last 4 years, the process has been total chaos. The proposed changes are very difficult for me to make sense of. If it takes a bunch of lawyers to understand what is being proposed, it doesn't serve the community very well. How about "one house, one vote" to resolve the problem and get on with it. Thank you, Jay Goodman

Submission ID: 21c898fd-3802-4cc6-b7f6-80ef8276e781

Record ID: 100

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Monday, August 3, 2020 11:06 AM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	Elizabeth
Last Name	Super
Email	elizabethsuper@hotmail.com
Public Comment	<p>I am writing to support Eastmoreland Historic District and to proceed quickly to approve the nomination for this historic district. The application process began four years ago, and the majority of residents in Eastmoreland approve this designation. Please improve the definition of a home owner, especially in relation to trusts. Currently Eastmoreland has 2,000 sham trusts in an attempt to take down the Historic District nomination. To protect demolishing old homes and DECREASING affordability, please approve the Historic District. Without it, developers have been demolishing affordable single family homes to build two expensive homes on the land. Please protect our neighborhood and approve the historic district. Elizabeth Super 7100 SE Reed College Place Portland OR 97202</p>

Submission ID: a28c3cd1-9d40-4fae-93d1-fe4fc439cb3d

Record ID: 101

MARSHALL Janelle * OPRD

From: Stephen Leasia <leasialaw@gmail.com>
Sent: Monday, August 3, 2020 11:17 AM
To: PUBLICCOMMENT * OPRD
Subject: Commentary on Rulemaking

Please accept this email as my expression of concerns and considerations with respect to the following proposed rule making with regards to the following:

RULES PROPOSED:

736-050-0220, 736-050-0230, 736-050-0240, 736-050-0250, 736-050-0260, 736-050-0270

AMEND: 736-050-0220

As a resident of the Eastmoreland neighborhood I have been very discouraged by the overly-aggressive activities of certain developers in creating trusts to divide ownership in residential property solely to gain an unfair

advantage in terms of the number of votes eligible to be cast and recorded on voting affecting land use and historic neighborhood designation of the Eastmoreland neighborhood. I have reviewed the rules and offer the following

commentary and concerns for your consideration.

First and foremost:

Keep Politics out of the process -- The proposed rules allow the Certified Local Government (CLG) a means to prevent a nomination from advancing, but only if the local landmarks commission agrees. And even if that happens, anyone can appeal to ensure that a nomination can advance to the NPS. The proposed rule is good, however special interest group 1,000 Friends of Oregon is pushing hard to inject politics into the process. They know that they can likely convince the CLG to object to nominations which is why they are pushing to have the other checks and balances (landmarks commission and appeal options) removed. Please do not give into them.

Second, strive for clarity:

Definition of "Owner" is Still Ambiguous -- Please take more time to improve the definition of owner, especially as it pertains to trusts. The proposed rules have created some ambiguity and are not clear whether trusts are treated as owners and allowed to object, or whether it is the trustee or settlor of the trust who is counted. Eastmoreland still has 2,000 sham trusts and if they are allowed to object, will again influence the outcome of the nomination.

Third, draft rules to ensure fairness:

Prevent Cheating -- Opponents of the Eastmoreland Historic District have, time and again, taken steps to ensure that the historic district nomination is not approved by the NPS. From generating thousands of sham trusts, to coercing neighbors, to submitting volumes of unsubstantiated statements to the NPS, these opponents will certainly look for other loopholes or tactics to deny Eastmoreland's listing on the National Register. It is now quite obvious that there is not a majority who object to the historic district, but a few ringleaders continue to use unethical means to deny the majority.

Finally, act promptly after rules/amendments are adopted:

Proceed with Eastmoreland -- The Eastmoreland historic district nomination began about 4 years ago and remains in limbo. If, and when, the new rules are adopted, please proceed quickly with Eastmoreland's nomination.

Thank you for your consideration of these comments.

Very truly yours,

Stephen H. Leasia (Eastmoreland Resident)

Stephen H. Leasia
6721 SE 34th Avenue
Portland OR 97202
telephone 503-349-7438
leasialaw@gmail.com

MARSHALL Janelle * OPRD

From: Susan Bragdon <bragdonsh@gmail.com>
Sent: Monday, August 3, 2020 5:12 PM
To: PUBLICCOMMENT * OPRD
Subject: Comments on Proposal for National Register Rule-making

Comments on Proposal for National Register Rule-making

My name is Susan Bragdon and I am a resident of Eastmoreland neighborhood in Portland, Oregon.

First, I would like to express appreciation for the hard-work of the OR SHPO and the Rules Advisory Committee (RAC) that produced the rule changes now under consideration. Experience demonstrated that the current rules are ambiguous. This provided opportunities for abuse and exploitation of the rules in unprecedented ways by those who refused to accept the desire of the majority of the Eastmoreland neighborhood and decades of accepted precedent and process for National Register nominations.

5,000 trusts were created for the **sole** purposes of preventing the listing of the Eastmoreland Historic District on the National Register. Unfortunately, these and other actions were effective and 4 years later, the residents of Eastmoreland are still in limbo since the process began!

In my opinion, the following issues still need to be addressed:

* Definition of "Owner" is Still Ambiguous -- Please take more time to improve the definition of owner, especially as it pertains to trusts. The proposed rules have created some ambiguity and are not clear whether trusts are treated as owners and allowed to object, or whether it is the trustee or settlor of the trust who is counted. Eastmoreland still has 2,000 sham trusts and if they are allowed to object, will again influence the outcome of the nomination.

* Prevent Cheating -- Opponents of the Eastmoreland Historic District have, time and again, taken steps to ensure that the historic district nomination is not approved by the NPS. From generating thousands of sham trusts, to submitting volumes of unsubstantiated statements to the NPS, we have reason for concern that opponents to the designation will look for other loopholes or tactics to deny Eastmoreland's listing on the National Register if that remains the will of the majority of residents. There is no evidence that there is a majority who object to the historic district -- quite the opposite. There seem to be a few ringleaders who are willing to use any loopholes to deny the will of the majority.

* Keep Politics out of the process -- The proposed rules allow the Certified Local Government (CLG) a means to prevent a nomination from advancing, but only if the local landmarks commission agrees. And even if that happens, anyone can appeal to ensure that a nomination can advance to the NPS. The proposed rule is good, please do not remove the checks and balances that re into the process as is being advocated by a special interest group.

* Proceed with Eastmoreland -- The Eastmoreland historic district nomination began about 4 years ago and remains in limbo. If, and when, the new rules are adopted, please proceed quickly with Eastmoreland's nomination.

Director, Seeds for All
Inclusive policy for food and nutrition security
<https://www.seedsforall.org/>

Policy Advisor
Oxfam Novib
<https://www.sdhsprogram.org/>

"For small creatures such as we the vastness is bearable only through love." Carl Sagan

MARSHALL Janelle * OPRD

From: Margaret DeLacy <margaretdelacy@comcast.net>
Sent: Tuesday, August 4, 2020 1:21 PM
To: PUBLICCOMMENT * OPRD
Subject: Public testimony on the Proposal for National Register Rulemaking

Dear Ms. Gauthier and members of the OPRC:

I am submitting public testimony to the Oregon Parks and Recreation Commission on the Proposal for National Register Rulemaking on my own behalf and not on behalf of any organization.

I hope this link is to the correct version--it is to the document I actually used to compile this testimony:

<https://www.oregon.gov/oprd/CAC/Documents/2020-06-9a.pdf>

It was exceptionally difficult to locate a readable version of the proposed draft online. If there is a request for public comment, it should include a link to the document that the comment is supposed to relate to. See, for example <https://www.oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx> which does not contain a link to the actual draft rules. (The "redline" version of the draft is unreadable by any ordinary person).

The document (Agenda Item #9 from June 17, 2020, "Request to open to rulemaking--Division 50, Historic Preservation Officer,") states that the OPRC began a rule making process because of several controversial submissions to the State Historic Preservation Office (SHPO) for nominations to the National Register of Historic Places.

Among those controversial submissions was the one from the Eastmoreland Neighborhood Association (ENA) which stalled when a very small number of Eastmoreland residents divided their fee simple property ownership among a multitude of different trusts.

Whatever one might feel about the ENA nomination itself, halting the process for so long has further divided neighborhood residents and perpetuated rancor to the detriment of both the neighborhood and the city as a whole.

Moreover, ratifying this stratagem or accepting a multi-trust tactic for future applications threatens to make a mockery of the entire historic preservation process. The next time someone applies for a listing, if one party creates a hundred trusts, an opposing party may create a thousand and a third may then create five thousand and so on ad infinitum.

The Rule Advisory Committee has acknowledged this problem. The summary states that

"Especially controversial is counting property owners and objections to establish owner consent as required by federal regulation, specifically trusts, but also other ownership arrangements . . .

These issues included: . . . establishing authority to accurately count owners and objections; and clarifying administrative processes, such as confidentiality, public notice, participation, and hearing procedures."

It is vital that the new rules establish a clear process and an unambiguous definition of "ownership," that cannot be undermined by questionable loopholes.

I am grateful to the committee for undertaking this difficult task. On the whole, I support the goals of the committee and the overall direction of the draft. I do, however, think that a representative from a neighborhood association should have been on the advisory committee.

I also believe it is best to ensure that this process is guided by historical preservation experts and removed as far as possible from political influences; therefore, I think the SHPO should be able to disregard comments by Certified Local Governments (CLGs).

However, as a layperson I find the language in the current proposal confusing and I am not sure it will prevent the use of abusive trusts. If I am misunderstanding something please accept my apologies--I am not an attorney!

One source of the confusion is the fact that objections are tied to "owners," and "properties." Each "property" may have several different "owners;" each "owner" may possess several different "properties;" and a given "property" may contain several different "structures" or "objects."

The right to issue an objection doesn't seem to clearly track with either owners or properties but to be given to a single owner of any number of properties whether that owner is a trust or an individual and whether or not that "owner" resides in the proposed district. If a given "property" has several "owners" apparently only one owner gets to object even if that owner has other properties, but the rules for determining which one gets to object on behalf of a property--or to issue a single objection on behalf of multiple properties--are unclear. Where a given individual owns a part of multiple properties, other parts of the same properties may belong to different individuals. Majority rule may not make sense if the "ownership" of the property is unevenly divided -this often occurs when an owner dies and their portion of a property is divided among heirs.

I am not sure what would happen if an organization such as a nonprofit, tribe or corporation owned a property--who would have the right to speak for the entire corporate owner? Could I and a friend create a set of shell nonprofits (foundations) and then cede ownership of a property to them?

If someone took a piece of fee simple property and sold fractional interests to thousands of people anywhere, even outside of OR, what enables the SHPO to determine that someone was trying to rig the vote?

Creating this discretion is essential to protect the integrity of the entire process. If a developer owned several parcels in a potential HD and stood to gain millions of dollars if the HD were defeated, it would easily be worth while to sacrifice a small parcel in this manner to frustrate the process.

Also unclear is the method for establishing that an "owner" has a unique and indivisible identify--that is, that the "owner" is not multiple people with similar names or multiple trusts with different names, or trusts created by different entities.

Finally, there is no definition of "property." In Eastmoreland, there are many homes that cross or span more than one lot line.

The proposed rule for Definitions: (OAR 736-050-0230) defines "Owner" as follows:

(16) "Owner:"

(a) Includes "owner or owners" as defined in 36CFR§60.6(k), and means:

(A) The owner of fee simple absolute or fee simple defeasible estate title to a property as shown in the property tax records of the county where the property is located, including, but not limited to, trusts, limited liability corporations, and any other legal entity that can hold fee simple absolute or fee simple defeasible title to real property within the state of Oregon;

(B) The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or

(C) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner; and

(b) Does not include: (A) Individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature; (B) The life tenant of a life estate; and

(c) Means, for a single property, building, structure, site, object, with or without secondary historic resources, or historic district with multiple owners, a majority of owners as defined in (a) and (b).

(17) "Person" means individuals, corporations, associations, firms, business trusts, estate, trusts, partnerships, limited liability companies, joint ventures, public and municipal organizations, joint stock companies, federal agencies, tribes, a public body as defined in ORS 174.109, or any other legal or commercial entity.

In this rule, 16 (b) (B) should "less than fee interests" be "less than fee SIMPLE interests?" I don't know what a "fee interest" is.

Section 12 of the Rule for Staff Activities: (OAR 736-05--0250) explains how the State Historic Preservation Office (SHPO) must establish who is an "owner" of a property within a proposed nominated district by comparing names with a list compiled from property tax records.

(As this seems to be the crux of the issue, I have copied ss 12 in its entirety at the bottom of this message.)

Section 12(d)(D) says that the SHPO will compare names and mailing addresses. It says that if Jane Doe and Jane S. Doe have two different mailing addresses, they must be considered to be two different people and if they have the same mailing address they *must* be considered to be the same person.

and section 12(d)(E) says that when a trust owns a property, the trusts are individual owners when the "owner" name differs *in any way* even if the mailing address is the same.

I am confused about whether this solves the problem of multiple trusts owning a single property.

Should that be the "grantor" or "settlor" of the trust instead of the "owner?"

If I and my daughter have the same name and live together at the same address are we one "owner", but if she gets a mailbox we become two "owners"?

If we jointly own two houses or "structures" within an HD boundary but live together at one address, do we get one vote or two?

If I create many trusts or nonprofits with slightly different names: "Jane Doe," "Jane S. Doe," "Jane Smith Doe," "Jane Smith-Doe," "Jane D. Smith" etc. and give each a part of a property, is each one an "owner?" Could each be a trust with its own mailbox?

Is it possible to become the "settlor" of trusts under more than one name? For example, could I create shell companies that would then grant a trust? Or grant a trust with and without my middle initial? Suppose I did this under the laws of another state?

What happens if a trust has more than one "settlor?" Could my husband and I establish three trusts--one for me, one for him and a third joint, and assign each trust a part of a "property?" Who or what would then own the "majority?" Which one of us would be the "settlor" of the trust we created jointly?

What is a "property?" Is it a tax lot? The city is encouraging duplexes and triplexes. If I subdivide my lot to create an ADU, duplex, or townhouse, and then convey one of them by fee simple, does it become two properties? Is there a clear distinction between a "property" and a piece of land? If a "site" includes several "structures" or "objects," can there be several "owners?" What happens if the "owners" don't agree? If my husband and I created a trust that owns a home that spans two property lines and contains three structures--a garage, a house, and a garden shed, what would happen if we divorced during the submission period and disagreed about the vote? Or created trusts for our children?

Could there be one rule for an application that concerns a single property/structure/dwelling/object with a single owner; a second rule for a historic *district* containing more than one dwelling with more than one owner; and possibly a

third rule for an entity with a potential for complex ownership such as a tribal area or a courthouse with a monument, a separate jail, an outhouse, and a canon parked out front.

The committee may know the answers to all these questions, but if they are not spelled out clearly I fear that either someone will find a loophole, or, worse, the entire Historic Preservation process may again be bogged down while these issues are hashed out in court.

Section 13 (e) states that the SHPO may choose to re-examine the property owner list ... *and any public record*. I strongly support retaining this discretion and even strengthening it to state that in cases where ownership is unclear the SHPO *must* examine other public records and reach a determination that properties had been distributed in good faith and not with intent to derail the HD process.

Here are some other problems that I noticed in trying to understand this draft.

Staff Activities (OAR 736-050-0250)

The first problem is that 12(a) refers to "county property tax records obtained as provided in subsection (8)(d) . I can't seem to find that subsection. This section, section 12 does have a subsection D (capitalized) that refers to "similar names" with different mail addresses but I don't think that is the section intended here. Section 12 doesn't have subsection 8. In referring to "that property owner list" it seems to refer to section 12 (B) which states that they are the property tax records provided by the county assessor. Moreover "Property tax list" is not defined in the definitions of "Owner" in section (16) of the Rule for Definitions (OAR 736-050-0230) .

Section 12 (a) F says that the SHPO "must count a trust as a single owner when multiple trustees are named, but no trust is identified". I don't know what "identified" refers to. What happens if a trust IS identified? IN that case does the SHPO count the multiple trustees as multiple owners?

Section 12 (b) (C) states that an owner may "Remove the previous owner from the property owner and withdraw the previous owner's objection."
This doesn't make sense.

Section 15 (b) (B) is ambiguous and confusing. May I suggest editing it to read "The SHPO may choose to resubmit *to the committee* a National Register nomination form returned by the NPS for amendment" (moving the phrase "to the committee" closer to the verb).

Section 15 (d) states that "If a historic resource is not listed in the National Register within two years from the date the NPS first returns the National Register nomination for correction the SHPO must decide whether to resubmit.....

This is confusing because of the passive tense. Just who is responsible for ensuring that a resource IS listed within two years? If the NPS has a breakdown, is it up to the SHPO to start from the beginning? Is it up to the Committee to make a correction within the two years?

Section 15 (f) refers to a "property owner list" created in section (15)(f)(C). Again, this seems to refer to a section I can't find.

Section 18 (c) permits the SHPO to "Change the contributing status of an individual historic property within a historic district." It seems to me that this would enable the SHPO effectively to cancel all the rules within a historic district for any or all properties. Shouldn't there be some process for this? Rules? A process for setting rules?

OAR 736-040-0260 sets procedures for the Advisory Committee.

Section 5 states that committee members must disclose actual and potential conflicts of interest. Section 6 states that committee members will NOT recuse themselves for potential conflicts of interest.

There is no information about what should happen if a committee member does have an actual conflict of interest. Must they recuse themselves? May they recuse themselves? What state law is referenced here?

Thank you very much for your time,

Sincerely yours,

Margaret DeLacy

7356 SE 30th. Av.
Portland OR 97202

for reference:

OAR 736-05-00250, Section 12

"(12)The SHPO must determine if the majority of owner(s) object to listing a nominated historic resource in the National Register by comparing the total number of owners identified on the property owner list to the number of notarized statements that object to listing the historic resource.

(a)The SHPO must create a property owner list that includes each owner within the boundary of a historic resource nominated for listing in the National Register using county property tax records obtained as provided in subsection (8)(d). That property ownerlist is the official list of property owners throughout the public comment period

(A)The SHPO must take reasonable steps to correctly identify the total number of owners.

(B) The SHPO must assume that the property tax records provided by the county assessor are accurate when counting owners.

(C) The SHPO must include owners on the property owner list regardless of whether the owner can be contacted using the information included on the property owner list provided by the county assessor's office.

(D) When encountering similar names, the SHPO will compare the name and mailing addresses to determine if there are one or more owners. Jane Doe and Jane S. Doe must be considered as two distinct persons when the county property tax records identify differing mailing addresses. If the mailing address is the same, the SHPO must identify these individuals as the same person.

(E) The SHPO must count entities, such as named trusts, corporations, partnerships, etc., as individual owners when the owner name differs in any way, even when the mailing address is the same.

(F)The SHPO must count a trust as a single owner when multiple trustees are named, but no trust is identified .

(G) The SHPO must use any adopted system of abbreviations, symbols, or other codes used by the county assessor from the county providingpropertytax records to identify owners when creating the property owner list.

(H)The SHPO must add or remove an ownerfrom the property owner list upon submission of a notarized statementfrom the current property owner when the notarized statement meets the requirements of subsection (c)

(b)At any time during the public comment period, an owner may take the following actions by submitting anotarized statement. An owner may object only once regardless of how many historic resources or what portion of a historic resource the owner owns: (

A) Object to listing a historic resource in the National Register;

(B) Withdraw their own previous objection;

(C) Remove the previous owner from the property owner and withdraw the previous owner's objection ;

(D) Assert ownership of a historic resource within the nominated area when the property owner listdoes not include the owner or property; or (E) Any combination of (A), (B), (C) and (D).

MARSHALL Janelle * OPRD

From: JOHNSON Ian * OPRD
Sent: Wednesday, August 5, 2020 9:36 AM
To: rick@wheatlawoffices.com; 'Stacy Scott'; OLGUIN Robert * OPRD
Cc: 'M Corvi'; 'Roselynn Lwenya'; PUBLICCOMMENT * OPRD
Subject: RE: CTCLUSI Requests Extension to Comment Period for National Register Program Rules

Thanks Rick, I will present it as such.

Ian



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division
State Historic Preservation Office
Desk: 503.986.0678 cell: 971.718.1137

Visit our [website](#), Like us on [Facebook](#), Visit our [Blog](#).

From: rick@wheatlawoffices.com <rick@wheatlawoffices.com>
Sent: Wednesday, August 5, 2020 8:43 AM
To: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>; 'Stacy Scott' <sscott@ctclusi.org>; OLGUIN Robert * OPRD <Robert.Olguin@oregon.gov>
Cc: 'M Corvi' <margaret.corvi@yuwe.co>; 'Roselynn Lwenya' <RLwenya@ctclusi.org>
Subject: RE: CTCLUSI Requests Extension to Comment Period for National Register Program Rules

A longer timeframe would be better if that is possible.

From: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>
Sent: Tuesday, August 4, 2020 6:35 PM
To: Stacy Scott <sscott@ctclusi.org>; OLGUIN Robert * OPRD <Robert.Olguin@oregon.gov>
Cc: rick@wheatlawoffices.com; M Corvi <margaret.corvi@yuwe.co>; Roselynn Lwenya <RLwenya@ctclusi.org>
Subject: RE: CTCLUSI Requests Extension to Comment Period for National Register Program Rules

Thanks Stacy,

The agency just issued a press release, attached, extending the comment period through August 31st. Is this sufficient time, or should I present your letter to leadership as a request to extend the comment period beyond that date?

Thanks.

Ian



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division
State Historic Preservation Office
Desk: 503.986.0678 cell: 971.718.1137

From: Stacy Scott <sscott@ctclusi.org>

Sent: Tuesday, August 4, 2020 5:46 PM

To: OLGUIN Robert * OPRD <Robert.Olguin@oregon.gov>; JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>

Cc: rick@wheatlawoffices.com; M Corvi <margaret.corvi@yuwe.co>; Roselynn Lwenya <RLwenya@ctclusi.org>

Subject: CTCLUSI Requests Extension to Comment Period for National Register Program Rules

Robert and Ian,

Please see the attached letter requesting an extension to the comment period for the proposed changes to the State's National Register program rules.

Sincerely,
Stacy

Stacy Scott, MA, RPA
Tribal Historic Preservation Officer &
Cultural Resources Protection Specialist
Confederated Tribes of
Coos, Lower Umpqua & Siuslaw Indians
1245 Fulton Avenue
Coos Bay, Oregon 97420
541.888.7513 (office)
541.297.5543 (cell)
541.888.2853 (fax)
SScott@ctclusi.org

This email and its attachments are confidential under applicable law and are intended for use of the sender's addressee only, unless the sender expressly agrees otherwise, or unless a separate written agreement exists between Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians and a recipient company governing communications between the parties and any data that may be transmitted. Transmission of email over the Internet is not a secure communications medium. If you are requesting or have requested the transmittal of personal data, as defined in applicable privacy laws, by means of email or in an attachment to email, you may wish to select a more secure alternate means of transmittal that better supports your obligations to protect such personal data. If the recipient of this message is not the recipient named above, and/or you have received this email in error, you must take no action based on the information in this email. You are hereby notified that any dissemination, misuse or copying or disclosure of the communication by a recipient who has received this message in error is strictly prohibited. If this message is received in error, please return this email to the sender and immediately highlight any error in transmittal. Thank You

MARSHALL Janelle * OPRD

From: Beth Warner <beth.warner48@comcast.net>
Sent: Wednesday, August 5, 2020 2:40 PM
To: PUBLICCOMMENT * OPRD
Cc: JOHNSON Ian * OPRD
Subject: RE: Public comments extended for national register program

I would like to present testimony regarding the extension of the public comment period for the Rule Advisory Committee's updates to the Oregon National Register Program.

The extension and the addition of the fourth webinar for public testimony are totally unnecessary. On July 1st, an email was sent from the ORPD announcing that the public comment period for testimony on the rule changes was open, and the ORPD would be accepting testimony until August 14th. There were multiple ways to present testimony: via mail, via email or orally at two virtual webinars on July 23rd. On July 17th, a news release was sent out stating that the public comment period for rule changes was open until August 14th and once again the ways to present testimony were listed and a third webinar was slated for July 28th.

Then, on August 4th, a news release was sent out stating that the public comment period has been extended to August 31st and a fourth virtual webinar session was added for August 18th.

I have attended all of the webinar sessions and have presented testimony at the session on July 28th. The sessions were not well attended nor has there been a great deal of written testimony presented. Perhaps citizens aren't interested? What is the rationale behind extending the date and adding an additional session? I would like to know. There has been plenty of time for citizens to testify, both virtually or in writing. There is no need for an extension as it once again prolongs the rule making process that was established.

I realize the pandemic has altered the original public comment plans. But, SHPO responded to the pandemic and the changes in plans responsibly and in a timely manner. Now, you are changing the rules once again? Why?

To begin with, the changing of rules for a national register nomination in the past has created the necessity for the rule making process. In the case of the Eastmoreland nomination, only one vote was allowed for trusts; then all trusts were counted which led to the formation of 5,000 illusory or sham trusts; then no trusts were allowed. Rules are rules, a process is a process, and the goal post cannot continue to be moved when the majority of citizens are abiding by the stated rules.

Respectfully submitted,

Beth Warner
Eastmoreland Resident

From: PUBLICCOMMENT * OPRD [mailto:OPRD.Publiccomment@oregon.gov]
Sent: Tuesday, August 04, 2020 4:14 PM
To: GAUTHIER Katie * OPRD
Subject: Public comments extended for national register program

PUBLIC COMMENTS EXTENDED THROUGH AUG. 31 FOR UPDATES TO STATE RULES FOR NATIONAL REGISTER PROGRAM

News Release from **Oregon Parks and Recreation Dept.**

Posted on FlashAlert: August 4th, 2020 3:30 PM

Oregon Parks and Recreation Department (OPRD) is extending the date to accept public comments on proposed changes to rules governing how the state protects important historical places until 5 p.m. Aug. 31, 2020. The extension comes with a new opportunity on Aug. 18 for local and tribal governments to learn more about the proposed rules and comment on them.

The state is proposing updates to the Oregon Administrative Rules that govern how the state administers the federal National Register of Historic Places Program, which lists buildings, districts and other sites important to local, state or national history. The Oregon State Historic Preservation Office (SHPO) — an office of OPRD — administers the local program, which is run by the National Park Service.

In Oregon, 2,065 properties — including 133 historic districts located across the state's 36 counties and representing many aspects of the state's rich history — are now listed in the National Register.

In the last several years, several high-profile, controversial nominations exposed problems with the National Register process, including determining owner consent and public involvement. Proposed changes seek to establish a fair and transparent process in alignment with federal requirements.

In addition to extending the comment period, OPRD will have an informational webinar at 10 a.m. Aug. 18 for government staff and leaders to learn more about the proposed rules and potential impact on communities, local governments and tribes. The webinar will be open to the public and end with an opportunity to provide public comment. Register to attend at oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx.

"Local governments and Native American tribes are a critical partner in the national register program," said Ian Johnson, associate deputy state historic preservation officer.

The Oregon SHPO provides local governments participating in the federal Certified Local Government (CLG) Program grants to list properties in the federal National Register of Historic Places. Using SHPO grant funds, the City of Jacksonville listed the Britt Gardens and the City of Gresham listed the Roy E. and Hildur L. Amundesen House in the National Register.

Local governments may comment on National Register nominations. Local governments participating in the CLG program may object to a nomination, ending the nomination process unless appealed. The revised rule includes updated procedures for hearing notifications, including specific provisions to notify CLGs, as well as a provision that allows the SHPO to coordinate outreach efforts with local governments. The revised rule also now includes provisions for comments from Oregon's nine federally-recognized Native American tribes.

OPRD will accept public comments on the proposed changes through 5 p.m. Aug. 31, 2020. Comments can be made online, in writing or via email:

- Online: oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx
- In writing: Oregon Parks and Recreation Department, attn. Katie Gauthier, 725 Summer St NE, Suite C, Salem OR 97301
- Email: OPRD.publiccomment@oregon.gov

- Informational, online webinar to discuss potential impacts of proposed rules on local governments, communities and federally-recognized Native American tribes. The webinar is set for 10-11:30 a.m. Aug. 18. Register at oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx.

After reviewing public comments, OPRD staff plan to present a final recommended rule for consideration to the Oregon State Parks and Recreation Commission.

The full text of the proposed change is available online: oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx

Properties listed in the National Register are:

- Recognized as significant to the nation, state or community;
- Considered in the planning of federal or federally assisted projects;
- Eligible for federal and state tax benefits;
- Eligible for historic preservation grants when funds are available;
- Eligible for leniency in meeting certain building code requirements.

National Register listing does not place any restrictions on a property at the federal level, unless property owners choose to participate in tax benefit or grant programs. State law requires local governments to review the demolition or relocation of all properties listed in the National Register at a public hearing, and allows local governments to add additional regulations following a formal public process. Learn more about the National Register of Historic Places program in Oregon at oregon.gov/oprd/OH/pages/national-register.aspx.



Katie Gauthier | Government Relations and Policy Manager

Oregon Parks and Recreation Department

503.510.9678

Telework 8-4:30 M-F

she/her/hers



This email has been checked for viruses by Avast antivirus software.

www.avast.com

MARSHALL Janelle * OPRD

From: Dinah Adkins <dadkins@inbia.org>
Sent: Wednesday, August 5, 2020 6:41 PM
To: PUBLICCOMMENT * OPRD
Cc: Dinah Adkins
Subject: Testimony for Public Comment on OPRC Rule-making
Attachments: Testimony v6.docx; RCP1.jpg; RCP2.jpg; RCP3.jpg

Please find my testimony and photos of the Reed College Place linden allee in our neighborhood attached.

Dinah Adkins
7711 S.E. 29th Ave.
Portland, OR 97202
Home: 503-432-8088
Cell: 503-780-6720
dadkins@inbia.org

My testimony today addresses only Mary Kyle McCurdy of 1000 Friends of Oregon's suggestion (in 200-plus words in her July 20 submission to the Oregon Parks and Recreation Commission) that the inclusion of Portland's Eastmoreland neighborhood on the National Historic Register should be denied because of historic "redlining." McCurdy and her allies in "Keep Eastmoreland Free" (she is a founding member and chief strategist) have painted neighbors as racist and elitist throughout their campaign opposing the proposed historic district. And they've done this *without a shred of evidence*. So it's hardly surprising that in her recent testimony she's banging the drum again. Yet this time she raises the "race card" when a majority of U.S. citizens ardently seeks to end systemic racism and supports (as shown by polling) the Black Lives Matter movement. Doubling down now, when Eastmorelanders have joined the Wall of Moms in Portland protests, is cynical, manipulative and morally corrupt. It is simply another McCurdy ploy to throw a roadblock into the nomination process.

Eastmoreland was founded by Portland developer William M. Ladd, a populist of the day, to offer homes to people of differing income levels—academics and staff at nearby Reed College, service providers, tradesmen, and a mix of Portlanders. The design exemplified the City Beautiful planning movement of the early 20th Century and showcased the natural undulations of the land, a tree canopy, and lawns. Soldiers returning from both World Wars bought property in Eastmoreland to build Mediterranean, English, French, and historic American home styles in all sizes.

Unfortunately, 100 years later, and lacking a historic district, the neighborhood is becoming less inclusive as its smaller and mid-priced homes are routinely torn down and trees are cut to accommodate *two* \$1.25 million-plus homes on the original lots, both lacking yards or play space; the new builds also tower over neighboring houses, reducing privacy for all. This is *far* from creating the greater diversity McCurdy pretends to espouse.

Thus we who are fortunate to live in this beautiful neighborhood have, by majority vote, in accordance with National Park Service guidelines, supported creation of an historic district to preserve and protect Eastmoreland. Our effort has been opposed by developers, those in their thrall, and some others who are immune to our neighborhood's beauty and history.

As an official representative of 1000 Friends of Oregon, Ms. McCurdy in her testimony *again* suggests that denial of Eastmoreland's application would somehow reduce the wrongs of historic redlining—perhaps serving as *an after-the-fact antidote to past sins*. Her KEF allies, including her own husband Tom Christ, have overtly painted their neighbors as NIMBYs, racists and elitists. In 2017 Christ wrote in the *Portland Tribune*, "I realize these labels—NIMBYism, elitism, racism—are discomforting. But they fit...." And KEF's Tom Brown, a developer, recently walked Eastmoreland posting signs to say: "Black Lives Matter; Kill the Historic District; Connect the dots."

It is so much easier to divide than unite, to demonize than engage in constructive dialogue. But playing the race card is in line with KEF's other flagrant attempts to block the historic district by creating 5,000 "objection trusts" via which five neighbors attempted to each increase their votes by 1,000 percent! McCurdy has also argued previously that it would be "invasive" of individuals' privacy to ask whether their trusts are real and whether the trustee or settler of each is not, in fact, the same as the five previously-listed owners. Thus it is in keeping that KEF and McCurdy have sanctimoniously attempted to co-opt the current, deserving Black Lives Matter cause.

Truth is, though, anyone concerned that Eastmorelanders are racist should take a long, slow walk down the linden allée on Eastmoreland's Reed College Place. Every one of the majestic lindens wears a

cardboard sign recognizing slain Black Americans. The signs have been in place since early June and remain to this day in honor of Black Lives Matter.

Eastmoreland residents resent McCurdy's attempts to cast slurs on her neighbors, paint them in the vilest terms, and co-opt an honorable movement for her own corrupt and misguided purposes.

Dinah Adkins
7711 S.E. 29th Ave.
Portland, OR 97202
503-432-8088
dadkins@nbia.org

GEORGE
SAY HIS NAME
FLOYD

WE CAN'T BREATHE
REMEMBER ME... ME...
JUSTICE EQUALITY

THIS IS A
MEMORIAL
PLEASE SHOW SOME RESPECT

BRIAN
PICKETT

KIKI

FANTROY

BOBBY
GROSS



MARSHALL Janelle * OPRD

From: Ron Cascisa <Roncascisa@comcast.net>
Sent: Wednesday, August 5, 2020 2:49 PM
To: PUBLICCOMMENT * OPRD
Cc: Derek Blum; Patty cascisa
Subject: National Register of Historical Places

My name is Ron Cascisa. My wife and I have lived in the Eastmoreland area of Portland, Oregon for almost 40 years and have been active in requesting that the area be considered an historic neighborhood. Due to many unscrupulous activities by some it has been delayed with legal wranglings, coercion and sham ownership declarations for several years!

I am glad to see that there has been some progress in clarifying the process. I would ask that definition of ownership be clarified to the nth degree. No one property (whether held in trust or not) should garner more than one vote in any determination!! One property utilized the ambiguity of ownership definition to create 2000 unscrupulous votes in the Eastmoreland case. This was not an isolated case. A few other properties followed suit to garner thousands of additional voices in the case! Shameful! Opponents have continued to take steps to ensure that the will of the majority of our neighbors wishes be circumvented and not approved by the National Park Service. I believe there will be no end to the opposition's unethical means to deny the majority's desire for designation. In these heated political times, we personally would request that the rules only allow the Certified Local Government a way to prevent advancement of nomination, if and only if the local landmarks commission agrees to it! Too often special interest groups (such as 1000 Friends of Oregon) have intervened in the process with their own political interests. Please see to it that undue influence is not allowed to sway the Certified Local Government officials in their determinations. Do not allow landmarks commissions, appeals options and checks and balances be removed from these proposed changes. We sincerely hope that you will see clear and help to make our highly regarded Eastmoreland neighborhood an historic district in Oregon like so many other neighborhoods in Portland that are already designated (one or two, even after our original request!) without any further delay.

Thank you for your time and consideration. Sincerely, Ron and Patty Cascisa
7314 SE 30th Ave.
Portland, Or. 97202

MARSHALL Janelle * OPRD

From: Rachel Papkin <rfpapkin@gmail.com>
Sent: Thursday, August 6, 2020 8:59 PM
To: PUBLICCOMMENT * OPRD
Subject: Proposed Rule Changes National Register Oregon 736-050-0220-0270
Attachments: TestimonyWord.docx

My name is Rachel Papkin and I live in the Eastmoreland neighborhood in Portland. While the Committee has done excellent work revising the current rules applicable to the procedures for designation as a historic district, I would suggest the following:

1. Clarification of ownership of trusts. Mr. Blum, perhaps others, as well, has pointed out correctly that there is some confusion in the rules about the owner of a trust, with some provisions indicating the 'trust' is the owner and others indicating the settlor or the trustee, depending on whether the trust is revocable or irrevocable. This begs the question of whether there is any trust at all, that is, whether or not the trust is even valid and entitled to be counted.

Although the rules include the requirement that a trust as owner of a fee simple interest be listed in the property tax records, this is not enough to avoid gaming the process as shown by what happened recently with the Eastmoreland nomination. There, 5000 trusts (based on four lots) were duly listed as separate entities in the tax records (although I think it is unlikely that the city sent out 5,000 tax bills), cast ballots, and were counted by SHPO as 5000 separate votes. This was patently incorrect. The controlling law is unambiguous. Oregon has adopted Uniform Trust Code Provision 404 which states that '*(a) trust may be created only to the extent the purposes of the trust are lawful, not contrary to public policy and possible to achieve.*' The Eastmoreland 5000 (since reduced to 2000), created for the sole purpose of interfering with the proper administration of a government program, were and are clearly against public policy, if not explicitly unlawful. Accordingly, the rules should include a mechanism for SHPO to impose a requirement that any trust participating in the designation process be a legitimate trust created for purposes other than creating mischief and disruption.

2. Politics should be kept out of the historical designation process. The proposed rules, 736-050-0250 (10) imposing strict requirements for objections by the Certified Local Government and allowing for appeal of an objection by proponents of a property's designation should stand. Criteria for designation in the National Register of Historic Places are esthetic and/or historical. They include places having an association with a historical event or pattern of history or with a person of historical interest, yielding or likely to yield historical information or '*that embody distinctive characteristics of a type, period or method of construction, ... or that represent a significant and distinguishable entity whose components may lack individual distinction...*' These criteria are anything but political. Allowing local factions with competing goals, cliques, agendas, sources of financial support and so on that have absolutely nothing to do with historical authenticity to pervert a singularly benign process undermines the entire National Register Program.

Ms. McCurdy, writing for the 1000 Friends of Oregon proposes that '*a local elected body have the final decision-making authority on whether a privately nominated structure or structures should proceeds (sic) forward.*' This is necessary, among other reasons, she asserts, because the National Register can '(p)erpetuate institutionalized racism' as awarding historic designation to large residential neighborhoods restricts the stock of affordable housing and gives current credence to restrictive covenants established more than a century ago and long since put to rest.

Ms. McCurdy should know better. She lives in Eastmoreland and should be aware of the great diversity of housing stock, from modest bungalows to 'mansions'. Parenthetically, she should know that recent rebuilds have replaced middle range homes on single lot each with two 'skinnies' completely out of character with the rest of the neighborhood and selling for around \$1.25 million each. This is neither affordable nor multi-family housing. This is the kind of development those of us supporting the Historic District seek to prevent and what we believe is funding the opposition—Keep Eastmoreland Free) Further, her charge of 'racism' is laughable. Black Lives Matter signs are prevalent throughout the neighborhood and every tree on Reed College Place bears a sign with the name of a black person who died in wrongful circumstances. Further I am told that a number of my Eastmoreland neighbors joined the protesters and participated in the Wall of Moms. This does not sound like a 'racist' place. The views of the 1000 Friends have no place at this table and I would request the committee to ignore them.

3. Conclusion. Eastmoreland has waited long enough. It is time to put aside the cheating and the red herrings and for our nomination for historic status go forward.

Thank you for taking the time to review my testimony.

MARSHALL Janelle * OPRD

From: Dinah Adkins <dadkins@inbia.org>
Sent: Friday, August 7, 2020 7:41 AM
To: Rachel Papkin
Cc: PUBLICCOMMENT * OPRD
Subject: Re: Proposed Rule Changes National Register Oregon 736-050-0220-0270

Ah, I see you entered your testimony. It looks great!!!!

Dinah Adkins
Portland, Oregon

On Aug 6, 2020, at 8:59 PM, Rachel Papkin <rfpapkin@gmail.com> wrote:

My name is Rachel Papkin and I live in the Eastmoreland neighborhood in Portland. While the Committee has done excellent work revising the current rules applicable to the procedures for designation as a historic district, I would suggest the following:

1. Clarification of ownership of trusts. Mr. Blum, perhaps others, as well, has pointed out correctly that there is some confusion in the rules about the owner of a trust, with some provisions indicating the 'trust' is the owner and others indicating the settlor or the trustee, depending on whether the trust is revocable or irrevocable. This begs the question of whether there is any trust at all, that is, whether or not the trust is even valid and entitled to be counted.

Although the rules include the requirement that a trust as owner of a fee simple interest be listed in the property tax records, this is not enough to avoid gaming the process as shown by what happened recently with the Eastmoreland nomination. There, 5000 trusts (based on four lots) were duly listed as separate entities in the tax records (although I think it is unlikely that the city sent out 5,000 tax bills), cast ballots, and were counted by SHPO as 5000 separate votes. This was patently incorrect. The controlling law is unambiguous. Oregon has adopted Uniform Trust Code Provision 404 which states that '(a) *trust may be created only to the extent the purposes of the trust are lawful, not contrary to public policy and possible to achieve.*' The Eastmoreland 5000 (since reduced to 2000), created for the sole purpose of interfering with the proper administration of a government program, were and are clearly against public policy, if not explicitly unlawful. Accordingly, the rules should include a mechanism for SHPO to impose a requirement that any trust participating in the designation process be a legitimate trust created for purposes other than creating mischief and disruption.

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Ms. McCurdy, writing for the 1000 Friends of Oregon proposes that *'a local elected body have the final decision-making authority on whether a privately nominated structure or structures should proceed (sic) forward.'* This is necessary, among other reasons, she asserts, because the National Register can '(p)erpetuate institutionalized racism' as awarding historic designation to large residential neighborhoods restricts the stock of affordable housing and gives current credence to restrictive covenants established more than a century ago and long since put to rest.

Ms. McCurdy should know better. She lives in Eastmoreland and should be aware of the great diversity of housing stock, from modest bungalows to 'mansions'. Parenthetically, she should know that recent rebuilds have replaced middle range homes on single lot each with two 'skinnies' completely out of character with the rest of the neighborhood and selling for around \$1.25 million each. This is neither affordable nor multi-family housing. This is the kind of development those of us supporting the Historic District seek to prevent and what we believe is funding the opposition— Keep Eastmoreland Free) Further, her charge of 'racism' is laughable. Black Lives Matter signs are prevalent throughout the neighborhood and every tree on Reed College Place bears a sign with the name of a black person who died in wrongful circumstances. Further I am told that a number of my Eastmoreland neighbors joined the protesters and participated in the Wall of Moms. This does not sound like a 'racist' place. The views of the 1000 Friends have no place at this table and I would request the committee to ignore them.

3. Conclusion. Eastmoreland has waited long enough. It is time to put aside the cheating and the red herrings and for our nomination for historic status go forward.

Thank you for taking the time to review my testimony.

<TestimonyWord.docx>

MARSHALL Janelle * OPRD

From: Marlene Burns <marlene@jmline.com>
Sent: Monday, August 10, 2020 9:44 AM
To: PUBLICCOMMENT * OPRD
Subject: Proposed National Register State Rules

My name is Marlene Burns. I am a resident in the Eastmoreland neighborhood in Portland, Oregon and concerned about what has been the difficult progress of the application for establishment of the Eastmoreland Historic District.

I am in support of National-Register registration of the Eastmoreland Historic District and offer the comments below for your consideration regarding your work in the ultimate adoption of newly proposed National Register State Rules.

1. PLEASE WORK TO IMPROVE IN THESE RULES THE DEFINITION OF "OWNER", especially as this term pertains to trusts. The currently proposed rules create ambiguity regarding whether trusts are treated as owners and allowed to object or whether it is the trustee or settlor of a trust who is counted. Eastmoreland still has 2,000 sham trusts. If they can object this will again improperly influence the outcome of the nomination.

2. PLEASE ACT AS BEST YOU CAN (IN YOUR RULE-DECISION-MAKING) TO BLOCK CHEATING. Disturbing past history in this Historic District process has involved the fact that certain opponents of the Eastmoreland Historic District, opponents apparently motivated by considerable unfairness, have repeatedly taken steps to ensure that the Historic District nomination is not approved by the NPS. They have done this (a) through generating thousands of blatantly sham trusts, (b) through pressure-coercing neighbors to think negatively about the District, and (c), perhaps among other things, through presenting numerous unsubstantiated negative-focused statements to the NPS. These sham-obsessed opponents will almost certainly continue to look for tactics to deny Eastmoreland's listing on the National Register, notwithstanding the now obvious condition that there is not a majority who object to the Historic District. In fact, there is a clear properly voting majority which is plainly in favor of establishment of the Historic District.

3. The Eastmoreland Historic District nomination process began about four years ago and remains in limbo. If, and when, new rules are adopted, please proceed quickly with the Eastmoreland's Nomination.

Thank you

Marlene J Burns

MARSHALL Janelle * OPRD

From: Jon Dickinson <jon@jmlne.com>
Sent: Monday, August 10, 2020 8:44 AM
To: PUBLICCOMMENT * OPRD
Subject: Proposed National Register State Rules

My name is Jon Dickinson, and I am a resident in the Eastmoreland neighborhood in Portland, Oregon who is concerned about what has been the difficult progress of the application for establishment of the Eastmoreland Historic District..

I am in support of National-Register registration of the Eastmoreland Historic District, and am offering several comments below for your consideration in relation to your work regarding (the ultimate) adoption of newly proposed National Register State Rules.

1. PLEASE WORK TO IMPROVE IN THESE RULES THE DEFINITION OF "OWNER", especially as this term pertains to trusts. The currently proposed rules, in my view, create ambiguity regarding whether trusts are treated as owners and allowed to object, or whether it is the trustee or settlor of a trust who is counted. Eastmoreland still has 2,000 sham trusts, and if they are allowed to object, this will again improperly influence the outcome of the nomination.

2. PLEASE ACT AS BEST YOU CAN (IN YOUR RULE-DECISION-MAKING) TO BLOCK CHEATING. Disturbing, and very sad, past history in this Historic District process has involved the fact that certain opponents of the Eastmoreland Historic District -- opponents apparently motivated by considerable unfairness -- have repeatedly taken steps to ensure that the Historic District nomination is not approved by the NPS. They have done this (a) through generating thousands of blatantly sham trusts, (b) through pressure-coercing neighbors to think negatively about the District, and (c), perhaps among other things, through presenting numerous unsubstantiated, negative-focused statements to the NPS. These sham-obsessed opponents will almost certainly continue to look for tactics to deny Eastmoreland's listing on the National Register, notwithstanding the now obvious condition that **THERE IS NOT A MAJORITY** who object to the Historic District. **In fact, there is a clear, properly voting majority which is plainly in favor of establishment of the Historic District.**

3. The Eastmoreland Historic District nomination process began about four years ago and, unhappily, remains in limbo. If, and when, new rules are adopted, PLEASE PROCEED QUICKLY WITH EASTMORELAND'S NOMINATION.

Thank you for your work.

Jon Dickinson

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Tuesday, August 11, 2020 10:19 PM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	Jeff
Last Name	Frkonja
Email	frkonjaj@gmail.com
Public Comment	<p>Dear State Advisory Committee on Historic Preservation: I write you to request that you please change the rules under 736-050-0250 "State Advisory Committee on Historic Preservation: Staff Activities Relating to the National Register Program." Rule (12) as currently written will perpetuate the biased and undemocratic system that requires property owners objecting to historic designation to submit notarized documents. This places an unfair and onerous burden upon objectors and clearly biases the nomination process towards designation. First, I ask you to please alter Rule (12) to read as follows: (12) The SHPO must determine if the majority of owner(s) object to listing a nominated historic resource in the National Register by submitting the question to all owners identified on the property list via a ballot during the next regularly-scheduled election in the district(s) in question. The ballot question wording shall clearly identify the boundaries of the proposed district. SHPO shall work with the appropriate county election authorities to create ballots specifically for the property owners in the proposed historic district. If a majority of voting owners vote "yes" to the designation then SHPO may forward the nomination to the National Register. If a majority of voting owners vote "no" to the designation then SHPO shall cease the nomination process. In either case SHPO will notify all property owners of the outcome of the election. Second, I ask you to strike all other references to "notarized" documents regarding the nomination process from the rules, except for submissions of fact to establish property ownership and other matters of legal standing. Finally, I will conclude by pointing out that much of the brouhaha in the City of Portland that motivated this new round of rulemaking would not have occurred if a simple, transparent, and democratic process had been in place all along. Providing that a simple majority vote of legitimate property owners determines the fate of historic designation will save SHPO and the citizens of Oregon much time and controversy. The shenanigans committed by BOTH sides of the nomination process in parts of Portland recently have been ludicrous, true, but that is largely because the old rules provided a totally biased process. Mark my words: if you leave the notarization provision IN the new rules you will simply convince one set of stakeholders that SHPO is hopelessly biased, leading to a further erosion of trust in government and increasingly bizarre efforts to overcome that bias. Regards, Jeff Frkonja</p>

Submission ID: 9f1a7713-02cc-4f15-a82b-e8d33aab7be4

Record ID: 125

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Tuesday, August 11, 2020 12:40 PM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	Ralph
Last Name	Bodenner
Email	rkbodenner@gmail.com
Public Comment	<p>Oregon uniquely links National Register historic status to a set of land use regulations determined by local governments. This practice has led to unintended consequences, where a few determined parties can do an end-run around the democratic process and enact land use changes that normally are the domain of elected officials, public process, and affirmative consent. I'm pleased to see the recent draft rule changes would give certified local governments (CLGs) power to consider the land use impacts of an historical district nomination before it can proceed to the federal level, where the National Park Service regulations explicitly do not consider any local regulatory effect of the nomination. As we have seen with the Eastmoreland historic district nomination, the existing rules allow a small group of powerful interests to advance a land use agenda divorced from democratic accountability or inclusiveness. Such interests can imaginatively insist that a property owner is in favor of land use regulations attached to historic district designation if they do not submit an onerous and expensive objection. The best rule change would be to require affirmative consent for an historical district nomination. No other democratic decision-making process I can think of in this country just assumes everyone wants a change in law or regulation to happen. At present, historic district nomination disenfranchises property owners, which has the effect of concentrating power with the people who already have it. In Oregon, this amounts to giving up local democratic control over land use decisions. But the State does not appear to intend to address this incredible loophole directly, since it is the federal government's process that throws affirmative consent out the window. Since the State's goal is to bring local rules in line with the federal government's process, the second-best solution would be to allow local governments to inject democracy into the proceedings.</p>

Submission ID: ba8865a8-49c9-4164-8ab7-fb0f2da074f5

Record ID: 124

MARSHALL Janelle * OPRD

From: Sarah Bland <sarahabland@yahoo.com>
Sent: Tuesday, August 11, 2020 11:17 AM
To: PUBLICCOMMENT * OPRD
Subject: Eastmoreland Historic District

To SHPO;

The definition of "Owner" is still ambiguous--

Please take more time to improve the definition of owner, especially as it pertains to trusts. The proposed rules have created some ambiguity and are not clear whether trusts are treated as owners and allowed to object, or whether it is the trustee or settlor of the trust who is counted. Eastmoreland still has 2,000 sham trusts and if they are allowed to object, will again influence the outcome of the nomination.

Please prevent cheating--

Opponents of the Eastmoreland Historic District have, time and again, taken steps to ensure that the historic district nomination is not approved by the NPS. From generating thousands of sham trusts, to coercing neighbors, to submitting volumes of unsubstantiated statements to the NPS, these opponents will certainly look for other loopholes or tactics to deny Eastmoreland's listing on the National Register. It is now quite obvious that there is not a majority who object to the historic district, but a few ringleaders who continue to use unethical means to deny the majority.

Please keep politics out of the process--

The proposed rules allow the Certified Local Government (CLG) a means to prevent a nomination from advancing, but only if the local landmarks commission agrees. And even if that happens, anyone can appeal to ensure that a nomination can advance to the NPS. The proposed rule is good, however special interest group 1,000 Friends of Oregon is pushing hard to inject politics into the process. They know that they can likely convince the CLG to object to nominations which is why they are pushing to have the other checks and balances (landmarks commission and appeal options) removed.. Please do not give into them.

Please "Proceed with Eastmoreland". The Eastmoreland district nomination began about 4 years ago and remains in limbo. If, and when, the new rules are adopted, please proceed quickly with Eastmoreland's nomination.

Thank you.

Sarah A. Bland
3109 SE Bybee Blvd,
Portland, OR, 97202

MARSHALL Janelle * OPRD

From: Bruce and Sally Williams <bandswilliams@comcast.net>
Sent: Wednesday, August 12, 2020 4:50 PM
To: PUBLICCOMMENT * OPRD
Subject: Comments on Proposed Rules related to Historic Districts

Thank you for the opportunity to comment on the proposed rules related to creation of Historic Districts.

By way of background, we are 30 year residents of Eastmoreland. We have raised a family in our neighborhood house, know our neighbors, schools and nearby businesses and enjoy the neighborhood that we all treasure.

We feel the rules need to be clarified as clearly shown by the lengthy and tumultuous process that the Eastmoreland application has gone through for the past 4+ years. In addition, the Eastmoreland vote was tarnished by the creation of multiple-thousand sham trusts that served no purpose other than stuffing the ballot box while the ultimate ownership and control of the subject properties did not change. It has been clear that there is not a majority of the Eastmoreland residents who oppose the creation of a Historic District.

For these reasons and many others the rules need to be clarified to avoid a continuation of those in the minority who seek to game the process and desire to rig the outcome of future votes.

Here are several key suggestions:

Definition of "Owner" is Still Ambiguous -- Please take more time to improve the definition of owner, especially as it pertains to trusts. The proposed rules have created some ambiguity and are not clear whether trusts are treated as owners and allowed to object, or whether it is the trustee or settlor of the trust who is counted. Eastmoreland still has 2,000 sham trusts and if they are allowed to object, will again influence the outcome of the nomination. (Of interest is that the small handful of homeowners who created 3,000 sham trusts to stuff the ballot box have now either left the neighborhood or unwound their trusts.) Consider strongly one vote for each property. Why does it matter how many owners (or trusts and other entities) that hold title to a single property. All parcels should be treated equally and given one vote.

Keep politics out of the process. Make it about the worthiness of the application. The proposed rules allow the Certified Local Government (CLG) a means to prevent a nomination from advancing, but only if the local landmarks commission agrees. And even if that happens, anyone can appeal to ensure that a nomination can advance to the NPS. The proposed rule is good, but special interest groups such as 1,000 Friends of Oregon are pushing hard to inject politics into the process. These groups know they can likely convince the CLG to object to nominations which is why they are pushing to have the other checks and balances (such as landmark commissions and appeal options) removed. Please listen to the citizens and homeowners and not the special interest groups. Do not give in to these entities as they seek to change the proposed rules to expedite their desired political outcomes.

Please proceed with the Eastmoreland historic district nomination. The process has been underway over four years and remains mired in doubt and uncertainty created by a small number of people who use unethical means to slow and make incredibly difficult the creation of the Eastmoreland historic district. Not surprisingly a number of this small group of obstructionists consist of real estate related interests who are short-term and transactionally motivated in contrast with the more long-term residents of the neighborhood who desire the historic district.

Thank you for your consideration and the opportunity to comment.

Respectfully,

Sally and Bruce Williams
Eastmoreland
Portland, Oregon

MARSHALL Janelle * OPRD

From: Frances Zeman <fran.zasa@gmail.com>
Sent: Wednesday, August 12, 2020 9:24 AM
To: PUBLICCOMMENT * OPRD
Subject: Public Comments - SHPO proposed Rule Changes
Attachments: EastmorelandHDTR.docx; EastmorelandHDFZ.docx

Good Morning:

Attached please find my comments and those of my husband regarding the above. We are both residents of Eastmoreland and owners at 3035 SE Martins Street. We have been dismayed (along with a majority of other residents) at the ability of individuals who set up 5,000 "ownership" trusts to manipulate, delay and frustrate moving ahead with the process for the area to be given historic district classification. Many are still attempting to thwart advancing the process.

Thank you for your attention to this matter and do let us know if you need anything else.

Frances Zeman
Ted Rothestein

--

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August 10, 2020
3035 SE Martins Street
Portland, OR 97202

To Whom it may Concern:

We have been mired in several unpleasant issues concerning the Eastmoreland Historic District for many years. I have reviewed the proposed changes made and still have certain concerns regarding some still ambiguous terminology that I hope you can address. Examples follow:

1. Definition of "Owner" is Still Ambiguous -- Please take more time to improve the definition of owner, especially as it pertains to trusts. The proposed rules have created some ambiguity and are not clear whether trusts are treated as owners and allowed to object, or whether it is the trustee or settlor of the trust who is counted. Eastmoreland still has 2,000 sham trusts and if they are allowed to object, will again influence the outcome of the nomination.
2. Prevent Cheating -- Opponents of the Eastmoreland Historic District have, time and again, taken steps to ensure that the historic district nomination is not approved by the NPS. From generating thousands of sham trusts, to coercing neighbors, to submitting volumes of unsubstantiated statements to the NPS, these opponents will certainly look for other loopholes or tactics to deny Eastmoreland's listing on the National Register. It is now quite obvious that there is not a majority who object to the historic district, but a few ringleaders continue to use unethical means to deny the majority.
3. Keep Politics out of the process -- The proposed rules allow the Certified Local Government (CLG) a means to prevent a nomination from advancing, but only if the local landmarks commission agrees. And even if that happens, anyone can appeal to ensure that a nomination can advance to the NPS. The proposed rule is good, however special interest group 1,000 Friends of Oregon is pushing hard to inject politics into the process. They know that they can likely convince the CLG to object to nominations which is why they are pushing to have the other checks and balances (landmarks commission and appeal options) removed. Please do not give into them.
4. Proceed with Eastmoreland -- The Eastmoreland historic district nomination began about 4 years ago and remains in limbo. If, and when, the new rules are adopted, please proceed quickly with Eastmoreland's nomination.

Thank you for your kind attention,

Ted Rothstein, Owner

August 10, 2020
3035 SE Martins Street
Portland, OR 97202

To Whom it may Concern:

We have been mired in several unpleasant issues concerning the Eastmoreland Historic District for many years. I have reviewed the proposed changes made and still have certain concerns regarding some still ambiguous terminology that I hope you can address. Examples follow:

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2. Prevent Cheating -- Opponents of the Eastmoreland Historic District have, time and again, taken steps to ensure that the historic district nomination is not approved by the NPS. From generating thousands of sham trusts, to coercing neighbors, to submitting volumes of unsubstantiated statements to the NPS, these opponents will certainly look for other loopholes or tactics to deny Eastmoreland's listing on the National Register. It is now quite obvious that there is not a majority who object to the historic district, but a few ringleaders continue to use unethical means to deny the majority.
3. Keep Politics out of the process -- The proposed rules allow the Certified Local Government (CLG) a means to prevent a nomination from advancing, but only if the local landmarks commission agrees. And even if that happens, anyone can appeal to ensure that a nomination can advance to the NPS. The proposed rule is good, however special interest group 1,000 Friends of Oregon is pushing hard to inject politics into the process. They know that they can likely convince the CLG to object to nominations which is why they are pushing to have the other checks and balances (landmarks commission and appeal options) removed. Please do not give into them.
4. Proceed with Eastmoreland -- The Eastmoreland historic district nomination began about 4 years ago and remains in limbo. If, and when, the new rules are adopted, please proceed quickly with Eastmoreland's nomination.

Thank you for your kind attention,

Frances Zeman, Owner

MARSHALL Janelle * OPRD

From: JOHNSON Ian * OPRD
Sent: Wednesday, August 12, 2020 1:21 PM
To: PUBLICCOMMENT * OPRD
Subject: FW: National Register Rulemaking Comment extended & NAPC debrief scheduled



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division
State Historic Preservation Office
Desk: 503.986.0678 cell: 971.718.1137

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From: GILL Kuri * OPRD
Sent: Monday, August 10, 2020 12:36 PM
To: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>
Subject: FW: National Register Rulemaking Comment extended & NAPC debrief scheduled

FYI

From: Heidi Kennedy <hkennedy@bendoregon.gov>
Sent: Monday, August 10, 2020 12:23 PM
To: GILL Kuri * OPRD <Kuri.Gill@oregon.gov>
Subject: RE: National Register Rulemaking Comment extended & NAPC debrief scheduled

We discussed at our last Landmarks Commission meeting and are neutral on the language changes. Thanks heidi



CITY OF BEND

Heidi Kennedy AICP | Senior Planner
O: 541-617-4524 | M: hkennedy@bendoregon.gov
www.bendoregon.gov



Due to COVID-19, the Bend City Hall, including the Permit Center, will be closed starting March 19, 2020. The latest information regarding our operations and contact information will be shown on the Community Development Department webpage. If you need general assistance, please email planning@bendoregon.gov or call 541-388-5580 Ext. 3. To make payments, call 541-323-8551. We appreciate your support and understanding

From: Pres_cmsn <pres_cmsn-bounces@omls.oregon.gov> **On Behalf Of** GILL Kuri * OPRD via Pres_cmsn
Sent: Wednesday, August 5, 2020 7:45 AM
To: CLG & Commission Listserv <pres_cmsn@listsmart.osl.state.or.us>
Subject: [Pres_cmsn] National Register Rulemaking Comment extended & NAPC debrief scheduled

National Register Process Rulemaking

Yes you have seen this. We would appreciate comment for, neutral, or against any of the points.

Why should you review these rules?

- CLGs are required to comment on National Register nominations.
- If you want to list properties in the National Register of Historic Places.
- If local governments want to object to a nomination.

What areas might be of interest?

- Definition of owner- is the definition clear and do the rules provide adequate direction in this area.
Reference: OAR 736-050-0230(16).
- CLG review and comment requirements – are these clear and manageable as a CLG?
Reference: [Definition of public comment period, OAR 736-050-0230(19)]; [Public comment period, OAR 736-050-0250(8) and (9)]; [CLG opportunity to waive comment opportunity, OAR 736-050-0260(4)]
- Objections to nominations – are the rules clear and do they provide enough direction to manage the process?
Reference: [SHPO determination of number of objections, OAR 736-050-0250(12)]; [CLG objection process, OAR 736-050-0250(10)]
- National Register nomination staff and committee review – do the rules provide enough clarity to understand why a nomination may require revision or be rejected?
Reference: [Definition for substantive revision, OAR 736-050-0230(21)]; [OAR 736-050-0260(2), (11), and (12)]

What should you share?

- Do these rules create barriers for local properties to be listed? If so, in what way?
- Do the rules provide clear boundaries for the process?
- Do the rules provide clear points of participation for your organization?

OPRD will accept public comments on the proposed changes through 5 p.m. Aug. 31, 2020. Comments can be made online, in writing or via email:

- Online: oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx
- In writing: Oregon Parks and Recreation Department, attn. Katie Gauthier, 725 Summer St NE, Suite C, Salem OR 97301
- Email: OPRD.publiccomment@oregon.gov
- Informational, online webinar to discuss potential impacts of proposed rules on local governments, communities and federally-recognized Native American tribes. The webinar is set for 10-11:30 a.m. Aug. 18. Register at oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx.

After reviewing public comments, OPRD staff plan to present a final recommended rule for consideration to the Oregon State Parks and Recreation Commission.

The full text of the proposed change is available online: oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx.

Properties listed in the National Register are:

- Recognized as significant to the nation, state or community;
- Considered in the planning of federal or federally assisted projects;
- Eligible for federal and state tax benefits;
- Eligible for historic preservation grants when funds are available;
- Eligible for leniency in meeting certain building code requirements.

National Register listing does not place any restrictions on a property at the federal level, unless property owners choose to participate in tax benefit or grant programs. State law requires local governments to review the demolition or

relocation of all properties listed in the National Register at a public hearing, and allows local governments to add additional regulations following a formal public process. Learn more about the National Register of Historic Places program in Oregon at oregon.gov/oprd/OH/pages/national-register.aspx.

NAPC Debrief

Let's have an informal chat about what we learned at the conference, what we want more on, etc. Anyone can come, even if you didn't "attend" the forum.

NAPC Forum De-Brief

Thu, Aug 13, 2020 9:00 AM - 10:30 AM (PDT)

Please join my meeting from your computer, tablet or smartphone.

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Kuri Gill (she, her, hers) | Oregon Heritage Grants & Outreach Coordinator

Oregon Heritage, Oregon Parks and Recreation Department

Oregon Commission on Historic Cemeteries

Desk: (503)986-0685 cell: (503)383-6787

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MARSHALL Janelle * OPRD

From: JOHNSON Ian * OPRD
Sent: Wednesday, August 12, 2020 1:29 PM
To: Beth Warner; PUBLICCOMMENT * OPRD
Subject: RE: Public comments extended for national register program

Beth,

Thanks for your comment. OPRD extended the comment period to specifically reach out to cities and counties and federally-recognized tribes, but also to provide further opportunity for those living outside of the Portland metro area to participate. The agency still expects to bring a draft rule to the Oregon Parks Commission for their November meeting.

Thanks.

Ian



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division
State Historic Preservation Office
Desk: 503.986.0678 cell: 971.718.1137

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From: Beth Warner <beth.warner48@comcast.net>
Sent: Wednesday, August 5, 2020 2:40 PM
To: PUBLICCOMMENT * OPRD <OPRD.Publiccomment@oregon.gov>
Cc: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>
Subject: RE: Public comments extended for national register program

I would like to present testimony regarding the extension of the public comment period for the Rule Advisory Committee's updates to the Oregon National Register Program.

The extension and the addition of the fourth webinar for public testimony are totally unnecessary. On July 1st, an email was sent from the ORPD announcing that the public comment period for testimony on the rule changes was open, and the ORPD would be accepting testimony until August 14th. There were multiple ways to present testimony: via mail, via email or orally at two virtual webinars on July 23rd. On July 17th, a news release was sent out stating that the public comment period for rule changes was open until August 14th and once again the ways to present testimony were listed and a **third** webinar was slated for July 28th.

Then, on August 4th, a news release was sent out stating that the public comment period has been extended to August 31st and a **fourth** virtual webinar session was added for August 18th.

I have attended all of the webinar sessions and have presented testimony at the session on July 28th. The sessions were not well attended nor has there been a great deal of written testimony presented. Perhaps citizens aren't interested? What is the rationale behind extending the date and adding an additional session? I would like to know. There has been plenty of time for citizens to testify, both virtually or in writing. There is no need for an extension as it once again prolongs the rule making process that was established.

I realize the pandemic has altered the original public comment plans. But, SHPO responded to the pandemic and the changes in plans responsibly and in a timely manner. Now, you are changing the rules once again? Why?

To begin with, the changing of rules for a national register nomination in the past has created the necessity for the rule making process. In the case of the Eastmoreland nomination, only one vote was allowed for trusts; then all trusts were counted which led to the formation of 5,000 illusory or sham trusts; then no trusts were allowed. Rules are rules, a process is a process, and the goal post cannot continue to be moved when the majority of citizens are abiding by the stated rules.

Respectfully submitted,

Beth Warner
Eastmoreland Resident

From: PUBLICCOMMENT * OPRD [<mailto:OPRD.Publiccomment@oregon.gov>]
Sent: Tuesday, August 04, 2020 4:14 PM
To: GAUTHIER Katie * OPRD
Subject: Public comments extended for national register program

PUBLIC COMMENTS EXTENDED THROUGH AUG. 31 FOR UPDATES TO STATE RULES FOR NATIONAL REGISTER PROGRAM

News Release from **Oregon Parks and Recreation Dept.**
Posted on FlashAlert: August 4th, 2020 3:30 PM

Oregon Parks and Recreation Department (OPRD) is extending the date to accept public comments on proposed changes to rules governing how the state protects important historical places until 5 p.m. Aug. 31, 2020. The extension comes with a new opportunity on Aug. 18 for local and tribal governments to learn more about the proposed rules and comment on them.

The state is proposing updates to the Oregon Administrative Rules that govern how the state administers the federal National Register of Historic Places Program, which lists buildings, districts and other sites important to local, state or national history. The Oregon State Historic Preservation Office (SHPO) — an office of OPRD — administers the local program, which is run by the National Park Service.

In Oregon, 2,065 properties — including 133 historic districts located across the state's 36 counties and representing many aspects of the state's rich history — are now listed in the National Register.

In the last several years, several high-profile, controversial nominations exposed problems with the National Register process, including determining owner consent and public involvement. Proposed changes seek to establish a fair and transparent process in alignment with federal requirements.

In addition to extending the comment period, OPRD will have an informational webinar at 10 a.m. Aug. 18 for government staff and leaders to learn more about the proposed rules and potential impact on communities, local governments and tribes. The webinar will be open to the public and end with an opportunity to provide public comment. Register to attend at oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx.

“Local governments and Native American tribes are a critical partner in the national register program,” said Ian Johnson, associate deputy state historic preservation officer.

The Oregon SHPO provides local governments participating in the federal Certified Local Government (CLG) Program grants to list properties in the federal National Register of Historic Places. Using SHPO grant funds, the City of Jacksonville listed the Britt Gardens and the City of Gresham listed the Roy E. and Hildur L. Amundesen House in the National Register.

Local governments may comment on National Register nominations. Local governments participating in the CLG program may object to a nomination, ending the nomination process unless appealed. The revised rule includes updated procedures for hearing notifications, including specific provisions to notify CLGs, as well as a provision that allows the SHPO to coordinate outreach efforts with local governments. The revised rule also now includes provisions for comments from Oregon’s nine federally-recognized Native American tribes.

OPRD will accept public comments on the proposed changes through 5 p.m. Aug. 31, 2020. Comments can be made online, in writing or via email:

- Online: oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx
- In writing: Oregon Parks and Recreation Department, attn. Katie Gauthier, 725 Summer St NE, Suite C, Salem OR 97301
- Email: OPRD.publiccomment@oregon.gov
- Informational, online webinar to discuss potential impacts of proposed rules on local governments, communities and federally-recognized Native American tribes. The webinar is set for 10-11:30 a.m. Aug. 18. Register at oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx.

After reviewing public comments, OPRD staff plan to present a final recommended rule for consideration to the Oregon State Parks and Recreation Commission.

The full text of the proposed change is available online: oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx

Properties listed in the National Register are:

- Recognized as significant to the nation, state or community;
- Considered in the planning of federal or federally assisted projects;
- Eligible for federal and state tax benefits;
- Eligible for historic preservation grants when funds are available;
- Eligible for leniency in meeting certain building code requirements.

National Register listing does not place any restrictions on a property at the federal level, unless property owners choose to participate in tax benefit or grant programs. State law requires local governments to review the demolition or relocation of all properties listed in the National Register at a public hearing, and allows local governments to add additional regulations following a formal public process. Learn more about the National Register of Historic Places program in Oregon at oregon.gov/oprd/OH/pages/national-register.aspx.



Katie Gauthier | Government Relations and Policy Manager

Oregon Parks and Recreation Department

503.510.9678

Telework 8-4:30 M-F

she/her/hers



This email has been checked for viruses by Avast antivirus software.
www.avast.com

MARSHALL Janelle * OPRD

From: Ellen Fitchen <efd@easystreet.net>
Sent: Wednesday, August 12, 2020 5:44 PM
To: PUBLICCOMMENT * OPRD
Subject: Eastmoreland Historic Designation

Please SHPO,

Thankfully, there have been some revisions to the rules governing the felonious trusts attempted by a minority of our neighbors. It is astounding to me that our proposal has brought so much controversy and delay when the vote was clearly in favor of our historic designation from the beginning. And that vote should absolutely be honored. It is only the extraordinary and frankly illegal and coercive shenanigans of very prejudicial groups like 1000 Friends, which had their leaders not been residents of Eastmoreland we would have had a smooth path to approval like Laurelhurst had most recently. 1000 have made our application into a political football and not a local neighborhood decision.

I have been an Eastmoreland resident for 38 years. I am not a racist. I believe humans deserve shelter and a life with hope for a future. I am not a NIMBY and deeply resent the slur. I believe our city's architectural history has value to future generations and should be honored and preserved.

Respectfully,
Ellen Fitchen
6920 SE 28th Avenue
Portland, Oregon 97202

MARSHALL Janelle * OPRD

From: sternarc@comcast.net
Sent: Wednesday, August 12, 2020 5:54 PM
To: PUBLICCOMMENT * OPRD
Subject: Comments on Proposed National Register State rules

My name is Bruce Sternberg and I am a resident of the Eastmoreland neighborhood in Portland. I have the following comments of the proposed rule changes by the RAC.

1. Definition of an Owner.
Members of a trust should not be considered as Owners capable of voting against NPS historic district nomination. A trust should have 1 vote only. The present language is not clear regarding this issue.
2. Not letting cheating stop the nomination process.
Provide swift mechanisms to determine cheating and insure that, if cheating occurs, there are swift measures to deal with it in a way that does not unduly delay or stop the nomination process.
3. Keep Politics out of the process.
Giving the power of the CLG to stop the nomination process only when the Landmark's commission opposes the nomination is good. Do not allow other bodies in the CLG to affect the nomination process.
4. Proceed quickly with the Eastmoreland nomination once the new rules are adopted.

Bruce Sternberg
7134 Se 34 Ave
Portland OR.

MARSHALL Janelle * OPRD

From: gary.scrivens@daimler.com
Sent: Wednesday, August 12, 2020 9:12 PM
To: PUBLICCOMMENT * OPRD
Subject: FW: Public comments for rules regarding historic district nominations

Dear SHPO and the State of Oregon,

Although my comments are not entirely written by me, they are my opinion, comments and statement:

*** Definition of "Owner" is Still Ambiguous** -- Please take more time to improve the definition of owner, especially as it pertains to trusts. The proposed rules have created some ambiguity and are not clear whether trusts are treated as owners and allowed to object, or whether it is the trustee or settlor of the trust who is counted. Eastmoreland still has 2,000 sham trusts and if they are allowed to object, will again influence the outcome of the nomination. One Vote per owner.

*** Prevent Cheating** -- Opponents of the Eastmoreland Historic District have, time and again, taken steps to ensure that the historic district nomination is not approved by the NPS. From generating thousands of sham trusts, to coercing neighbors, to submitting volumes of unsubstantiated statements to the NPS, these opponents will certainly look for other loopholes or tactics to deny Eastmoreland's listing on the National Register. It is now quite obvious that there is not a majority who object to the historic district, but a few VERY vocal ring leaders continue to use unethical means to deny the majority.

*** Keep Politics out of the process** -- The proposed rules allow the Certified Local Government (CLG) a means to prevent a nomination from advancing, but only if the local landmarks commission agrees. And even if that happens, anyone can appeal to ensure that a nomination can advance to the NPS. The proposed rule is good, however special interest group 1,000 Friends of Oregon is pushing hard to inject politics into the process. They know that they can likely convince the CLG to object to nominations which is why they are pushing to have the other checks and balances (landmarks commission and appeal options) removed. Please do not give into them.

I feel that there is a conflict of interest with 1,000 Friends of Oregon having a significant voice, The Deputy Director of that organization lives in Eastmoreland and remains in strong opposition against Historic Districts. It is a significant conflict of interest and should be questioned.

*** Proceed with Eastmoreland** -- The Eastmoreland historic district nomination began about 4 years ago and remains in limbo. If, and when, the new rules are adopted, please proceed quickly with Eastmoreland's nomination.

Thank you for your consideration,

Gary D. Scrivens

7700 SE 30th Avenue
Portland, OR 97202
(503) 777-9078

If you are not the addressee, please inform us immediately that you have received this e-mail by mistake, and delete it.
We thank you for your support.

MARSHALL Janelle * OPRD

From: Rochelle Scrivens <gscriv@aol.com>
Sent: Wednesday, August 12, 2020 8:08 PM
To: PUBLICCOMMENT * OPRD
Subject: Public comments for rules regarding historic district nominations

Dear SHPO and the State of Oregon,

Although my comments are not entirely written by me, they are my opinion, comments and statement:

*** Definition of "Owner" is Still Ambiguous** -- Please take more time to improve the definition of owner, especially as it pertains to trusts. The proposed rules have created some ambiguity and are not clear whether trusts are treated as owners and allowed to object, or whether it is the trustee or settlor of the trust who is counted. Eastmoreland still has 2,000 sham trusts and if they are allowed to object, will again influence the outcome of the nomination. One Vote per owner.

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I feel that there is a conflict of interest with 1,000 Friends of Oregon having a significant voice, The Deputy Director of that organization lives in Eastmoreland and remains in strong opposition against Historic Districts. It is a significant conflict of interest and should be questioned.

*** Proceed with Eastmoreland** -- The Eastmoreland historic district nomination began about 4 years ago and remains in limbo. If, and when, the new rules are adopted, please proceed quickly with Eastmoreland's nomination.

Thank

Rochelle Scrivens
7700 SE 30th Avenue
Portland, OR 97202
(503) 777-9078

MARSHALL Janelle * OPRD

From: GAUTHIER Katie * OPRD
Sent: Thursday, August 13, 2020 2:50 PM
To: PUBLICCOMMENT * OPRD
Subject: FW: Comment: Revising state rules for National Register of Historic Places program in Oregon
Attachments: 20200813 Comment to OPRD.pdf

From: Morales, Nathan (Perkins Coie) <NMorales@perkinscoie.com>
Sent: Thursday, August 13, 2020 2:50 PM
To: GAUTHIER Katie * OPRD <Katie.Gauthier@oregon.gov>
Cc: Tom Brown <sellwoodbrown@gmail.com>
Subject: Comment: Revising state rules for National Register of Historic Places program in Oregon

Ms. Gauthier,

Please see the attached comment regarding the above-captioned Notice of Proposed Rulemaking. We also are mailing a hard copy to you at the address in the notice. If you have any questions, please feel free to contact me directly. Thank you.

Nathan Morales | Perkins Coie LLP
LITIGATION & APPELLATE ATTORNEY
1120 N.W. Couch Street Tenth Floor
Portland, OR 97209-4128
D. +1.503.727.2187
E. NMorales@perkinscoie.com

PERKINScoie



NOTICE: This communication may contain privileged or other confidential information. If you have received it in error, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

August 13, 2020

Nathan R. Morales
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F. +1.503.346.2187

VIA E-MAIL AND U.S. MAIL

Katie Gauthier, Rules Coordinator
Oregon Parks and Recreation Department
725 Summer St. NE
Salem, OR 97301
katie.gauthier@oregon.gov
(503)510-9678

Re: Revising state rules for National Register of Historic Places program in Oregon

Dear Ms. Gauthier:

I represent Tom Brown, a property owner in the Eastmoreland neighborhood of Portland, Oregon. On behalf of Mr. Brown, we respectfully submit the following comments to the Oregon Parks and Recreation Department, concerning the recent Notice of Proposed Rulemaking for state rules for the National Register of Historic Place program in Oregon. Please feel free to contact me directly if you have any questions related to this comment.

INTRODUCTION

In response to the national outcry and local pressures, in June 2020, Oregon lawmakers declared that Black Lives Matter in several pieces of critical legislation.¹ Although those measures are a good starting point to address issues of police brutality and overt manifestations of racism, bigotry, and hate, the State also must continue to struggle with the covert manifestations of bigotry baked into our institutions. In the spirit of encouraging all those in power to be thoughtful and intentional when employing their power, this comment encourages the Oregon Parks and Recreation Department (OPRD) to act in this critical moment to be more inclusive.

Historical preservation plays an important role in our society, but it is critical that historical preservation does not become a tool to exclude and disenfranchise marginalized populations. Though the act of preserving historic homes, districts, and other locations is commendable, OPRD should include provisions in this rulemaking that explicitly require OPRD, the State Historic Preservation Office(r) (SHPO), and the State Advisory Committee on Historic Preservation (SACHP), to consider whether racial animus or racial motivation have infected a particular historic-district nomination.

¹ HB 4203, HB 4205, and HB 4207.

Abuse of the historic-district process as a tool to further racist policies is nothing new. In fact, SHPO has already acknowledged that addressing racism in historic places is necessary and important. In its own handouts about inclusivity, SHPO acknowledges that, historically, “[t]hese institutions were generally built exclusive of people of color and other under-documented and under-recognized people.”² As noted in the “Pursue Best Practices” section, there is a call for heritage organizations to turn inward to discuss racism, privilege, and inclusion.³

The call for Oregonians to be more inclusive and to celebrate diversity has been made for generations. But to do their part in answering that call, OPRD, SHPO, and SACHP must be more thoughtful about how they achieve their goals, unless they want the term “historic preservation” in Oregon to become synonymous with other racially charged terms like “urban renewal” and “gentrification”.

Now, seemingly more than ever, it is clear that everyone, especially government agencies, plays a part in systems that are rooted in bigotry. In this moment of Black Lives Matter, OPRD should take a definitive stand to state that Blacks Lives Matter and to be intentional about rethinking its role in promoting racial justice through historic preservation.

Thus, OPRD should:

- Amend OAR 736-050-0250 and OAR 736-050-0260 to expressly require consideration of diversity and inclusion in a historic-district nomination, as part of the National Register criteria.
- Amend OAR 736-050-0250 and OAR 736-050-0260 to include specific consideration of macro factors leading to the submission of an application. OPRD should undertake a comprehensive evaluation of the racial history of a nomination and proposed historic district before approving an application.

BACKGROUND

I. THE HOUSING HISTORY OF PORTLAND, SPECIFICALLY, INCLUDES POLICIES THAT SUPPORT SUSTAINED RACIAL SEGREGATION, WHICH CONTINUES TO AFFECT COMMUNITY MEMBERS TODAY.

The history of zoning segregation in Portland follows a familiar pattern: one form of discrimination is eliminated and replaced by a newer, more subtle form of discrimination, once it

² Oregon Heritage, Addressing Racism in Historic Places and Heritage Organizations, 1 <https://www.oregon.gov/oprd/OH/Documents/AddressingRacismHeritagePlan.pdf>.

³ *Id.* at 3-4.

is politically unsavory to admit that the true aim for the policy was rooted in bigotry.⁴ And although national and local government agencies have begun to address those subtleties, OPRD needs to contribute to that conversation.

A. National Land Use Matters

Our national housing policy already has begun to institutionalize its attempts to fight racist housing policies. Those agencies now are realizing that internal “best practices,” alone, cannot rectify past harm. Though many would point to the Fair Housing Act of 1968 as a watershed moment, governments continue to fail to achieve the goals of that seminal legislation: eliminating housing segregation.⁵ Under HUD regulations, the 2015 Affirmatively Furthering Fair Housing Rule (AFFH) has attempted to implement an “effective planning approach to aid program participants in taking meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination.”⁶ This indicates that national proponents of fair housing have acknowledged that rectifying the segregationist history of the past continues to be a priority that will require a directed, thoughtful approach to transcend.

B. Portland Land Use Matters

Legal, blatant segregation did not start to lose favor in Portland until the early 20th century.⁷ The history of Oregon is steeped in unsavory exclusionary policies, including housing.⁸ Often times, segregation was enforced through a combination of seemingly innocuous systemic forces coming together to compound each other’s negative effects.⁹ One cannot appreciate the full weight of those policies by examining just one aspect of housing in the Portland area. Though this comment will not expound on this, exclusionary housing policies are just the tip of the iceberg when thinking about removing elements of racism and bigotry from local institutions.

But uncovering the true negative impacts of Portland’s exclusionary housing policies is difficult, because that requires an evaluation of almost every aspect of our lives. Even a preference for

⁴ *Texas Dep’t of Hous. and Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 135 S Ct 2507, 2525 (2015) (holding “that disparate-impact claims are cognizable under the Fair Housing Act upon considering its results-oriented language.”)

⁵ Michelle Adams, *The Unfulfilled Promise of the Fair Housing Act*, The New Yorker, Apr. 11, 2018, <https://www.newyorker.com/news/news-desk/the-unfulfilled-promise-of-the-fair-housing-act>.

⁶ 24 C.F.R. § 5.150.

⁷ See generally *Buchanan v. Warley*, 245 US 60 (1917) (noting that housing ordinances that imposed racial segregation violate the Fourteenth Amendment and eliminating *de jure* residential segregation).

⁸ Alana Semuels, *The Racist History of Portland, the Whitest City in America*, The Atlantic (July 22, 2016), <https://www.theatlantic.com/business/archive/2016/07/racist-history-portland/492035/>.

⁹ *The Early History of Portland’s Racist Housing Strategies*, Habitat for Humanity Portland/Metro (June 26, 2020), <https://habitatportlandmetro.org/the-early-history-of-portlands-racist-housing-strategies-part-one/>.

single-family homes, though seemingly innocuous, can be traced back to discriminatory ends.¹⁰ In 1924, Portland implemented new zoning regulations that required single-family zoning with large lot sizes, creating a clearly “desirable” part of town.¹¹ Single-family homes and large lot sizes were and are a proxy for whiteness in Portland, so one cannot talk about the character of its neighborhoods without considering this history.¹²

Additionally, restrictive covenants were employed in Portland to keep segregated neighborhoods in place.¹³ Even though the U.S. Supreme Court ruled these covenants unenforceable in 1948,¹⁴ their negative impacts on communities of color linger.¹⁵ Following the unenforceability of restrictive covenants, in order to preserve the “character” of their neighborhoods, white residents turned to more subtle housing-type restrictions, which mimicked those traditionally imposed by restrictive covenants.¹⁶ Though initially concentrated in only certain communities, those policies, such as lot-size restrictions in single-family zoning, expanded throughout Portland.¹⁷

And as another example, redlining—federal government restriction of federal lending and private lending based in part on racial and ethnic make-up of the area—continued far into recent history.¹⁸ Redlining was the perfect combination of a strategic failure to fund Black families seeking housing loans, the broad use of restrictive covenants, and white real-estate agents steering Black and other minority groups away from white neighborhoods.¹⁹ The government and the private market came together in perfect harmony to disenfranchise marginalized people

¹⁰ Jean Hughes, et al., *Historical Context of Racist Planning: A History of How Planning Segregated Portland*, 19 (2019).

¹¹ Michael Andersen, *Maps: Portland’s 1924 Rezone Legacy is “A Century of Exclusion”*, Sightline Institute (May 25, 2018), <https://www.sightline.org/2018/05/25/a-century-of-exclusion-portlands-1924-rezone-is-still-coded-on-its-streets/>.

¹² Jean Hughes, et al., *Historical Context of Racist Planning: A History of How Planning Segregated Portland*, 19 (2019).

¹³ *Id.* at 6. See also, Michael Andersen, *A Historian is Unearthing Records of Where Portlanders of Color Couldn’t Legally Live*, Portland for Everyone (Nov. 29, 2017), <https://medium.com/@pdx4all/a-historian-is-unearthing-records-of-where-portlanders-of-color-couldnt-legally-live-818a39c5310f>.

¹⁴ *Shelley v. Kraemer*, 33 US 1 (1948) (holding that racially restrictive covenants could not be enforced without violating the Fourteenth Amendment).

¹⁵ Michael Andersen, *A Historian is Unearthing Records of Where Portlanders of Color Couldn’t Legally Live*, Portland for Everyone (Nov. 29, 2017), <https://medium.com/@pdx4all/a-historian-is-unearthing-records-of-where-portlanders-of-color-couldnt-legally-live-818a39c5310f>.

¹⁶ Jena Hughes, et al., *Historical Context of Racist Planning: A History of How Planning Segregated Portland*, 8-9 (2019), <https://www.portland.gov/sites/default/files/2019-12/portlandracistplanninghistoryreport.pdf>.

¹⁷ Michael Andersen, *Maps: Portland’s 1924 Rezone Legacy is “A Century of Exclusion”*, Sightline Institute (May 25, 2018), <https://www.sightline.org/2018/05/25/a-century-of-exclusion-portlands-1924-rezone-is-still-coded-on-its-streets/>.

¹⁸ Alana Semuels, *The Racist History of Portland, the Whitest City in America*, The Atlantic (July 22, 2016), <https://www.theatlantic.com/business/archive/2016/07/racist-history-portland/492035/>.

¹⁹ Jena Hughes, et al., *Historical Context of Racist Planning: A History of How Planning Segregated Portland*, 9 (2019), <https://www.portland.gov/sites/default/files/2019-12/portlandracistplanninghistoryreport.pdf>.

with layers and layers of discrimination. This comment will not even venture into the ways communities of color were continually victimized within their own neighborhoods through policies such as those, but mentions them as part of important context that OPRD should consider when determining how to address these issues through its historic-preservation program.

In addition to official housing policies, the structure of the “neighborhood system” in Portland and the continued perpetuation of segregation, perhaps by more implicit mechanisms, means that only the historically powerful likely will wield any efforts to mobilize, raise funds, and effect change, against those who already have been systematically disenfranchised.²⁰ Though Portland’s neighborhood system effectively has protected certain underrepresented neighborhoods like in Northwest Portland, that did not occur throughout the rest of the city, giving rise to an additional layer of inequality.²¹

As a whole, the landscape of Portland has remained fixed in time based on the initial land-use decisions made in the 1920s.²² Until recently, the city’s strong protections for single-family homes have effectively maintained an overwhelmingly white majority in certain neighborhoods.²³ In contrast, much new development has occurred in neighborhoods that were not protected, displacing the few historical bastions preserved for communities of color.²⁴ As aforementioned, these divergences in development have had long term effects on the racial demographics of the city, inequitable wealth accumulation, and home values.²⁵

It is easy to think about racial discrimination in housing as something that happened in the past and something that happens in obvious ways. Many of the conversations about housing discrimination in Portland concern the well-known neighborhoods of Vanport, Albina, and North Portland. In some ways this allows many to think that, although racial segregation is a discrete problem in one small part of town, it has not impacted the larger structural nature of how Portland has developed. Contrary to that line of thinking, however, it is much more likely that the very culture we seek to preserve in Portland (and, perhaps, Oregon generally) may be the result of a racist and classist history, which must be acknowledged before it can be addressed.

²⁰ Carl Abbott, *Portland: Planning, Politics, and Growth in the Twentieth-Century City*, 183-206 (1983) (highlighting the differences between community activism in different parts of Portland).

²¹ Nuin-Tara Key, *Neighborhood Governance in Portland Oregon: An Analysis of Public Involvement in Urban Planning*, 2-3 (2010), http://www.isocarp.net/Data/case_studies/1679.pdf (discussing the collective action problems between some neighborhood lead movements).

²² Jena Hughes, et al., *Historical Context of Racist Planning: A History of How Planning Segregated Portland*, 19 (2019), <https://www.portland.gov/sites/default/files/2019-12/portlandracistplanninghistoryreport.pdf>.

²³ *Id.*

²⁴ *Id.* at 20.

²⁵ *Id.* at 20–23.

C. In Portland and Oregon, the Infill Project and the Better Housing Design Project seek to address serious societal problems, and OPRD should ensure that the National Historic Registry is not used to avoid those critical programs.

The goals of preservation and affordable housing are not incompatible, but it is important that OPRD consider whether preservation is being used to circumvent equitable public policy decisions. For example, in light of severe affordable housing shortages, the Oregon Legislature passed House Bill 2001.²⁶ The biggest impact was the requirement that cities over 25,000 in population update their comprehensive plan²⁷ and to remove restrictions on the construction of non-single-family homes.²⁸ The Portland Comprehensive Plan has been published in light of this legislation.²⁹ Importantly, the *first goal* of the Portland Comprehensive Plan is focused exclusively on equitable housing practices in the city.³⁰

To further those goals, the city created the Portland Infill Project, which aims to address housing supply issues by:

1. “Requiring smaller houses that better fit existing neighborhoods.
2. Creating more housing choices for people’s changing needs.
3. Establishing clear and fair rules for narrow lot development.”³¹

Additionally, in light of robust public comments on the Infill Project, the Portland Planning Commission has proposed protections for structures in a historic district or other protected landmarks.³² In related development legislation, the city, in the Better Housing by Design project, also has included specific language relating to historic districts, including how to work in concert with preservation goals and affordability issues.³³

²⁶ HB 2001 (2019).

²⁷ ORS § 197.646(1).

²⁸ ORS § 93.277.

²⁹ City of Portland, 2035 Comprehensive Plan, <https://www.portland.gov/bps/comp-plan/2035-comprehensive-plan-and-supporting-documents#toc-2035-comprehensive-plan-as-amended-through-march-2020->.

³⁰ City of Portland, 2035 Comprehensive Plan, Chapter 2: Community Engagement, Goal 2.B, GP2-5, https://www.portland.gov/sites/default/files/2019-08/02_community-involvement_0.pdf

³¹ City of Portland, *About the Residential Infill Project*, <https://www.portland.gov/bps/rip/about-residential-infill-project>.

³² Bureau of Planning and Sustainability, *Residential Infill Project Amendments for Consideration, Amendment Package 7: Historic Resource Demolition Disincentive*, https://www.portland.gov/sites/default/files/2020-03/combined-amendment-packages_030920.pdf, 88-90.

³³ City of Portland, *About the Better Housing by Design Project*, <https://www.portland.gov/bps/better-housing/about-better-housing-design-project>.

In drafting this comment, we acknowledge that these housing issues are complicated, subject to a variety of factors, and wrapped up in issues of home and identity. While there can be reasonable debates about the best ways to accomplish these community goals, OPRD should not allow individuals to use preservation as a tool to prevent necessary public policy development. That is especially so when that development is an attempt by local governments to walk back years of racially discriminatory housing practices. Instead, OPRD should require and facilitate conversations about demolition, preservation, and the character of neighborhoods, while acknowledging the true impacts of each. Policies like the Infill Project, which seek to address serious societal problems, should not be circumvented under the guise of the National Historic Registry.

D. Eastmoreland Specifically

As this rulemaking was prompted by a specifically contentious application, it makes sense to turn to the specifics of that tension.³⁴ Although the proposed rulemaking here will apply statewide, we use Eastmoreland as an example of how including our suggestions in an OPRD rule would have a great impact. That is because the issues that have occurred in Eastmoreland are not limited to that Portland neighborhood.³⁵ In fact, immediately following Eastmoreland's historic district nomination, other wealthy and predominantly white Portland neighborhoods (e.g., Laurelhurst and Irvington) have sought and obtained approval for historic district status, thereby preserving the demographically unequal status quo.³⁶

As the Eastmoreland application for historic district distinction and the neighborhood website establish, that neighborhood has historically utilized discriminatory housing practices to preserve its uniquely white and wealthy character. Those practices include the use of restrictive covenants.³⁷ In addition to restricting building sizes and uses in Eastmoreland, restrictive covenants also plainly stated that “Chinese, Japanese, and Negroes” were not allowed to own the properties in question.³⁸ Furthermore, this neighborhood was subject to redlining tactics.³⁹ Which begs the question: Is a neighborhood that owes its character to the use of these policies one worth preserving, if establishing a historic district in that neighborhood will only perpetuate the

³⁴ *Brown v. Parks & Recreation Dep't by & through State Historic Pres. Office*, 296 Or App 886, 443 P3d 1170 (2019).

³⁵ Jena Hughes, et al., *Historical Context of Racist Planning: A History of How Planning Segregated Portland*, 6 (2019), <https://www.portland.gov/sites/default/files/2019-12/portlandracistplanninghistoryreport.pdf>.

³⁶ *Id.*

³⁷ Eastmoreland Neighborhood Association, Portland, OR, *History* <https://www.eastmorelandpdx.org/history/> (from the Historic District Nomination 2015).

³⁸ *Id.*

³⁹ *Id.*

inequities and segregation that resulted from the use of those unlawful and discriminatory policies in the first place?

In an attempt to counteract the discriminatory housing practices historically used in Eastmoreland, that neighborhood has been subject to infill efforts in the past, in an effort to meet housing demands and change the landscape of the area based on population shifts in Portland history.⁴⁰ But despite those attempts, even now, the most recent census data from 2010 shows that Eastmoreland (and other affluent areas in town) continue to remain *almost 95% white*.⁴¹ This alone does not indicate that the current residents of the neighborhood hold harmful views, but the words of proponents for Eastmoreland's application have made statements that cast a shroud of doubt of the goals of the initiative.

A clear example were the comments by an Eastmoreland Neighborhood Association member:

“Our feeling is that the density should be where it belongs. . . .
You’re talking about lower income people or younger people who
want to rent or need to rent and they need to be where there’s good
transit. This is a little oasis because it’s down here, and it’s just not
appropriate.”⁴²

And as if to directly answer those comments, President Trump recently used similar wording when he cited his rollback of a housing law meant to combat residential segregation, which others have criticized as having racist undertones:

“I am happy to inform all of the people living their Suburban
Lifestyle Dream that you will no longer be bothered or financially
hurt by having low income housing built in your neighborhood.”⁴³

Specifically, scholars have noted that those types of comments “are often motivated by unconscious racism [that the speakers] are loathe to admit and disguise their racial hostility with innocuous-sounding terms like ‘neighborhood schools’ and ‘property values.’”⁴⁴

⁴⁰ *Id.*

⁴¹ 2000 and 2010 Census Profile: Eastmoreland, <https://www.portlandoregon.gov/civic/article/375863>.

⁴² Randy Gragg, *Can A Stranger Designate Your House as Historic*, Oregon Public Broadcasting (Oct. 23, 2016), <https://www.opb.org/radio/article/keep-eastmorland-free-historic-controversy/#:~:text=In%20Oregon%2C%20They%20Can,-by%20Randy%20Gragg&text=In%20Oregon%2C%20you%20don%27t,National%20Register%20of%20Historic%20Places>.

⁴³ John Blake, *How ‘good White people’ derail racial progress*, CNN (Aug. 1, 2020), <https://www.cnn.com/2020/08/01/us/white-liberals-hypocrisy-race-blake/index.html>

⁴⁴ *Id.*

Various government agencies in Oregon have started to acknowledge that the historic district process is being abused to promote discriminatory housing practices. The Portland Historic Landmarks Commission recently has indicated dismay at “the recent ‘protect us from density’ rationale offered by a few voices (such as those in Eastmoreland) advocating for new residential historic districts, and a fundamental misunderstanding about historic districts and their relationship to density.”⁴⁵

In addition, the Landmarks Commission has acknowledged that “well-intentioned policies can exacerbate inequities without a racial/ethnic justice lens. For example, ending mortgage redlining in a predominantly black neighborhood can result in new homebuyers, but without specific supports for African-Americans, the residents who experienced deprivation of access may not benefit.”⁴⁶ Furthermore, the Landmarks Commission has highlighted the artificial tension between equity and preservation at length, highlighting that reasonable minds can disagree and be thoughtful about policy decisions.⁴⁷

This is not to say that preservation is inherently harmful. Furthermore, this is not to say that a single unsavory comment about low-income housing means that a historic district application could never be approved. Rather, OPRD can and should look at these questions on historic preservation, diversity, inclusion, and discriminatory effects, in a thoughtful and systematic manner. And it is imperative that OPRD, at minimum, asks the right questions to assess any discriminatory motives and takes any evidence of discrimination seriously, when reviewing a historic district nomination. The only way to do that in an institutional and effective manner is through the promulgation of formal rules, which provide specific, thoughtful guidance on this matter.

LEGAL ANALYSIS

To be clear, our argument is not that all historic district applications should be denied because of the exclusionary zoning practices in Oregon and Portland history. Rather, we implore OPRD, SHPO, and SACHP, to be thorough and thoughtful about how well-meaning actors can be unknowingly complicit in actions that further subjugate vulnerable populations.

⁴⁵ Portland Historic Landmarks Commission, *State of the City Preservation Report 2017*, 5, <https://www.portlandoregon.gov/bds/article/664367>.

⁴⁶ Portland Historic Landmarks Commission, *State of the City Preservation Report 2018*, 17, <https://www.portlandoregon.gov/bds/article/698934>.

⁴⁷ *Id.* at 19-23.

I. THE PURPOSE OF THE NATIONAL REGISTER OF HISTORIC PLACES INCLUDES A MANDATE TO ACT INTENTIONALLY ABOUT PRESERVATION EFFORTS.

Among similar goals, the purpose of the National Historic Preservation Act is to “to foster conditions under which our modern society and our historic property can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations.”⁴⁸ The National Register of Historic Places grants broad discretion to the Secretary of the Interior to “establish criteria for properties to be included on the National Register and criteria for National Historic Landmarks”⁴⁹ and to promulgate regulations to manage the properties on the list.⁵⁰

The national criteria for evaluation are very broad and protect structures, places, etc.:

- “(a) that are associated with events that have made a significant contribution to the broad patterns of our history; or
- (b) that are associated with the lives of persons significant in our past; or
- (c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
- (d) that have yielded, or may be likely to yield, information important in prehistory or history.”⁵¹

The most relevant criteria to this matter is Criterion (a).⁵² In guidance documents describing this criterion, the National Park Service (NPS) clarifies this criterion refers to “[a]n event, a series of events or activities, or patterns of an area’s development.”⁵³ Where the patterns of our history are painful, there is an opportunity to utilize discretion to ask important questions.

Asking questions about diversity and inclusion are not uncommon at the Department of Interior. The Department’s Cultural Historic Heritage Needs Assessment highlights how historic preservation has failed minority communities through its failure to engage with diversity in a

⁴⁸ 54 U.S.C. § 300101(1).

⁴⁹ 54 U.S.C. § 302103(1).

⁵⁰ 54 U.S.C. § 302103(2).

⁵¹ 36 C.F.R. § 60.4.

⁵² 36 C.F.R. § 60.4(a).

⁵³ U.S. Department of the Interior, National Park Service Cultural Resources, National Register Bulletin, *How to Apply the National Register Criteria for Evaluation*, 7 (1997).

meaningful way.⁵⁴ The NPS has acknowledged this lack of diversity and has implemented programs like the Underrepresented Community Grants.⁵⁵ But despite those federal actions, of the more than 60 places listed on the National Register in the Portland area, very few celebrate or consider the Black history of Portland.⁵⁶

OPRD has the authority to consider these issues when reviewing a historic district nomination. Case law establishes that the National Historic Preservation Act functions as a procedural statute, but that specific discretion for how to assess properties remains in the hands of the state agency responsible for nominating properties to the National Register.⁵⁷ When exercising their own discretion, federal agencies, under Section 106 of the National Historic Preservation Act, are required to “stop, look, and listen”, or “take into account the effect of their actions on structures eligible for inclusion in the National Register of Historic Places.”⁵⁸

Additionally, SHPO serves in an important gatekeeper in the historic district process, and should empower itself to act with concepts of equity and justice in mind. Though SHPO is not the final decisionmaker in this process, they have a clear mandate to advocate for the history of all Oregonians, not just the rich, white, and powerful.

II. THE DUTIES OF SHPO INCLUDE FORWARD-THINKING ENGAGEMENT WITH ALL OREGON COMMUNITIES.

SHPOs are granted broad discretion to influence the nature of applications submitted to the Secretary of Interior. SHPOs must “identify and nominate eligible property to the National Register and otherwise administer applications for listing historic property on the National Register.”⁵⁹ Additionally, SHPOs are responsible for “prepar[ing] and implement[ing] a comprehensive statewide historic preservation plan.”⁶⁰ When carrying out these acts, SHPO should make sure that it implements measures to promote diversity and inclusion.

⁵⁴ See generally Ned Kaufman, *Cultural Heritage Needs Assessment: Phase I Draft*, Apr. 8, 2004, <https://www.nps.gov/subjects/tellingallamericansstories/upload/PhaseIReport.pdf>; see also, National Park Service, *Publications on Diverse and Inclusive History*, <https://www.nps.gov/heritageinitiatives/publications.html>; Ned Kaufman, *Historic Places and the Diversity Deficit in Heritage Conservation*, 1 CRM: The Journal of Heritage Stewardship 2 (Summer 2004).

⁵⁵ National Park Service, *Preservation Grants - Underrepresented Community Grants*, <https://www.nps.gov/preservation-grants/community-grants.html>.

⁵⁶ Zachary Stocks, *NPS Approves MPD for African-American Historic Sites of Portland*, Oregon Black Pioneers, (July 8, 2020), <https://oregonblackpioneers.org/2020/07/08/nps-approves-mpd-for-african-american-historic-sites-of-portland/>.

⁵⁷ *Pub. Emps. for Envtl. Responsibility v. Beaudreau*, 25 F Supp 3d 67, 119 (D.D.C. 2014) (noting that the statutory grant contains limited specifics).

⁵⁸ *Ill. Commerce Comm’n v. Interstate Commerce Comm’n*, 848 F2d 1246, 1260–61 (D.C. Cir. 1988).

⁵⁹ 54 U.S.C § 302303(2).

⁶⁰ 54 U.S.C § 302303(3).

Additionally, SHPOs establish statewide priorities for preparation and submittal of nominations for all properties meeting National Register criteria for evaluation within Oregon.⁶¹ All nominations in Oregon are submitted in accord with the State priorities, which are supposed to be consistent with an approved state historic preservation plan.⁶²

As the agency responsible for considering state-specific objective in the federal historic-district process, SHPO has a unique role to play and must act in a manner that “reflects the interests of the State and its citizens in the preservation of their cultural heritage.”⁶³ This illustrates the important role SHPOs can play as the advocate and gatekeeper of applications for all Oregonians.

As noted in the prior section, the federal government already has set priorities and provided grant money to increase equity by addressing the systemic failure to protect marginalized communities. Similar to those efforts, SHPO, through the tools it already employs, should ensure that all federal historic district nominations clear a minimum threshold: that no nomination is filed with the aim to discriminate, or further the discrimination, against marginalized populations. While efforts to increase equity in historic preservation can be productive by increasing the diversity of protected properties, if historic preservation is also being used as a tool for marginalization, this severely limits the ability of SHPO to fulfill its duty to all Oregonians.

In addition to federal authority, the state-level statutes that govern OPRD and SHPO would authorize those entities to include the issues that we have identified in this comment in a formal OPRD rule. For example, under Oregon law, SHPO “[s]hall prepare and implement a comprehensive statewide historic preservation plan to assist local governments in developing their preservation programs and participate in the national program.”⁶⁴ Additionally, SHPO must conduct “a comprehensive, statewide survey to identify districts, sites, buildings, structures and objects that are potentially significant in Oregon history, prehistory, architecture, archaeology and culture.”⁶⁵ SHPO’s responsibilities include working with “local, statewide and national organizations to develop means of promoting historic preservation, including legislation, financing, education, easements, conferences and workshops and audio-visual materials.”⁶⁶ Those statutes give OPRD and SHPO broad discretion to promote historic preservation, in a manner that makes sense given the history of this state.

⁶¹ 36 C.F.R. § 60.6.

⁶² *Id.*

⁶³ 36 C.F.R. § 800.2(c).

⁶⁴ ORS § 358.612.

⁶⁵ *Id.*

⁶⁶ *Id.*

OPRD and SHPO already have confirmed that point. For example, SHPO's Oregon Preservation Plan 2018-2023 includes measures to increase diversity and inclusion.⁶⁷ But those measures are insufficient because they are merely goals, not administrative rules binding SHPO. Additionally, the Oregon Heritage Plan 2020-2025 seeks to include more voices from excluded or marginalized communities.⁶⁸ Though thoughtful goals established by OPRD and other stakeholders are a good start, a formal rule memorializing OPRD's commitment to considering equity and inclusion in historic district nominations would be more powerful and have greater weight.

As highlighted in the litigation that prompted this rulemaking, OPRD must enshrine its commitment to diversity, inclusion, and equity in clear rules. It is not enough to implement concepts of equity in an ad hoc manner, as that does not give applicants sufficient notice of the criteria that will be used to judge them. It also does not send a clear enough signal that OPRD will not allow individuals to use the historic district process to exacerbate the effects of historically racist housing policies. Even if OPRD already is employing certain metrics to assess the motivation behind an application, those metrics should be codified and open to public comment. These important preservation decisions are not made in a vacuum, and it is irresponsible to review applications without considering the motive behind the application.

CONCLUSION

We must not forget the harsh truth: This system has failed to protect the historical sites, the heritage, and the stories of many marginalized groups. In fact, it historically has been used to silence those stories. Thus, the harmful narratives around people of color and other minority groups have been baked into our systems.⁶⁹

Where there is any question of efforts to exclude minority groups from housing districts, OPRD, SHPO, and SACHP, must assess whether the aims of the national historic district program are met by approving a nomination. Though we appreciate historic preservation efforts, we implore OPRD to consider whether preservation has been co-opted to serve nefarious ends, before approving a nomination. This does not mean that OPRD, SHPO, or SACHP, should reject any application from any area that has been historically segregated. Rather, we ask that OPRD draft a rule provision explicitly directing the agency to consider issues of equity, justice, and inclusion when considering state nominations to the National Register.

⁶⁷ Oregon Historic Preservation Office, Oregon Historic Preservation Plan 2018-2023, 10.
<https://www.oregon.gov/oprd/OH/Documents/2018preservationplan.pdf>.

⁶⁸ Oregon Heritage, *Oregon Heritage Plan 2020-2025*, 2.
https://www.oregon.gov/oprd/OH/Documents/2020_Oregon_Heritage_Plan.pdf.

⁶⁹ Benjamin Heller, *How Can Historic Preservation Be More Inclusive*, Research & Policy, June 8, 2020,
<https://furmancenter.org/thestoop/entry/how-can-historic-preservation-be-more-inclusive>.

Katie Gauthier, Rules Coordinator
August 13, 2020
Page 14

OPRD itself acknowledges that “[t]he fact that some communities were documented better than others is one of the key challenges in incorporating a diversity of experiences into local or regional histories. This oversight might have been purposeful, political, or accidental; nevertheless, it is important to make a concerted effort to reincorporate those stories into the historical record.”⁷⁰ This comment does not seek to call anyone who wants to preserve the character of their neighborhood inherently racist, classist, and elitist. Rather, it calls upon our community to acknowledge that some things that we take for granted, like single-family homes in a neighborhood, can be the outgrowth of hateful policies. The question from there is: What can and should be done about it?

Respectfully,



Nathan R. Morales

NRM:nrm

⁷⁰ Oregon Heritage, *Researching Historically Marginalized Communities*, 34 HERITAGE BULLETIN 1, 1, (April 2018) <https://oregonheritage.files.wordpress.com/2018/05/hb34-researching-historically-marganized-communities.pdf>.

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Friday, August 14, 2020 4:53 PM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	Katherine
Last Name	Showalter
Email	ksmlcom@gmail.com
Public Comment	<p>My name is Katherine Showalter and I reside in the Eastmoremoreland neighborhood of Portland. I would like to thank SHPO and the Rules Advisory Committee for their efforts in revising state rules governing the National Register Program and for the opportunity to comment on the draft. 736-050-0250(10) I support the draft rule invalidating a Certified Local Government's objection to a Historic Resource nomination if the local Landmarks Committee determines that it should go forward. Local governments, subject to the pressures of expedience and the influence of money, can't always be counted on to make wise policy decisions—it is imperative that a body that understands the importance of preserving our "historical foundations...as a living part of our community life and development," as stated in the National Historic Preservation Act, can put a brake on politically motivated decisions. I encourage SHPO and the RAC to resist efforts by 1000 Friends of Oregon to make the CLG the final arbiter of whether a nomination should proceed. I also concur with comments made by Derek Blum, Rod Merrick, Rachel Papkin and others that the language of draft rules regarding ownership of trusts is ambiguous. I won't repeat the arguments here, except to say that the creation of 5000 sham trusts to derail the Eastmoreland Historic District nomination was blatantly unethical, but such efforts may not always be so brazen. Clarity on the issue is essential. Thank you.</p>

Submission ID: ce04e406-dd41-43ab-a24f-6cf8de1748a1

Record ID: 132

MARSHALL Janelle * OPRD

From: P Baker <posta.baker@icloud.com>
Sent: Friday, August 14, 2020 12:32 PM
To: PUBLICCOMMENT * OPRD
Cc: Phillip Baker
Subject: Testimony regarding Revising Rules for National Register for Historic Places in Oregon

I appreciate the proposed updates. I encourage further clarification on these two details:

- 1) Please take more time to improve the definition of owner, especially as it pertains to trusts. Are trusts treated as owners and allowed to object? or Is the trustee or settlor of the trust counted? Please be specific.
- 2) Let the residents decide, not special interest groups. The proposed rules allow the Certified Local Government (CLG) a means to prevent a nomination from advancing, but only if the local landmarks commission agrees. And even if that happens, anyone can appeal to ensure that a nomination can advance to the NPS. The proposed rule is good, however special interest groups, for example 1,000 Friends of Oregon, can push hard to inject politics into the process. Special interest groups might be able to convince the CLG to object to nominations which is why it is important to have the other checks and balances (landmarks commission and appeal options) in place. Please keep checks and balances in place.

I'm a resident of an Oregon neighborhood with historical, architectural value. I value the architecture, history, and I believe context matters. Let's preserve all our state's existing architectural resources for generations to come.

Thank you.
Maria Baker

MARSHALL Janelle * OPRD

From: P Baker <posta.baker@icloud.com>
Sent: Friday, August 14, 2020 12:32 PM
To: PUBLICCOMMENT * OPRD
Cc: Phillip Baker
Subject: Testimony regarding Revising Rules for National Register for Historic Places in Oregon

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- 1) Please take more time to improve the definition of owner, especially as it pertains to trusts. Are trusts treated as owners and allowed to object? or Is the trustee or settlor of the trust counted? Please be specific.
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I'm a resident of an Oregon neighborhood with historical, architectural value. I value the architecture, history, and I believe context matters. Let's preserve all our state's existing architectural resources for generations to come.

Thank you.
Maria Baker

MARSHALL Janelle * OPRD

From: Katie McClintock <Katie_McClintock@msn.com>
Sent: Thursday, August 13, 2020 7:00 PM
To: PUBLICCOMMENT * OPRD
Cc: Katie McClintock
Subject: Commentary on Rulemaking in regards to the Eastmoreland Historic District Nomination

To Whom It May Concern:

I am writing to express my concerns with respect to the proposed rule making with regards to the following:

RULES PROPOSED:

736-050-0220, 736-050-0230, 736-050-0240, 736-050-0250, 736-050-0260, 736-050-0270

AMEND: 736-050-0220

As a resident of the Eastmoreland neighborhood I have been very discouraged by the overly-aggressive activities of a small group of residents creating trusts to divide ownership in residential property solely to gain an unfair

advantage in terms of the number of votes eligible to be cast and recorded on voting affecting land use and historic neighborhood designation of the Eastmoreland neighborhood. I have reviewed the rules and offer the following commentary and concerns for your consideration.

First:

Keep Politics out of the process -- The proposed rules allow the Certified Local Government (CLG) a means to prevent a nomination from advancing, but only if the local landmarks commission agrees. And even if that happens, anyone can appeal to ensure that a nomination can advance to the NPS. The proposed rule is good, however special interest group 1,000 Friends of Oregon is pushing hard to inject politics into the process. They know that they can likely convince the CLG to object to nominations which is why they are pushing to have the other checks and balances (landmarks commission and appeal options) removed. Please do not give into them.

Second:

Strive for Clarity -- The definition of "Owner" is still ambiguous. Please take more time to improve the definition of owner, especially as it pertains to trusts. The proposed rules have created some ambiguity and are not clear whether trusts are treated as owners and allowed to object, or whether it is the trustee or settlor of the trust who is counted. Eastmoreland still has 2,000 sham trusts and if they are allowed to object, will again influence the outcome of the nomination.

Third:

Draft Rules to Ensure Fairness and Prevent Cheating -- Opponents of the Eastmoreland Historic District have, time and again, taken steps to ensure that the historic district nomination is not approved by the NPS. From generating thousands of sham trusts, to coercing neighbors, to submitting volumes of unsubstantiated statements to the NPS, these opponents will certainly look for other loopholes or tactics to deny Eastmoreland's listing on the National Register. It is now quite obvious that there is not a

majority who object to the historic district, but a few ringleaders continue to use unethical means to deny the majority.

Finally:

Act Promptly After Rules/Amendments are Adopted and Proceed with Eastmoreland -- The Eastmoreland historic district nomination began about 4 years ago and remains in limbo. If, and when, the new rules are adopted, please proceed quickly with Eastmoreland's nomination.

Thank you for your consideration of these comments.

Best Regards,

Katie McClintock

Eastmoreland Resident for 22 years

MARSHALL Janelle * OPRD

From: PATTY BRANDT <tpbrandt@comcast.net>
Sent: Monday, August 17, 2020 3:18 PM
To: PUBLICCOMMENT * OPRD
Subject: Written Testimony SHPO Rule Changes

July 30, 2020

Oregon Parks and Recreation Commission

725 Summer Street NE, Suite C

Salem, OR 97301

Re: Proposed administrative rules for National Register Programs, 736-050-0220 to 736-050-0270

Dear Commissioners:

I am writing today as an Eastmoreland property owner who has been and continues to be “affected” by an almost **four year nomination** on our large historic district in SE Portland.

Inconsistency, lack and clarity of rules continues to impact this nomination.

In many substantive cases, there is no explanation for why the new rules – if they’re needed for thoughtful consideration for new nominations, to correct the obvious problems in prior nominations that led to these reforms, or two that will not apply to pending nominations. If the rules are going to apply prospectively only, the agency should provide a reason why.

Following are suggested revisions to the draft:

OAR 736-050-0230

16(a) **The definition of owner or owners is not defined in 36 CFR 60.6 (k) it is defined in 36 CFR 60.6 (g).**

(16) A The owner of fee simple absolute or fee simple defeasible estate title to property as shown **from either official land recordation records or** in the property tax records of the county where the property is located, including, but not limited to, trusts, limited liability corporations, and any other legal entity that can hold fee simple absolute or fee simple defeasible title to real property within the state of Oregon;

36 CFR 60.6 The list of owners shall be obtained from either official land recordation records or tax records, whichever is more appropriate, within 90 days prior to the notification of intent to nominate.

For the Eastmoreland nominations SHPO pulled just the Multnomah County Tax Records. These records have shown multiple errors that have been shared with SHPO by homeowners in Eastmoreland asking for correction showing SHPO the current deeds.

Starting in July of 2018, 100+ deed records showing misinformation was shared with Ian Johnson, SHPO and with Julie Earnstein and Paul Lusignan, National Park Service. This sample is evidence alone that the Multnomah County property tax records are not accurate when counting owners.

In contacting Multnomah County Recording Office, I was told by a technician that SHPO could pull the county tax records and the deeds to ensure accuracy.

OAR 736-050-0250

8(e) Identify owners using **either official land recordation records or** county property tax records obtained within 90 calendar days prior to the beginning of the public comment period.

See prior argument.

12(a) The SHPO must create a property owner list that includes each owner within the boundary of a historic resource nominated for listing in the National Register using **either official land recordation records or** county property tax records obtained as provided in subsection (8) (d). That property owner list is the official list of property owners throughout the public comment period.

See prior argument.

12(A) The SHPO must correctly identify the total number of owners.

This is critical to insure that the count is correct for the nominations. This nomination has been riddled with changing laws and process. Under state law in Oregon automatic restrictions result that are not required by federal listing. Oregon's process is not just honorary. In Oregon, there are restrictions on resources listed on the National Register because of other state statutory and administrative rule provisions.

12(B) The SHPO must **review official land recordation records** provided by the county assessor to **determine accuracy when counting owners.**

The Eastmoreland nomination has demonstrated that SHPO cannot have confidence in the Multnomah County Tax Records alone without seeing the current deeds to property.

12(C) The SHPO must **remove owners** on the property owner list **if the owner cannot be** contacted using the information included on the property owner list provided by the county assessor's office.

In mailing to owners on the Multnomah Property Tax Records List, twenty homeowners' letters were returned which I have. Technically this could be 40 owners tallied in the count who are not aware, not able to object. These owners should not work against other owners in Eastmoreland in the count.

12(F) The SHPO must count a trust as a single owner when multiple trustees are named.

If SHPO is referring to the official land recordation records, they will be able to identify trusts.

The SHPO cannot assume correctly whether the listing is an individual or a trust on the Multnomah County Tax Records.

Many Multnomah County Tax Records do not list trusts in the record.

13(b) In determining to undertake an examination under subsection (a), SHPO **will undertake** an examination **that** could affect the outcome of the process.

Once an examination is requested that document evidence to establish factual inaccuracy or error by SHPO, SHPO will undertake an examination or such request will be submitted to the National Park Service.

13(d) An examination under subsection (a) **may be** limited to the specific nature of the identified concern; **or may include** an evaluation of each entry in the property owner list or each submitted notarized statement.

Once an examination is requested that documents evidence to establish factual inaccuracy or error by SHPO, SHPO will undertake an examination or such request will be submitted to the National Park Service.

SHPO has a responsibility to examine records that document evidence to establish factual inaccuracy or error by SHPO.

15(d) If a historic resource is not listed in the National register within two years from the date the NPS first returns the National Register nomination for correction the SHPO must decide whether to resubmit the National Register nomination form to the Committee or the NPS as described in this rule or end the National Register nomination process. If the SHPO does not resubmit a National Register nomination form to the Committee or the NPS as described in this rule, the public comment period and the nomination process are ended. The SHPO must consult with the proponent and consider their opinion before making a final decision. A written decision shall be provided to the proponent, owner, CLG, chief elected official, and tribes. The SHPO may provide notice to owners by public press release or other means.

15(e)(B) If the SHPO determines that the National Register nomination form requires substantive revision or if it is in the public interest the public comment period must close and the nomination process must stop. A proponent may revise the National Register nomination form and submit the form as a new nomination during a regular deadline for a future committee meeting as described in this rule;

Both 15(d) and 15(e)(B) are invitations to arbitrary and capricious agency action. SHPO could decide whether to resubmit a returned nomination or end the nomination, but doesn't say on what grounds it will decide. It doesn't identify the criteria it will use in making that decision. On these rules, the decision could be based on whether SHPO likes the proponent or not, or dislikes the opponents, or is just weary of the process, or other reasons that no party would be comfortable with.

15(D) Create a new property owner list as described in section (12a); and

The SHPO must create a property owner list that includes each owner within the boundary of a historic resource nominated for listing in the National Register using official land recordation records and county property tax records obtained as provided in subsection (8) (d). That

property owner list is the official list of property owners throughout the public comment period.

There seems to be wording missing after the word and.

Section (15)(f)(c) seems to be missing from the rule documents.

OAR 736-050-0270

(4) OAR 736-050-0270(4), that “OAR 736-050-0260(15)(d) and 736-050-0260(15)(e)(B) are not applicable to National Register forms submitted before the effective date of this Division.”

Paragraph (15)(d) and subparagraph (15)(e)(B) are not in OAR 736-050-0260, which only goes as high as section (13). They’re in OAR 736.050-0250.

Why would these laws not be applicable to National Register forms submitted before the effective date of this Division? What is the precedence used to create this rule?

Patty Brandt
6819 SE 29th Ave

MARSHALL Janelle * OPRD

From: PATTY BRANDT <tpbrandt@comcast.net>
Sent: Tuesday, August 18, 2020 8:55 AM
To: PUBLICCOMMENT * OPRD
Subject: SHPO Rule Changes
Attachments: Rule Changes Testimony.docx

----- Original Message -----

From: PATTY BRANDT <tpbrandt@comcast.net>
To: "ORPD.publiccomment@oregon.gov" <ORPD.publiccomment@oregon.gov>
Date: 08/18/2020 8:02 AM
Subject: SHPO Rule Changes

Patty Brandt
6819 SE 29th Ave
Portland, OR 97202

MARSHALL Janelle * OPRD

From: JOHNSON Ian * OPRD
Sent: Tuesday, August 18, 2020 11:02 AM
To: Kimberli Fitzgerald
Cc: OLGUIN Robert * OPRD; HAVEL Chris * OPRD; PUBLICCOMMENT * OPRD
Subject: FW: Questions for today's NR Rulemaking mtg

Kimberli,

Thanks for your questions. I have answered your questions in the order you asked them. I have copied this email to our public comment mailbox to add our correspondence to the public record.

Please let me know if you have any further questions or comments.

Ian

1. The definition of "conflict of interest" and all sections throughout the rule have been removed because this term and the procedures are already well-defined in other state laws and rules. Including a definition and provisions here in this rule are repetitive. See Chapter 244 of the Oregon Revised Statutes. Staff will consider if a reference to the state law is necessary.
2. The quorum requirements are included in are included in OAR 736-050-0260 because this section addresses how the committee conducts meetings, including determining if they have a quorum to conduct business. However, this could be addressed earlier in OAR 736-050-0240. Staff will consider this change.
3. Yes, the SHPO could provide the CLG notice of the SACHP and the SHPO's recommendation to NPS. The rule already includes a provision that requires the SHPO to provide a copy of the nomination document that is sent to the National Park Service, and the SHPO's recommendation could be provided at the same time. Staff will consider making this change.
4. The provisions of Chapter 36 of the Federal Code of Regulations (CFR) Section 60.6(f) states, "The commenting period following notifications can be waived only when all property owners and the chief elected local official have advised the State in writing that they agree to the waiver." A local landmarks commission does not play a role in this decision.



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division
State Historic Preservation Office
Desk: 503.986.0678 cell: 971.718.1137

Visit our [website](#), Like us on [Facebook](#), Visit our [Blog](#).

From: HAVEL Chris * OPRD
Sent: Tuesday, August 18, 2020 9:14 AM
To: Kimberli Fitzgerald <KFitzgerald@cityofsalem.net>
Cc: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>; OLGUIN Robert * OPRD <Robert.Olguin@oregon.gov>; GAUTHIER Katie * OPRD <Katie.Gauthier@oregon.gov>
Subject: RE: Questions for today's NR Rulemaking mtg

OK, got it.

--

Chris Havel, Oregon Parks and Recreation Dept., (d) 503-986-0722, (c) 503-931-2590, chris.havel@oregon.gov

From: Kimberli Fitzgerald <KFitzgerald@cityofsalem.net>

Sent: Tuesday, August 18, 2020 8:29 AM

To: HAVEL Chris * OPRD <Chris.Havel@oregon.gov>

Cc: JOHNSON Ian * OPRD <ian.johnson@oregon.gov>; OLGUIN Robert * OPRD <Robert.Olguin@oregon.gov>

Subject: Questions for today's NR Rulemaking mtg

Hi Chris/Ian and Robert;

I have the following questions on behalf of the City of Salem HLC, a CLG.

1. Definitions. OAR 736-050-0230

Can you please clarify why the definition of 'conflict of interest' has been removed? This term is utilized in OAR 736-050-0260 and doesn't appear to be defined anywhere else.

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Comment: It is unclear why the requirements for SACHP meeting quorum are in OAR 736-050-0260 instead of this section?

3. NR Program. OAR 736-050-0250

Proposed amendments do not require SHPO staff to notify the CLGs of the SACHP action (recommended approval or denial); or the action of the Deputy SHPO (should they reverse the recommendation of the SACHP to the National Park Service). Would it be feasible for SHPO staff to notify the CLGs of the SACHP and/or SHPO recommendation at this step of the process?

4. SACHP Procedures for Review and Approval of Nominations. OAR 736-050-0260

Can you please clarify how the proposed rule under section 4 that allows "the owner(s) and chief elected official to waive the CLG comment opportunity outlined in OAR 736-050-0250(10)" would work in practice if there is a disagreement between an owner/chief elected official and an HLC? For example, what would happen if a CLG's HLC wished to provide comment and the owner and/or chief elected official submitted such a waiver?

Thanks,
Kimberli

*Kimberli Fitzgerald, AICP/RPA
Historic Preservation Officer/City Archaeologist
Historic Preservation Program Manager
City of Salem, Oregon
503 540-2397 503 351-7578 (cell)
kfitzgerald@cityofsalem.net*

July 30, 2020

Oregon Parks and Recreation Commission

725 Summer Street NE, Suite C

Salem, OR 97301

Re: Proposed administrative rules for National Register Programs, 736-050-0220 to 736-050-0270

Dear Commissioners:

I am writing today as an Eastmoreland property owner who has been and continues to be “affected” by an almost **four year nomination** on our large historic district in SE Portland.

Inconsistency, lack and clarity of rules continues to impact this nomination.

In many substantive cases, there is no explanation for why the new rules – if they’re needed for thoughtful consideration for new nominations, to correct the obvious problems in prior nominations that led to these reforms, or two that will not apply to pending nominations. If the rules are going to apply prospectively only, the agency should provide a reason why.

Following are suggested revisions to the draft:

OAR 736-050-0230

16(a) **The definition of owner or owners is not defined in 36 CFR 60.6 (k) it is defined in 36 CFR 60.6 (g).**

(16) A The owner of fee simple absolute or fee simple defeasible estate title to property as shown **from either official land recordation records or** in the property tax records of the county where the property is located, including, but not limited to, trusts, limited liability corporations, and any other legal entity that can hold fee simple absolute or fee simple defeasible title to real property within the state of Oregon;

36 CFR 60.6 The list of owners shall be obtained from either official land recordation records or tax records, whichever is more appropriate, within 90 days prior to the notification of intent to nominate.

For the Eastmoreland nominations SHPO pulled just the Multnomah County Tax Records. These records have shown multiple errors that have been shared with SHPO by homeowners in Eastmoreland asking for correction showing SHPO the current deeds.

Starting in July of 2018, 100+ deed records showing misinformation was shared with Ian Johnson, SHPO and with Julie Ernstein and Paul Lusignan, National Park Service. This sample is evidence alone that the Multnomah County property tax records are not accurate when counting owners.

In contacting Multnomah County Recording Office, I was told by a technician that SHPO could pull the county tax records and the deeds to ensure accuracy.

OAR 736-050-0250

- 8(e) Identify owners using **either official land recordation records or** county property tax records obtained within 90 calendar days prior to the beginning of the public comment period.

See prior argument.

- 12(a) The SHPO must create a property owner list that includes each owner within the boundary of a historic resource nominated for listing in the National Register using **either official land recordation records or** county property tax records obtained as provided in subsection (8) (d). That property owner list is the official list of property owners throughout the public comment period.

See prior argument.

- 12(A) The SHPO must correctly identify the total number of owners.

This is critical to insure that the count is correct for the nominations. This nomination has been riddled with changing laws and process. Under state law in Oregon automatic restrictions result that are not required by federal listing. Oregon's process is not just honorary. In Oregon, there are restrictions on resources listed on the National Register because of other state statutory and administrative rule provisions.

- 12(B) The SHPO must **review official land recordation records** provided by the county assessor **to determine accuracy when counting owners.**

The Eastmoreland nomination has demonstrated that SHPO cannot have confidence in the Multnomah County Tax Records alone without seeing the current deeds to property.

- 12(C) The SHPO must **remove owners** on the property owner list **if the owner cannot be** contacted using the information included on the property owner list provided by the county assessor's office.

In mailing to owners on the Multnomah Property Tax Records List, twenty homeowners' letters were returned which I have. Technically this could be 40 owners tallied in the count who are not aware, not able to object. These owners should not work against other owners in Eastmoreland in the count.

- 12(F) The SHPO must count a trust as a single owner when multiple trustees are named.

If SHPO is referring to the official land recordation records, they will be able to identify trusts.

The SHPO cannot assume correctly whether the listing is an individual or a trust on the Multnomah County Tax Records.

Many Multnomah County Tax Records do not list trusts in the record.

- 13(b) In determining to undertake an examination under subsection (a), SHPO **will undertake** an examination **that** could affect the outcome of the process.

Once an examination is requested that document evidence to establish factual inaccuracy or error by SHPO, SHPO will undertake an examination or such request will be submitted to the National Park Service.

- 13(d) An examination under subsection (a) **may be** limited to the specific nature of the identified concern; **or may include** an evaluation of each entry in the property owner list or each submitted notarized statement.

Once an examination is requested that documents evidence to establish factual inaccuracy or error by SHPO, SHPO will undertake an examination or such request will be submitted to the National Park Service.

SHPO has a responsibility to examine records that document evidence to establish factual inaccuracy or error by SHPO.

- 15(d) If a historic resource is not listed in the National register within two years from the date the NPS first returns the National Register nomination for correction the SHPO must decide whether to resubmit the National Register nomination form to the Committee or the NPS as described in this rule or end the National Register nomination process. If the SHPO does not resubmit a National Register nomination form to the Committee or the NPS as described in this rule, the public comment period and the nomination process are ended. The SHPO must consult with the proponent and consider their opinion before making a final decision. A written decision shall be provided to the proponent, owner, CLG, chief elected official, and tribes. The SHPO may provide notice to owners by public press release or other means.

- 15(e)(B) If the SHPO determines that the National Register nomination form requires substantive revision or if it is in the public interest the public comment period must close and the nomination process must stop. A proponent may revise the National Register nomination form and submit the form as a new nomination during a regular deadline for a future committee meeting as described in this rule;

Both 15(d) and 15(e)(B) are invitations to arbitrary and capricious agency action. SHPO could decide whether to resubmit a returned nomination or end the nomination, but doesn't say on what grounds it will decide. It doesn't identify the criteria it will use in making that decision. On these rules, the decision could be based on whether SHPO likes the proponent or not, or dislikes the opponents, or is just weary of the process, or other reasons that no party would be comfortable with.

- 15(D) Create a new property owner list as described in section (12a); and

The SHPO must create a property owner list that includes each owner within the boundary of a historic resource nominated for listing in the National Register using official land recordation records and county property tax records obtained

as provided in subsection (8) (d). That property owner list is the official list of property owners throughout the public comment period.

There seems to be wording missing after the word and.

Section (15)(f)(c) seems to be missing from the rule documents.

OAR 736-050-0270

- (4)** OAR 736-050-0270(4), that “OAR 736-050-0260(15)(d) and 736-050-0260(15)(e)(B) are not applicable to National Register forms submitted before the effective date of this Division.”

Paragraph (15)(d) and subparagraph (15)(e)(B) are not in OAR 736-050-0260, which only goes as high as section (13). They’re in OAR 736.050-0250.

Why would these laws not be applicable to National Register forms submitted before the effective date of this Division?

MARSHALL Janelle * OPRD

From: Kimberli Fitzgerald <KFitzgerald@cityofsalem.net>
Sent: Wednesday, August 19, 2020 10:24 AM
To: JOHNSON Ian * OPRD
Cc: OLGUIN Robert * OPRD; HAVEL Chris * OPRD; PUBLICCOMMENT * OPRD
Subject: RE: Questions for today's NR Rulemaking mtg

Thank you!

From: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>
Sent: Tuesday, August 18, 2020 11:02 AM
To: Kimberli Fitzgerald <KFitzgerald@cityofsalem.net>
Cc: OLGUIN Robert * OPRD <Robert.Olguin@oregon.gov>; HAVEL Chris * OPRD <Chris.Havel@oregon.gov>; PUBLICCOMMENT * OPRD <OPRD.Publiccomment@oregon.gov>
Subject: FW: Questions for today's NR Rulemaking mtg

Kimberli,

Thanks for your questions. I have answered your questions in the order you asked them. I have copied this email to our public comment mailbox to add our correspondence to the public record.

Please let me know if you have any further questions or comments.

Ian

1. The definition of "conflict of interest" and all sections throughout the rule have been removed because this term and the procedures are already well-defined in other state laws and rules. Including a definition and provisions here in this rule are repetitive. See Chapter 244 of the Oregon Revised Statutes. Staff will consider if a reference to the state law is necessary.
2. The quorum requirements are included in are included in OAR 736-050-0260 because this section addresses how the committee conducts meetings, including determining if they have a quorum to conduct business. However, this could be addressed earlier in OAR 736-050-0240. Staff will consider this change.
3. Yes, the SHPO could provide the CLG notice of the SACHP and the SHPO's recommendation to NPS. The rule already includes a provision that requires the SHPO to provide a copy of the nomination document that is sent to the National Park Service, and the SHPO's recommendation could be provided at the same time. Staff will consider making this change.
4. The provisions of Chapter 36 of the Federal Code of Regulations (CFR) Section 60.6(f) states, "The commenting period following notifications can be waived only when all property owners and the chief elected local official have advised the State in writing that they agree to the waiver." A local landmarks commission does not play a role in this decision.



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division

State Historic Preservation Office

Desk: 503.986.0678 cell: 971.718.1137

Visit our [website](#), Like us on [Facebook](#), Visit our [Blog](#).

From: HAVEL Chris * OPRD

Sent: Tuesday, August 18, 2020 9:14 AM

To: Kimberli Fitzgerald <KFitzgerald@cityofsalem.net>

Cc: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>; OLGUIN Robert * OPRD <Robert.Olguin@oregon.gov>; GAUTHIER Katie * OPRD <Katie.Gauthier@oregon.gov>

Subject: RE: Questions for today's NR Rulemaking mtg

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--

Chris Havel, Oregon Parks and Recreation Dept., (d) 503-986-0722, (c) 503-931-2590, chris.havel@oregon.gov

From: Kimberli Fitzgerald <KFitzgerald@cityofsalem.net>

Sent: Tuesday, August 18, 2020 8:29 AM

To: HAVEL Chris * OPRD <Chris.Havel@oregon.gov>

Cc: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>; OLGUIN Robert * OPRD <Robert.Olguin@oregon.gov>

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Thanks,
Kimberli

*Kimberli Fitzgerald, AICP/RPA
Historic Preservation Officer/City Archaeologist
Historic Preservation Program Manager
City of Salem, Oregon
503 540-2397 503 351-7578 (cell)
kfitzgerald@cityofsalem.net*

MARSHALL Janelle * OPRD

From: JOHNSON Ian * OPRD
Sent: Friday, August 21, 2020 9:17 AM
To: Tom Brown
Cc: PUBLICCOMMENT * OPRD
Subject: RE: True historic preservation would respect the homes of poor people, too; NR Rule Comment

Tom,

Thanks for sending this to us. I have added it to the public record at your request by copying it to the public comment email box. I have tagged the subject line so that it gets associated with the correct rulemaking process.

Thanks,

Ian



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division

State Historic Preservation Office

Desk: 503.986.0678 cell: 971.718.1137

Visit our [website](#), Like us on [Facebook](#), Visit our [Blog](#).

From: Tom Brown <sellwoodbrown@gmail.com>
Sent: Thursday, August 20, 2020 3:02 PM
To: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>
Subject: Fwd: True historic preservation would respect the homes of poor people, too

I would like to make this article part of the public record.

Is something SHPO has to accept?

Thanks

Tom Brown

----- Forwarded message -----

From: **Tom Brown** <sellwoodbrown@gmail.com>
Date: Thu, Aug 20, 2020 at 14:59
Subject: Fwd: True historic preservation would respect the homes of poor people, too
To: Tom Brown <sellwoodbrown@gmail.com>

<https://openhousing.net/true-historic-preservation-would-respect-the-homes-of-poor-people-too-216f392584b9>

<https://openhousing.net/true-historic-preservation-would-respect-the-homes-of-poor-people-too-216f392584b9>

True historic preservation would respect the homes of poor people, too

A state law aims to prevent historic districts from being perverted into a war on diverse housing.

by Michael Andersen | June 6, 2017

History is awesome, when it's accurate.

That's exactly why it's a problem when "historic districts" start being used not to open a window on a city's shared history, but as a back-door way to prevent changes to the buildings in desirable neighborhoods.

If the main effect of our historic preservation laws were to preserve the homes of rich people, we'd be unintentionally writing poor people out of Portland's history — and maybe even its future.

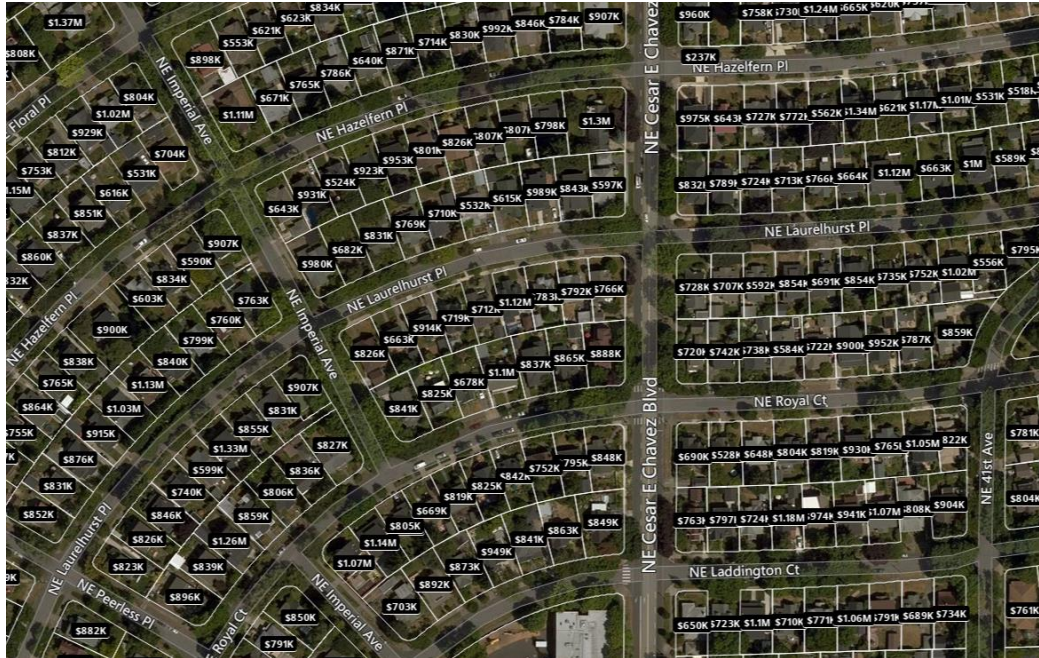
This isn't a theoretical issue.

Two weeks ago, the Eastmoreland Neighborhood Association [elected a slate of board members](#) who support a National Register Historic District in that neighborhood (average home price, per Zillow: [\\$779,000](#)).

Last week, the Laurelhurst Neighborhood Association followed, electing a board that unanimously backs the National Register Historic District plan described in a [44-page report](#). The report spent thousands of words describing how the plan would make demolition of the neighborhood's homes (average price: [\\$774,000](#)) "very difficult and rare" and **zero words mounting any argument that Laurelhurst's current buildings are actually uniquely historic.**

There's currently nothing to stop this from happening again and again, in neighborhood after neighborhood. And if that happened, Portlanders wouldn't just be writing poor people out of history. **By greatly slowing the gradual densification of their city, coalitions of local landowners could lock in ever-rising home costs and accidentally write poor people out of Portland's future, too** — without so much as a city council vote.

Historic districts have started to be used in ways that weren't intended



The average Laurelhurst home price has risen 50 percent during Portland's 12-year housing shortage. Image: Zillow.

What's going on here? As they freely admit, neighborhood backers of these national districts are **not motivated by a sudden interest in local history but by a series of interlocking loopholes** that let them use a federal administrative process to trigger local laws that essentially block redevelopment of any building that's found to "contribute" to the district's historic nature.

Nowhere in the [review process](#) for a new national historic district does anyone have to ask "Would permanently deterring infill housing a few blocks from a light rail station have any environmental costs?" or "Is it a good idea to have an entire neighborhood where the cheapest house costs \$440,772?"

Not only are people never *prompted* to consider those questions during the creation of a new national historic district, Portland historic resources manager Brandon Spencer-Hartle said Tuesday: "They're not *allowed* to consider them."

That's because the federal historic district process was never designed as a way to evaluate a de facto redevelopment ban. It was designed as a way to qualify for a National Historic Register plaque and various opt-in tax credits.



Photo: [Michael Rivera](#).

The deeper problem here is that **in 1995, Oregon passed a [law](#) that uses the low-oversight national historic register as a shortcut for deciding whether a building counts as sufficiently “historic.”** Once the state did that, it left no way for local politicians to create their own rules for controlling demolition in historic districts — the sort of rules that could weigh historic preservation against other issues like affordability or housing diversity.

The perverse result: Under current law, national historic districts can be initiated by landowners and approved without anyone formally considering the negative consequences. Democratically elected officials have no power to intervene.

Once that historic district is in place, any building that has been marked as “contributing” (a standard that describes most houses in any national historic district) can never be redeveloped without a direct vote of the city council.

The point here isn’t that historic districts are always bad.

Some buildings of historic significance ought to be preserved. But for any given house or district, **someone needs to weigh the benefits of preservation against the costs** — and right now, nobody is.

A proposed state law aims to change the rules



State Rep. Alissa Keny-Guyer chairs the Oregon House of Representatives committee on Human Services and Housing. Photo courtesy [Keny-Guyer](#).

Fixing this problem is [one of several ideas in Oregon House Bill 2007](#), part of the state's [many-pronged attack on high housing prices](#).

The goal of H.B. 2007 is to **make it easier to add homes without sprawl**. But it's currently on a knife's edge in the state legislature, largely because of its changes to future historic districts.

The bill would prevent Oregon cities from looking the other way while landowner-initiated national historic districts lock down one rich neighborhood after another without democratic oversight.

1. The bill would require cities to consider, during their hearings on the demolition of a building in a future National Historic Register neighborhood, "the affordability or the proposed development compared to the existing development."
2. The bill would create new exceptions to the requirement for a public hearing over demolition in future National Historic Register neighborhoods: if the new home is affordable to a middle-class household (up to 120 percent of the local median income); if it increases density; if it includes only exterior aesthetic modifications; or if it demolishes only an accessory structure like a garage.
3. The bill would preserve cities' right to create local historic districts, but they still couldn't use those to prevent a property owner from redeveloping if they want to.

None of these changes would affect national historic districts that already exist, only new ones.

Leading opposition to this part of the bill is [Restore Oregon](#), a statewide historic preservation nonprofit.

Restore Oregon Executive Director Peggy Moretti said in an interview Friday that her goal is to reduce building demolitions. Under the 1995 state law, the National Historic Register process is currently the only way to block a property owner from demolishing their building if they want to.

As for the risk that landowners in any wealthy neighborhood could block infill by getting their area designated as “historic,” Moretti said she sees no realistic chance of that becoming widespread.

In any case, Moretti said, requiring a city council vote every time a freestanding house in a historic district gets replaced with something else isn’t an excessive burden on neighborhood change.

“That’s far from redlining,” Moretti said.

What might a more inclusive historic preservation policy look like?



Housing affordability advocates and historic preservation advocates agree that the state’s historic preservation process is terrible — the national registry is “just not the right tool,” Restore Oregon staffer Dan Everhart [said last year](#).

Restore Oregon believes current law is better than H.B. 2007 as written. But it’s also possible to imagine a compromise around some new and better tool.

In the comments beneath a Portland Tribune editorial this spring warning about the risk of overusing historic districts, Lents resident Alex Reedin laid out an [interesting vision](#):

I am in favor of some historical preservation... But it has to be about shared, equitable history, not about aesthetics and exclusion. I'd be in favor of, say, a program to preserve say 100 historic buildings around the city including the following attributes:

- Homes and buildings open to the public and student field trips a good number of hours a year.
- More homes of the poor and lower classes than of the wealthy (there were many more poor and lower class people than wealthy). Also a focus on the historic homes and businesses of ethnic minorities.
- A focus on the stories of the people who lived there — told year round with sidewalk-accessible plaques, etc.
- Distributed fairly evenly around the city. There are old farmhouses everywhere in the city.

The wealthy inner parts are not the only areas with history.

That's just one take. [Here's another](#), from local architecture writer Randy Gragg last year:

Make historic preservation important again. Sorry, that doesn't mean stopping demolitions or creating more historic districts (especially the ones, like Irvington's, that are really about stopping development). ... We also need to recognize that "old" does not equal "valuable" — and concentrate our efforts on buildings that truly add texture, beauty, and meaning.

The benefits of a more concentrated, inclusive vision for historic preservation wouldn't just be academic.

If more Portlanders had firsthand knowledge of how Portland housed its poorest residents during its past booms, today's housing debate would be smarter.

Garage apartments, internal divisions of big old houses, two-story wood-frame apartment buildings: all cheap, all legal in Portland during World War II.

So was rent control, for that matter. It lasted from 1941 to 1945.

One of Portland's current historic districts, in Old Town-Chinatown, does indeed preserve some homes of poor people. But if the city's future historic districts were to gradually become code for "neighborhoods designed for rich people," we wouldn't be improving appreciation of Portland's history. We'd be obscuring it.

[Portland for Everyone](#) supports abundant, diverse, affordable housing. This is a reported blog about how to get more of those things. You can follow it on [Twitter](#) and [Facebook](#), or [get new posts by email](#) a few times a month.

Sent from my iPhone

MARSHALL Janelle * OPRD

From: Marcie Garritt <mgdr@stpaultel.com>
Sent: Sunday, August 23, 2020 5:24 PM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rule Changes

St. Paul CLG accepts rule changes to the National Register Program.

MARSHALL Janelle * OPRD

From: GAUTHIER Katie * OPRD
Sent: Monday, August 24, 2020 8:03 AM
To: PUBLICCOMMENT * OPRD
Subject: FW: for Proposed administrative rules for National Register Programs, 736-050-0220 to 736-050-0270
Attachments: ! Rule Changes Testimony.pdf

From: Sandra Shotwell <sandra.shotwell@gmail.com>
Sent: Sunday, August 23, 2020 9:50 AM
To: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>; GAUTHIER Katie * OPRD <Katie.Gauthier@oregon.gov>
Cc: Sandra Shotwell <sandra.shotwell@gmail.com>
Subject: Fwd: for Proposed administrative rules for National Register Programs, 736-050-0220 to 736-050-0270

Hello, Ian and Katie. Thank you for your work on this. My comments have been sent as below.

Kind regards,

Sandra

Begin forwarded message:

From: Sandra Shotwell <sandra.shotwell@gmail.com>
Subject: for Proposed administrative rules for National Register Programs, 736-050-0220 to 736-050-0270
Date: August 23, 2020 at 8:10:17 AM PDT
To: OPRD.publiccomment@oregon.gov
Cc: Sandra Shotwell <sandra.shotwell@gmail.com>

Please find my comments attached and below. Thank you.

August 22, 2020

Oregon Parks and Recreation Commission

725 Summer Street NE, Suite C

Salem, OR 97301

Re: Proposed administrative rules for National Register Programs, 736-050-0220 to 736-050-0270

Dear Commissioners:

Thank you for the public process to establish clear rules for submission and review of National Register historic district applications in the state of Oregon. I appreciate the opportunity to provide comments.

Given the honorary nature of the National Park Service National Register designation, a single person in theory could designate over a thousand homes as being part of a historic district. In a state such as Oregon that automatically applies land use restrictions to such an honorary national designation, a clear, detailed and reasonable set of rules and procedures must be available for applicant and for the owners of those homes. I appreciate the attempt to create such a fair set of rules and procedures in Oregon.

I have lived through the current process as an owner in Eastmoreland, which was among the applications that appear to have informed the current proposed rules. My experience leads me to have some ongoing concerns that are not fully addressed by the proposed rules.

In a large district such as Eastmoreland, informing neighbors about the existence of the application was a problem. I fully support the requirement that each owner receive a letter of notification.

Section 12 and 13 Comments

Section 12 (a) (B) requires the SHPO to use the county tax records to create the list of owners. Ownership is a moving target. The Eastmoreland process dragged on for years. Properties were sold. Owners died. Owners married or divorced. If accurate ownership must be determined, ownership as of what date? What is the plan for establishing an ownership date? And then allowing objections, and managing objections while more ownership changes occur?

And for an application pending from before the current proposed rulemaking, what process will be used to establish the date of ownership for generating the list of owners eligible to object? Will existing objections be counted? If not, on what basis under current or proposed changes in rules?

Will any of these issues require another rulemaking process?

Section 12 (a) (C) requires the SHPO to include owners listed on the tax rolls regardless of whether or not they can be contacted. Yet Section 13 (f) says that the SHPO may require that owners submit documentation to confirm their ownership and does not need to include them on the list of owners if they are unable or refuse to respond. How do these two sections work together?

Accurate identification of owners was a challenge. While I appreciate that the county tax rolls might seem to be a reasonable way to identify owners, the records are not accurate. I helped identify what ended up being about 100 errors in ownership for Eastmoreland. Often the listed owners include both former and current owners and also might list an agent or a deceased owner. The result is an apparent list of owners that is inaccurate, and larger than an accurate list would be. When objections are nearing 50%, that larger number of apparent owners adds confusion and makes it difficult to know what number of objections are needed to withhold approval of an eligible district. I understand Section 13 lays out procedures for staff to follow. I am not at all satisfied with the proposed procedures. Too much authority remains with the SHPO to decide whether to look beyond the tax roles for an accurate count of owners. "The SHPO may" is the most frequently used phrase. Leaving an accurate count to the SHPO has not worked effectively for our large proposed district. When some of the neighbors provided documentation about ownership errors related to the Eastmoreland application, we received no substantive response regarding the SHPO's plan to use the information. As the SHPO "may" but is not required to look beyond demonstrably inaccurate tax rolls to verify ownership, for Section

13 (g) I strongly recommend including clearly defined procedures that detail what documentation the SHPO will accept from third parties in making ownership determinations.

That said, I agree that it makes sense not to require additional work on the part of the SHPO if the work is not likely to change the outcome of a determination of the percent of owners objecting.

Section 13 (c) (A) requires notarized statements on forms supplied by SHPO. During the Eastmoreland process those forms changed. I strongly recommend that any notarized statement that contains all the information laid out in this section of the rules be accepted by SHPO.

Section 13 (c) (D) requires identification of names on previous tax rolls. What is not made clear is what are the consequences of not properly identifying all previous names on all previous tax rolls. This requirement seems unworkable and I recommend removing it.

General Comments

Racist history

I understand that a negative history can be the basis for historic designation, to help remember and hopefully not repeat that history. I further understand that a negative history would not preclude a district being designated for other reasons. In the case of Eastmoreland, there were covenants that precluded ownership by Chinese, Japanese and Negroes. Later, when that became illegal, there was redlining. Now there is the historic inequity barrier that makes it more difficult for those historically kept out of a neighborhood to be able to afford a home there at current prices. Is it possible to amend an application to include this negative but important historic information? The application for Eastmoreland was effectively whitewashed in its total focus on the architectural and design history of the proposed district. This is not the time for such oversights, and I encourage SHPO to include consideration of such issues in future applications, if not those that are ongoing. When we view a historic district, we should not overlook negative historic aspects.

Privacy

Privacy is another key issue. I did not appreciate having my name and address listed publicly. Neighbors approached and even harassed neighbors based on their now-public position on the application. I object to the notarized statements being made public without the express permission of the owner.

Thank you for the opportunity to provide comments, and for your courtesy in addressing them.

Sincerely,

Sandra Shotwell

7505 SE 36th Ave.

Portland, OR 97202

August 22, 2020

Oregon Parks and Recreation Commission

725 Summer Street NE, Suite C

Salem, OR 97301

Re: Proposed administrative rules for National Register Programs, 736-050-0220 to 736-050-0270

Dear Commissioners:

Thank you for the public process to establish clear rules for submission and review of National Register historic district applications in the state of Oregon. I appreciate the opportunity to provide comments.

Given the honorary nature of the National Park Service National Register designation, a single person in theory could designate over a thousand homes as being part of a historic district. In a state such as Oregon that automatically applies land use restrictions to such an honorary national designation, a clear, detailed and reasonable set of rules and procedures must be available for applicant and for the owners of those homes. I appreciate the attempt to create such a fair set of rules and procedures in Oregon.

I have lived through the current process as an owner in Eastmoreland, which was among the applications that appear to have informed the current proposed rules. My experience leads me to have some ongoing concerns that are not fully addressed by the proposed rules.

In a large district such as Eastmoreland, informing neighbors about the existence of the application was a problem. I fully support the requirement that each owner receive a letter of notification.

Section 12 and 13 Comments

Section 12 (a) (B) requires the SHPO to use the county tax records to create the list of owners. Ownership is a moving target. The Eastmoreland process dragged on for years. Properties were sold. Owners died. Owners married or divorced. If accurate ownership must be determined, ownership as of what date? What is the plan for establishing an ownership date? And then allowing objections, and managing objections while more ownership changes occur?

And for an application pending from before the current proposed rulemaking, what process will be used to establish the date of ownership for generating the list of owners eligible to object? Will existing objections be counted? If not, on what basis under current or proposed changes in rules?

Will any of these issues require another rulemaking process?

Section 12 (a) (C) requires the SHPO to include owners listed on the tax rolls regardless of whether or not they can be contacted. Yet Section 13 (f) says that the SHPO may require that owners submit documentation to confirm their ownership and does not need to include them on the list of owners if they are unable or refuse to respond. How do these two sections work together?

Accurate identification of owners was a challenge. While I appreciate that the county tax rolls might seem to be a reasonable way to identify owners, the records are not accurate. I helped identify what ended up being about 100 errors in ownership for Eastmoreland. Often the listed owners include both former and current owners and also might list an agent or a deceased owner. The result is an apparent list of owners that is inaccurate, and larger than an accurate list would be. When objections are nearing 50%, that larger number of apparent owners adds confusion and makes it difficult to know what number of objections are needed to withhold approval of an eligible district. I understand Section 13 lays out procedures for staff to follow. I am not at all satisfied with the proposed procedures. Too much authority remains with the SHPO to decide whether to look beyond the tax roles for an accurate count of owners. "The SHPO may" is the most frequently used phrase. Leaving an accurate count to the SHPO has not worked effectively for our large proposed district. When some of the neighbors provided documentation about ownership errors related to the Eastmoreland application, we received no substantive response regarding the SHPO's plan to use the information. As the SHPO "may" but is not required to look beyond demonstrably inaccurate tax rolls to verify ownership, for Section 13 (g) I strongly recommend including clearly defined procedures that detail what documentation the SHPO will accept from third parties in making ownership determinations.

That said, I agree that it makes sense not to require additional work on the part of the SHPO if the work is not likely to change the outcome of a determination of the percent of owners objecting.

Section 13 (c) (A) requires notarized statements on forms supplied by SHPO. During the Eastmoreland process those forms changed. I strongly recommend that any notarized statement that contains all the information laid out in this section of the rules be accepted by SHPO.

Section 13 (c) (D) requires identification of names on previous tax rolls. What is not made clear is what are the consequences of not properly identifying all previous names on all previous tax rolls. This requirement seems unworkable and I recommend removing it.

General Comments

Racist history

I understand that a negative history can be the basis for historic designation, to help remember and hopefully not repeat that history. I further understand that a negative history would not preclude a district being designated for other reasons. In the case of Eastmoreland, there were covenants that precluded ownership by Chinese, Japanese and Negroes. Later, when that became illegal, there was redlining. Now there is the historic inequity barrier that makes it more difficult for those historically kept out of a neighborhood to be able to afford a home there at current prices. Is it possible to amend an application to include this negative but important historic information? The application for Eastmoreland was effectively whitewashed in its total focus on the architectural and design history of the proposed district. This is not the time for such oversights, and I encourage SHPO to include consideration of such issues in future applications, if not those that are ongoing. When we view a historic district, we should not overlook negative historic aspects.

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Thank you for the opportunity to provide comments, and for your courtesy in addressing them.

Sincerely,

A handwritten signature in black ink that reads "Sandra Shotwell". The script is fluid and cursive, with the first name "Sandra" and last name "Shotwell" clearly legible.

Sandra Shotwell

7505 SE 36th Ave.

Portland, OR 97202

MARSHALL Janelle * OPRD

From: Jim Heuer <jsheuer@easystreet.net>
Sent: Monday, August 24, 2020 11:12 AM
To: PUBLICCOMMENT * OPRD
Subject: Comment on draft SHPO rulemaking for NR Nominations
Attachments: CommentsOnOPRD_RuleMaking_August_2020_JSH.pdf

To OPRD:
Attn: Katie Gauthier, Salem, OR

Attached is a PDF containing my comments on OPRD's proposed rules for National Register Nominations as prepared by the SHPO.

Thank you for the opportunity to comment and the extension of the date for comments to August 31, 2020.

All best,
Jim Heuer

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James S. Heuer
1903 NE Hancock Street
Portland, OR 97212
(503) 284-8481 (Home)
(503) 335-8380 (Work/Cell)
(503) 348-8694 (Text)

Public Testimony Re: Update to State Rules for National Register Program

By James Heuer

August 18, 2020

Attn: Oregon Parks and Recreation Commission, State Historic Preservation Office

My name is James Heuer, and I'm submitting this public comment on the pending SHPO rules for the National Register Program. My comments are based on the August 10, 2020, "clean" draft of the proposed rules. The positions and opinions in this document are my own, submitted as a member of the public with a deep interest in historic preservation. I am *not* representing any organization's position. However, my point of view is influenced by my experiences in the following roles I have played over the last 15 years:

- Member, Advocacy Committee, Bosco-Milligan Foundation (ongoing)
- Member, Advocacy Committee, Restore Oregon (2016-2019)
- Member, Land Use Committee, Irvington Community Association – reviewed and commented on over 400 applications for Historic Resource Review since 2010 (ongoing)
- Member, Rulemaking Advisory Committee for LCDRC update of State of Oregon Goal 5 Rules for Historic Preservation (2016-2017)
- Member, Senator Dembrow's Legislative Committee on Historic Preservation Issues (2018)
- Researcher and data analyst for the Irvington Historic District Nomination (2008-2010) and for the defense of the current Historic District boundary for the Irvington Historic District (2015)
- Presenter and information source for public meetings supporting the Eastmoreland Historic District (2017-2018)

These comments are organized into three sections. The first addresses major topical issues and broad concerns relative to the new rules. The second singles out specific language for editorial concerns. The last rebuts some claims found in the public testimony submitted previously in this matter.

Major Topical Issues

In general this rulemaking project is laudable as a meaningful effort to clarify a process which became corrupted and insulted by legal pettifoggery and abuse injected by unscrupulous owners involved with the Eastmoreland Historic District nomination. From an outsider's point of view, it should never have been necessary, had the State of Oregon simply adhered to its own laws and rules relating to trusts. But in the face of implacable legal assaults, it appears that SHPO had no choice but to undertake this rulemaking. It also appears that some of the concerns raised by the nomination to the National Register of lands in Coos County by local Tribes are being addressed here as well. It is my hope that in attempting to plug holes revealed by these narrow instances, the integrity and usefulness of the National Register designation process in recognizing and protecting our precious historic legacy not be compromised.

Definition, Determination, and Counting of Owners

This Section 736-050-0250(12) attempts to clarify the issue of counting owner objections relative to the total population of owners – a process which has plagued the Eastmoreland Historic District Nomination for the last three years. While an admirable attempt, the confusing language and internal

inconsistencies result in a failure to achieve the desired goal. Instead of the section as currently worded, I suggest the following:

Firstly, there is a need to make clear that SHPO has the responsibility to receive, evaluate, and count letters of objection to the Nomination and to make clear that such objections must be delivered in writing to SHPO at its place of business in Salem, OR. This provides the overall framework for the process.

There must be clarity in basic principles guiding the counting process as suggested below:

- **“Objections” may only be made by “natural persons” or entities which have the recognition in law as functioning as “persons”** – these include LLCs, corporations (non-profit or for-profit), and governmental entities. All such entities should be treated as being a single “owner”, regardless of their ownership structure or the number of stockholders of record. Note that a settlor or trustee of a trust must be such an entity, since (as mentioned below) trusts “per se” do not have decision making power, and thus cannot themselves “object” to anything.
- **The total population of owners is defined as the number of discrete persons, identifiable by name and address (or address of principal place of business) who have fee simple title** to all or part of a property contained within the boundaries of a resource being nominated for the National Register. Persons who own interest in multiple properties within those boundaries will be counted only once.
- **Properties held in trusts require that the “person” or “persons” be identified based on the type of trust, either revocable or irrevocable, in conformance with ORS 130 – Uniform Trust Code** which establishes the difference between revocable and irrevocable trusts. The rule must be consistent with ORS 195.300(18), which provides the definition of “owner” for purposes of Oregon Land Use laws – as enshrined in LCDC Rule 660-023-0200, “Procedures and Requirements for Complying with Goal 5”, which makes clear that for revocable trusts it is the Settlor who is the “person” who counts as “Owner” and for irrevocable trusts it is the trustee of the trust. If there are multiple persons who are settlors or trustees under this concept, each is accorded a count as one owner, but the trusts themselves are not counted as “owners” having independent agency – as it is always the settlor or the trustee who must act on behalf of the trust, never the trust itself. Natural persons or person entities which have a role in multiple trusts or in a trust and as fee simple owner of one or more other properties in the boundaries of the resource must specifically be counted only once to be in compliance with NPS rules.
 - **SHPO may require submission of a Certificate of Trust** (a commonly available document typically required by financial institutions and title companies to establish the status of the trust) to establish the type and effectivity date of the trust and the names of the settlors and/or trustees. If no type is expressly indicated on the Certificate of Trust or other Trust documents, SHPO must apply the rule spelled out in ORS 130.505 UTC 602(1) which defines all trusts as revocable unless explicitly defined in the creation documents as irrevocable (the reverse is true for trusts created prior to the 2005 adoption of the UTC by the State of Oregon). Specific information on the Certificate of Trust is provided in Appendix 1 of this document.

- **The identification that a property is held by a trust is primarily to be determined by the listing of the owner in the county tax records.** Owners who assert that they have right to be counted as “Owner” for objection purposes but whose trust is not listed on county tax records as owning the property bear the burden of proof to show that they have in fact a valid trust which holds title to the property and are required to submit a Certificate of Trust which establishes them as the person or persons who qualify as “owners” under the 660-023-0200 Rule.
- **A specific “point in time” should be defined that determines which owners may object based on property tax records.** Leaving this issue undefined invites endless scrambles to update the list as properties change owners. No effort to update the owner(s) identified for a property should be made unless an objection is filed by a person or entity which is not shown to be found on the “official” list from the defined “point in time”. In that case, the owner submitting the objection must have the burden of proof to submit evidence of a sales transaction or other title transfer making them the “current” owner. Without this certainty relative to the time frame for identifying “owners”, the process for validating the owner list and the identify of objectors as outlined in 736-050-0250(13) promises to be a never ending process of “whack a mole” as properties change hands both by the natural working of the real estate market and potentially (if unfortunately) the result of attempts by hostile parties to “game the system”. In this context, owners who have deceased after the “point in time” but prior to the completion of the review provided for by (13) should appropriately be treated as not having objected, even if the heir to the property submits an objection.
- **For purposes of determining the total number of “owners” associated with a Nomination, the proposed language that makes use of combination of full name and mailing address** from the property tax records to identify owners, provides SHPO with a good-faith, reasonable approach to identifying unique owners for non-trust ownership. However, for purposes of counting discrete objectors, SHPO must apply a more stringent rule, requiring each objector to submit a full name, home address, and contact telephone number, which will be the basis of eliminating duplicate objections. This will require SHPO to consider multiple spellings of the same name (i.e. with or without middle initial) at the same address and phone number as the same person. In the case where multiple (possibly duplicate) names appear at the same address, SHPO must notify the objector of the duplication. Burden of proof should be on the objector(s) to establish that they are in fact separate persons by presenting copies of the approved photo ID document (currently valid Oregon Driver’s License or U.S. Passport, for example) which was used by the objector for notarization of the objection letter.
- **Both SHPO and NPS must have reasonable time to perform their responsibilities under their respective rules and procedures.** Accordingly, SHPO should set a deadline for receiving objection letters in advance of the end of the NPS comment period so as to provide time for SHPO’s work of due diligence to establish the validity of the total count of all owners and of objectors. Letters of objection sent directly to NPS by objectors without SHPO review during the comment period must be considered null and void for purposes of SHPO objection counting – if the NPS wants them to be included in the count, let NPS determine how they are to be counted.

Role of Local Governments (Including CLGs) To Object to Nominations

In 736-050-0250(10) SHPO proposes to grant to CLG jurisdictions the right effectively to veto a listing on the National Register subject to some conditions and the (poorly described) opportunity for an appeal. My presumption is that inclusion of this provision was a response to two considerations:

1. The bad feeling and frustration created by the designation of the Q'alya ta Kukwis scichdii me TCP Historic District in and surrounding Coos Bay, which resulted from requirements in the implementation rules for Land Use Goal 5 to protect National Register listed resources with a demolition review process. The requirement to carry out this responsibility put the local jurisdictions in the rather ridiculous position of having to establish a demolition review process for resources which were not disclosed to them and could not be under the legal requirement to redact information about archeological resources.
2. Arguments by 1000 Friends of Oregon and their legal counsel that the power of local jurisdictions to create and manage Comprehensive Plans was thwarted by imposing National Register resource and/or district designations on them without their agreement.

The first issue is a valid concern, but the solution proposed by SHPO in this provision is not sufficient to address the problem. The conflict between the Goal 5 rules and the requirement for secrecy regarding archeological (typically Tribal) resources began during the process by which the Goal 5 rules were revised back in 2016. At that time, one or more Tribal representatives were included on the RAC, but as they concluded the discussion was not relevant to their interests, they suspended participation after a couple of RAC meetings. As a result, the perspective of the RAC was entirely related to conventional historic resource nominations where secrecy was not expected. This, in hindsight, was a mistake, but one that could not have been corrected without the presence of one or more Tribal representatives who could address archeological site considerations.

The option for a local jurisdiction to shut down a Nomination, even with the possibility for appeal to SHPO sets up an inevitable conflict in future cases involving archeological resources – potentially pitting the Tribes against Oregon cities and/or counties. That should not be the result of any SHPO rule-making. Instead, SHPO should undertake a separate rule making that addresses the unique factors associated with archeological resources. Ideally, that separate rule making should be undertaken in cooperation with the Land Conservation and Development Commission so that SHPO rules for Nominations and Goal 5 rules for protecting archeological resources are appropriately coordinated.

The second concern, raised by opponents of historic preservation and supporters of untrammelled development rights (within the urban growth boundaries) is really a non-issue as they know – 1000 Friends of Oregon representatives closely followed the Goal 5 RAC rewrite of the Historic Preservation rules. In fact, only demolition review is automatically imposed by Goal 5 and then only on contributing primary resources (if in a district). Any application of additional protections requires a full-on land-use process conducted by the local jurisdiction, including the option of appeal to the local legislative body. Further, the Goal 5 rules give the local jurisdiction broad latitude to allow full or partial demolition of NR listed resources with many factors they can optionally weigh (including the adopted Comprehensive Plan) in arriving at a decision to allow demolition. Thus, the local legislative body is in no way prevented from intervening if the presence of a protected NR historic resource interferes with achievement of the goals and objectives of their Comprehensive Plan, or indeed any other civic or societal goals they should choose to prioritize over the preservation of the resource. Furthermore, Comprehensive Plans typically

concern themselves with zoning designations and allowances. In practice, changes in zoning can often be accommodated by adaptive reuse of historic resources – effectively allowing the Comprehensive Plan objectives to be achieved without any loss of historic resources.

Given these arguments, I urge SHPO to remove section (10) entirely from the proposal!

However, should SHPO insist on the inclusion of section (10), there are significant areas of confusion that must be cleared up in the language:

- The CLG may introduce its objection without ever providing a basis for it. Further, even the landmarks commission is not required to express the reasons for concurring in the objection. It is hard to imagine how a landmarks commission could in good faith characterize a resource proposed for listing as “qualifying” and then determine that such listing should not go forward. At minimum, for the benefit of any potential appellant, a full explanation of why the objection is being filed should be required.
- There is language that says “The public has a reasonable opportunity to comment”. That is insufficient. The process by which the landmarks commission reviews the potential for an objection should be a “land use process” as formally defined in State of Oregon Land Use laws so as to ensure adequate notice, proper recording of written and oral testimony, and publishing of the result. This would allow for possible appeal to the Land Use Board of Appeals if concerned parties determined that the local jurisdiction failed to meet its process responsibilities – a determination that SHPO is not prepared to make.
- SHPO is required to terminate the process and remove the nomination from further consideration immediately upon receipt. However, there immediately follows a 10-day notice deadline for communicating with the nominating party and a 30-day period from the initial date the objection was received for an appeal to be filed. Proper procedure should specify that the nomination is put into a hold or suspended state and not terminated (with all statutory time periods also suspended) until the passing of the appeal period without receipt of an appeal application or until an appeal is received.
- The notice periods and deadlines are much too stringent. National Register nominations are complex documents – especially those relating to districts. Proponents may have expended substantial resources in their preparation and documentation. If both the notice to the proponent and the appeal period start on the date SHPO receives the objection, this reduces the time during which the proponent may assemble an appeal to just 20 calendar days – an unreasonably short period of time.
- The appeal of a CLG objection appears to be allowed to be filed by any person, but no mention is made of what evidence should be brought forward to counter the CLG arguments. In the absence of a requirement for justification from the CLG for the objection, including a record of testimony received during the public hearings on the matter, it is difficult to imagine how the applicant could prepare a rebuttal or how the Advisory Committee could evaluate the Nomination and decide whether or not to take into account the CLG objection. Indeed, there is no indication of even how or whether the Committee should take it into account at all.

- Finally, the rule states that in the event of receipt of an appeal to the objection by the CLG, SHPO must submit the Nomination at the time of the next regularly scheduled Committee meeting. This, of course, might be happening in just a few days after the appeal is filed. Applicant should have the option, if the upcoming Committee meeting is to be held inside of 30 days from date of the appeal, to defer presenting their case to the Committee at the next following meeting so as to have adequate time to prepare their presentation and arguments to the Committee.

Editorial Issues and Concerns

- I have a concern with 736-050-0250 (6) which gives discretion without conditions or guidance to SHPO for implementing the restrictions on public disclosure under ORS 192.355(4). Consider requiring public notice of any decision invoking this clause, which must include defining the public interest which is advanced by the exemption from public disclosure. I'd urge that SHPO not allow this provision to apply to the identity of the persons presenting objection statements, and only allow such persons to request in writing the exclusion of their personal phone and email contact information from public disclosure.
- Definition of CLG in 736-050-0230 should indicate that the CLG is currently in good standing and has not had its status suspended or terminated at the timing of filing of an objection to any application for nomination to the National Register. Also change to "which is a city or county government which has signed a CLG agreement with SHPO, which agreement has formed the basis of certification by NPS to carry out responsibilities under the Act." This emphasizes that the CLG status represents a signed agreement between the jurisdiction and SHPO to carry out its responsibilities under the Act and under Oregon Goal 5 Rules and SHPO policies.
- 736-050-0250(9)(d) Should make clear that portions of testimony which make explicit reference to resources protected by Section 304 of the Act may be redacted when made public, but that the name and contact information of the submitter must be a matter of public record even if requested otherwise pursuant to 736-050-0250(6).
- 736-060-0250(17) provides for SHPO to make a recommendation to NPS on a Nomination contrary to the recommendation by the Committee. This requires more explication as well as a provision for timely notice to the Nomination's applicant, including specific reasons why SHPO has rejected the Committee's decision. There are actually several situations here:
 - The Committee votes to reject the Nomination. Does SHPO have the right to send it to NPS anyway with either a positive or negative recommendation? If SHPO sends the application to NPS anyway, must SHPO provide NPS with a summary of the Committee's findings?
 - The Committee votes to reject the Nomination and SHPO concurs. Does the applicant for the Nomination have the right to insist that it be forwarded to NPS anyway, even if SHPO attaches a negative recommendation? (In the past that has been allowed.)
 - The Committee votes to forward the Nomination with a recommendation to approve. SHPO disagrees. May SHPO decline to send it to NPS? If not, what communication should be made to NPS on the Nomination?

- 736-060-0260 and 736-060-0270 - I have no concerns about these provisions of the proposed rules.

Responses to Concerns Raised in Opposition to the Current Draft Rule:

- Objection: Requiring notarized letters of objection presents an “onerous” burden to those who wish to make their objections to a Historic District known.
 - Response: A simple Google search reveals a broad array of notary services, including nearly a dozen in Portland that will come to your home for as little as \$10. Many local “mail box” stores like Postal Annex provide notary services as part of their offerings. While the market provides owners plenty of convenient options for notarizing their objection documents, in larger nominations like Irvington, Laurelhurst and Eastmoreland, both proponents and opponents of the district set up “notary events” where concerned owners could notarize their objection letters for free. Fundamentally, the argument that the requirement for objections to be notarized is onerous is completely bogus. Indeed, it is a simple precaution to make sure that participants in this important land-use process are who they say they are and are thus eligible to file an objection under the Act.
- Objection: The objection counting process mandated by the National Park Service and the 1966 Act is inherently flawed and should be replaced by an out-and-out vote of property owners (possibly conducted by local election officials) where a majority rules.
 - In the era before 2016 when some Oregon jurisdictions applied extensive protection regimens automatically to newly designated National Register Districts, this argument might have made sense. Since the new Goal 5 Rule which limits automatic protection to review of the most dramatic alteration to a resource – its demolition, the urgency has been greatly reduced. In any event, it is the Federal Act which sets the groundrules for the process.

The Goal 5 Rule does in fact define “owner consent” for purposes of *locally* designated Historic Districts (and multi-owner resources) as a majority vote in favor of the nomination. To date that process has not been fully defined in most jurisdictions. The difficulties in counting exposed by the SHPO proposal suggest that a “majority rule” voting process will likely be just as fraught, especially as it relates to owners who choose not to vote or whose eligibility to vote is called into question.
- Objection: Historic District nominations upend land use planning in local jurisdictions. This dictates that local legislative bodies or government executives should have absolute veto over proposed nominations – both individually listed resources and historic districts.
 - This argument is frequently trotted out by objectors to all historic designation, but especially as it relates to districts. Yet, even in Portland, where the most controversy has occurred, the total residential land area currently in or in proposed designated districts (including the Historic Conservation Districts with their lower level of protection) is around 3%. This does not strike me as extraordinarily imbalanced given the fact that Portland’s Comprehensive Plan includes goals and objectives for livability,

historic preservation, and new housing capacity – all of which need to be balanced.

Further, with the new Goal 5 Rules, local jurisdictions must review, but certainly may allow – for a wide variety of reasons – demolitions of NR listed resources. In no way is the power of local government impinged upon in their role to manage development within their boundaries.

The fact that decision-making authority is wielded by SHPO and NPS for the actual identification and designation of NR resources simply puts this important task in the hands of agencies with well-defined, nationally-accepted rules for defining what is historic and allows the sound evaluation of historic value to be handled independently of local politics. However, those local politics are given free rein in defining and applying protections and especially in defining those protections which go beyond basic demolition review.

It should be remembered that Oregon has some of the oldest cities in the Western United States. Portland's proportion of pre-World War II structures within its pre-1980 boundaries is comparable to that of Philadelphia and Baltimore. With such a high proportion of potentially historic buildings, it is not surprising that there will be controversy over how much of the "historic core" should be protected. But with the new Goal 5 Rules, local jurisdictions like Portland have every opportunity to conduct inventories, evaluate historic importance, and locally designate and comprehensively protect what is most important in their boundaries.

- Objection: Many historic neighborhoods in Portland especially were originally subject to racially restrictive covenants on the deeds. We should not be valorizing the historic integrity and architectural excellence of such areas where people of color were excluded. SHPO, therefore must include an "equity" lens through which to evaluate new National Register nominations.
 - Taken to its logical conclusion, this argument might suggest demolition and replacement of pretty much any structure in Oregon built prior to the 1926 repeal of the Black exclusion clause of the Oregon Constitution. Indeed, Oregon does not have a stellar track record when it comes to equality for people of color. Race-based restrictive insurance and real estate sales policies in Oregon and Portland specifically continued well into the 1970s. We in the Irvington Historic District are well aware of this history, as at least half of the current District was red-lined by the banks until the passage of the Fair Housing Act in 1968, limiting the ability of residents both Black and white to obtain loans for purchase or improvement of their property.

That said, when we valorize these architecturally and historically rich neighborhoods, we highlight what they achieved: the transition of tens of thousands of Portland residents into the middle-class from their working class and immigrant origins – a transition that was a triumph of the American and Northwest economy. A survey reported in The Oregonian in February, 1909, of some 15,000 newly built Portland east-side residences found over 98% owner occupied. This economic empowerment of the (white) middle-

class has not been equaled, even in the boom years of the 1950s and 1960s. If anything, it sets an ambitious goal for a society that wants to expand the opportunities for wealth creation through home ownership to those historically disadvantaged by racism -- and to those of all races impacted by growing economic inequality throughout our society.

I agree that SHPO and the National Register system needs to continue to expand its view of the "historic" to include places and cultural movements that reflect our diversity. And we are seeing that expansion happening today. The Nomination to the National Register of a Multiple Property Listing of African American Resources in Portland, Oregon, from 1865 to 1973, has been approved by the NPS Office of the Keeper of the NR. That MPS will facilitate the Nomination of a wide spectrum of individual and district resource of importance to the Black Community in the coming years. And we can expect yet more nominations in the succeeding years that highlight the contributions of other communities of color. Stay tuned!

- Objection: Some proposed Historic District nominations were motivated by racism, seeking to prevent multi-family infill and "affordable housing" in single family areas (the example being "Eastmoreland"). To address this situation, SHPO should take "intent" of the nomination into account and refuse to approve those promoting racist intent.
 - Aside from the impossibility of considering "intent" of the proponent of a National Register Nomination (even if it were allowed by the Federal Act), this objection is both misguided and factually incorrect. I can speak from experience relative to the nomination of the Irvington Historic District, one that previous commenters have referenced as motivated by racist intent. From the time of the nomination in 2008-2010 and continuing today, Irvington has had a significant Black and Hispanic population. Of the District's 2377 single family houses, nearly 600 are less than 1800 square feet (the average size of a new house in the US is 2687 square feet), putting them very much into the middle- and working-class category. Furthermore, Irvington includes a large number of historic multi-family buildings, which taken together, constitute a significant resource of what is referred to as "NOAH": Naturally Occurring Affordable Housing. Indeed, the per capita income of the part of Irvington south of Tillamook Street is about 15% below the Portland median.

At the time of its nomination, many Irvington residents were concerned by recent experiences of demolition of small houses and replacement by much larger and more expensive houses. The opportunity to preserve our smaller working-class and middle-class houses through the demolition protections accorded to a National Register Historic District was strongly persuasive. In the end, Irvington's small-house inventory has been preserved, reducing the redevelopment and gentrification pressure. And our stock of NOAH multi-family buildings remains intact. However, this does not prevent the evolution of the neighborhood as zoning and demographic changes require it.

As I pointed out repeatedly to audiences of neighbors who gathered to learn about the Eastmoreland Historic District, the possibility of internal conversion, ADU construction

and multi-family zoning was NOT closed off by the Historic District. The ill-informed comments to the contrary by a few Eastmoreland residents notwithstanding, the residents of that neighborhood were well informed that District status would NOT block change, but would steer it in ways that preserved the architectural integrity of the neighborhood but NOT its demographic composition.

The foregoing was prepared by:

James S. Heuer
1903 NE Hancock Street
Portland, OR 97212
jsheuer@easystreet.net

Appendix 1 - General Information on Certificates of Trust:

(See <https://www.nolo.com/technical-support-main/nolo-living-trust-making-a-certification-or-abstract-of-trust.html>)

Making a Certification or Abstract of Trust

When you go to transfer property in or out your living trust, a bank or other institution may ask to see the trust document. The institution wants to know that the trust exists and that you really have the authority you say you do.

Use a Certification in Lieu of Your Trust Document

If you don't want to show your trust document, in most cases you can use a shorter version of it, called a certification, certificate, abstract or memorandum of trust (different states use different names). This document gives institutions the information they need but lets you keep some key provisions private. Notably, you don't have to disclose the names of the beneficiaries to whom you're leaving trust property. A certification is almost universally accepted in place of an entire trust document.

Many states have laws stating that if a certification of trust includes certain information, institutions must accept it in lieu of the entire trust document. California law, for example, states that someone who refuses to accept a valid certification and demands to see the whole trust document may be liable for any monetary loss suffered by the trust grantor.

Nolo's Trust Certification

Nolo's certification gives you a certification that meets the requirements of many states (for example, California). Even if it doesn't contain everything your state's form does, it will still be acceptable in a great many cases. However, an institution may insist that you use the form that has been approved by your state legislature. The states that have their own requirements are listed below. You can look up your state's law if you need to; see [If You Need More Help](#) for tips. In addition, institutions such as banks and title companies may have their own forms, which they would prefer you to use.

Notarizing Your Trust Certification

You should sign the certification in front of a notary public. If you and your spouse or partner made the trust together, you both need to sign the certification. If one has died, the survivor can make a certification.

State-Specific Rules

Most states have enacted statutes setting out the contents for a certification of trust. If your certification meets the state requirements, institutions must accept it or be liable to you for your losses.

State	Statute Sections on Certification of Trust
Alabama	Ala. Code §§ 19-38-1013
Arizona	Ariz. Rev Stat. s § 14-11013
Arkansas	Ark. Rev. Stat. § 28-73-1013
California	Cal. Prob. Code § 18100.5
Delaware	12 Del. Code Ann. § 3591
District of Columbia	D.C. Code Ann. § 19-1310.13
Florida	Fla. Stat. Ann. § 736.1017
Idaho	Idaho Code § 68-115
Iowa	Iowa Code § 633A.4604
Indiana	Ind. Code § 30-4-4-5
Kansas	Kan. Stat. Ann. § 58a-1013
Maine	Me. Rev. Stat. tit. 18-B, § 1013
Michigan	Mich. Comp. Laws Ann. § 565.432
Minnesota	Minn. Stat. § 501B.56
Mississippi	Miss. Code Ann. § 91-9-7
Missouri	Mo. Rev. Stat. § 456.10-1013
Nebraska	Neb. Rev. Stat. § 30-38,102 and following
Nevada	Nev. Rev. Stat. § 164.410
New Hampshire	N.H. Rev. Stat. Ann. § 564-B:10-1013
New Mexico	N.M. Stat. Ann. § 46A-10-1013
North Carolina	N.C. Gen. Stat. § 36C-10-1013
North Dakota	N.D. Cent. Code § 59-18-13
Ohio	Ohio Rev. Code § 5810.13
<u>Oregon</u>	<u>Or. Rev. Stat. § 130.860</u>
Pennsylvania	20 Pa. Cons. Stat. Ann. § 7790.3
Rhode Island	R.I. Gen. Laws § 34-4-27
South Carolina	S.C. Code Ann. § 62-7-1013
South Dakota	S.D. Cod. Laws Ann. § 55-4-42
Tennessee	Tenn. Code Ann. § 35-15-1013
Texas	Tex. Prop. Code § 114-086
Utah	Utah Code Ann. § 75-7-1013
Virginia	Va. Code § 55-550.13
West Virginia	W.Va. Code § 36-1-4a
Wyoming	Wyo. Stat. § 4-10-1014

MARSHALL Janelle * OPRD

From: JOHNSON Ian * OPRD
Sent: Monday, August 24, 2020 1:40 PM
To: Beth Warner
Cc: Merrick_map@yahoo.com; 'Derek Blum'; jncarlson@ipns.com; PUBLICCOMMENT * OPRD
Subject: RE: Another Extension

Beth,

At this time the agency has not scheduled another webinar. If that should change we will announce it publicly as we have for the other session.

Thanks.

Ian



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division

State Historic Preservation Office

Desk: 503.986.0678 cell: 971.718.1137

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From: Beth Warner <beth.warner48@comcast.net>
Sent: Monday, August 24, 2020 1:27 PM
To: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>
Cc: Merrick_map@yahoo.com; 'Derek Blum' <derekb@stanfordalumni.org>; jncarlson@ipns.com; PUBLICCOMMENT * OPRD <OPRD.Publiccomment@oregon.gov>
Subject: RE: Another Extension

I would hope this is the last extension they receive.

This is the response I received from you on August 12th (part of the public comment). Are you adding an additional webinar as well?

Beth

Beth,

Thanks for your comment. OPRD extended the comment period to specifically reach out to cities and counties and federally-recognized tribes, but also to provide further opportunity for those living outside of the Portland metro area to participate. The agency still expects to bring a draft rule to the Oregon Parks Commission for their November meeting.

Thanks.

Ian

Beth,

Thanks for your comment. OPRD extended the comment period to specifically reach out to cities and counties and federally-recognized tribes, but also to provide further opportunity for those living outside of the Portland metro area to participate. The agency still expects to bring a draft rule to the Oregon Parks Commission for their November meeting.

Thanks.

Ian

From: JOHNSON Ian * OPRD [<mailto:Ian.Johnson@oregon.gov>]

Sent: Monday, August 24, 2020 1:02 PM

To: Beth Warner

Cc: Merrick_map@yahoo.com; Derek Blum; jncarlson@ipns.com; PUBLICCOMMENT * OPRD

Subject: RE: Another Extension

Beth,

Thanks for your question. I have added the agency public comment email box to the cc line to include our conversation in the public record.

OPRD extended the public comment period at the request of the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (CTCLUSI). The Tribe nominated a Traditional Cultural Property in the Coos Bay area last year. The agency is still intending on presenting the draft rule to the commission for adoption at their November meeting.

Ian



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division

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Desk: 503.986.0678 cell: 971.718.1137

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From: Beth Warner <beth.warner48@comcast.net>

Sent: Monday, August 24, 2020 11:41 AM

To: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>

Cc: Merrick_map@yahoo.com; Derek Blum <derekb@stanfordalumni.org>; jncarlson@ipns.com

Subject: Another Extension

Good morning, Ian,

Can you please tell me why the public comment period was extended once again?

This is getting to be a bit ridiculous. The comment period was opened on July 1 and was due to remain open until August 14th. Then it was extended to August 31st. Now it is September 14th?

You say in the message that it is being extended because of a request from stakeholders. What stakeholders? Stakeholders have had almost two months to present both oral and written testimony. This extension seems unreasonable to me. I, too, am a stakeholder, and I would like to see the public comment period closed.

Best regards,

Beth Warner



This email has been checked for viruses by Avast antivirus software.
www.avast.com

MARSHALL Janelle * OPRD

From: JOHNSON Ian * OPRD
Sent: Monday, August 24, 2020 9:41 AM
To: sandra.shotwell@gmail.com
Cc: GAUTHIER Katie * OPRD; PUBLICCOMMENT * OPRD
Subject: FW: for Proposed administrative rules for National Register Programs, 736-050-0220 to 736-050-0270
Attachments: ! Rule Changes Testimony.pdf

Sandra,

Thanks for providing us your comments Sandra. I am sending this document to our public email box so that it is officially entered in the public record.

Ian



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division
State Historic Preservation Office
Desk: 503.986.0678 cell: 971.718.1137

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From: Sandra Shotwell <sandra.shotwell@gmail.com>
Sent: Sunday, August 23, 2020 9:50 AM
To: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>; GAUTHIER Katie * OPRD <Katie.Gauthier@oregon.gov>
Cc: Sandra Shotwell <sandra.shotwell@gmail.com>
Subject: Fwd: for Proposed administrative rules for National Register Programs, 736-050-0220 to 736-050-0270

Hello, Ian and Katie. Thank you for your work on this. My comments have been sent as below.

Kind regards,

Sandra

Begin forwarded message:

From: Sandra Shotwell <sandra.shotwell@gmail.com>
Subject: for Proposed administrative rules for National Register Programs, 736-050-0220 to 736-050-0270
Date: August 23, 2020 at 8:10:17 AM PDT
To: OPRD.publiccomment@oregon.gov
Cc: Sandra Shotwell <sandra.shotwell@gmail.com>

Please find my comments attached and below. Thank you.

August 22, 2020

Oregon Parks and Recreation Commission

725 Summer Street NE, Suite C

Salem, OR 97301

Re: Proposed administrative rules for National Register Programs, 736-050-0220 to 736-050-0270

Dear Commissioners:

Thank you for the public process to establish clear rules for submission and review of National Register historic district applications in the state of Oregon. I appreciate the opportunity to provide comments.

Given the honorary nature of the National Park Service National Register designation, a single person in theory could designate over a thousand homes as being part of a historic district. In a state such as Oregon that automatically applies land use restrictions to such an honorary national designation, a clear, detailed and reasonable set of rules and procedures must be available for applicant and for the owners of those homes. I appreciate the attempt to create such a fair set of rules and procedures in Oregon.

I have lived through the current process as an owner in Eastmoreland, which was among the applications that appear to have informed the current proposed rules. My experience leads me to have some ongoing concerns that are not fully addressed by the proposed rules.

In a large district such as Eastmoreland, informing neighbors about the existence of the application was a problem. I fully support the requirement that each owner receive a letter of notification.

Section 12 and 13 Comments

Section 12 (a) (B) requires the SHPO to use the county tax records to create the list of owners. Ownership is a moving target. The Eastmoreland process dragged on for years. Properties were sold. Owners died. Owners married or divorced. If accurate ownership must be determined, ownership as of what date? What is the plan for establishing an ownership date? And then allowing objections, and managing objections while more ownership changes occur?

And for an application pending from before the current proposed rulemaking, what process will be used to establish the date of ownership for generating the list of owners eligible to object? Will existing objections be counted? If not, on what basis under current or proposed changes in rules?

Will any of these issues require another rulemaking process?

Section 12 (a) (C) requires the SHPO to include owners listed on the tax rolls regardless of whether or not they can be contacted. Yet Section 13 (f) says that the SHPO may require that owners submit documentation to confirm their ownership and does not need to include them on the list of owners if they are unable or refuse to respond. How do these two sections work together?

Accurate identification of owners was a challenge. While I appreciate that the county tax rolls might seem to be a reasonable way to identify owners, the records are not accurate. I helped identify what ended up being about 100 errors in ownership for Eastmoreland. Often the listed

owners include both former and current owners and also might list an agent or a deceased owner. The result is an apparent list of owners that is inaccurate, and larger than an accurate list would be. When objections are nearing 50%, that larger number of apparent owners adds confusion and makes it difficult to know what number of objections are needed to withhold approval of an eligible district. I understand Section 13 lays out procedures for staff to follow. I am not at all satisfied with the proposed procedures. Too much authority remains with the SHPO to decide whether to look beyond the tax roles for an accurate count of owners. "The SHPO may" is the most frequently used phrase. Leaving an accurate count to the SHPO has not worked effectively for our large proposed district. When some of the neighbors provided documentation about ownership errors related to the Eastmoreland application, we received no substantive response regarding the SHPO's plan to use the information. As the SHPO "may" but is not required to look beyond demonstrably inaccurate tax rolls to verify ownership, for Section 13 (g) I strongly recommend including clearly defined procedures that detail what documentation the SHPO will accept from third parties in making ownership determinations.

That said, I agree that it makes sense not to require additional work on the part of the SHPO if the work is not likely to change the outcome of a determination of the percent of owners objecting.

Section 13 (c) (A) requires notarized statements on forms supplied by SHPO. During the Eastmoreland process those forms changed. I strongly recommend that any notarized statement that contains all the information laid out in this section of the rules be accepted by SHPO.

Section 13 (c) (D) requires identification of names on previous tax rolls. What is not made clear is what are the consequences of not properly identifying all previous names on all previous tax rolls. This requirement seems unworkable and I recommend removing it.

General Comments

Racist history

I understand that a negative history can be the basis for historic designation, to help remember and hopefully not repeat that history. I further understand that a negative history would not preclude a district being designated for other reasons. In the case of Eastmoreland, there were covenants that precluded ownership by Chinese, Japanese and Negroes. Later, when that became illegal, there was redlining. Now there is the historic inequity barrier that makes it more difficult for those historically kept out of a neighborhood to be able to afford a home there at current prices. Is it possible to amend an application to include this negative but important historic information? The application for Eastmoreland was effectively whitewashed in its total focus on the architectural and design history of the proposed district. This is not the time for such oversights, and I encourage SHPO to include consideration of such issues in future applications, if not those that are ongoing. When we view a historic district, we should not overlook negative historic aspects.

Privacy

Privacy is another key issue. I did not appreciate having my name and address listed publicly. Neighbors approached and even harassed neighbors based on their now-public position on the application. I object to the notarized statements being made public without the express permission of the owner.

Thank you for the opportunity to provide comments, and for your courtesy in addressing them.

Sincerely,

Sandra Shotwell

7505 SE 36th Ave.

Portland, OR 97202



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Willamette Valley Office • 454 Willamette St, Ste 213 • Eugene, OR 97401
Southern Oregon Office • PO Box 2442 • Grants Pass, OR 97528

July 20, 2020

Oregon Parks and Recreation Commission
725 Summer Street NE, Suite C
Salem, OR 97301

Re: Proposed administrative rules for National Register Program, 736-050-0220 to 736-050-0270

Dear Commissioners:

On behalf 1000 Friends of Oregon, I was a member of the Rules Advisory Committee (RAC) to the State Historic Preservation Office (SHPO) on OAR 736-050-0220 to 736-050-0270. We thank the chair of the RAC, the SHPO staff, and fellow RAC members for an informative and efficient process.

1000 Friends of Oregon submitted initial written comments on the draft rule that is before you today. Those are attached and with a few exceptions, we will not repeat them here but ask that you take them into consideration; many concern technical but important timing and process aspects of the proposed rules.

The proposed rules, while largely procedural, also raise some significant substantive issues. These include important and potentially adverse impacts on housing diversity, sufficiency, and affordability throughout a community. Therefore, these comments will focus on four issues: the role of local elected leaders in determining whether privately nominated structures and geographic areas should be submitted for inclusion on the National Register of Historic Places; the public engagement process currently underway for these proposed rules; a request to direct staff to pursue disconnecting the state historic preservation program's automatic restrictions from a listing on the National Register; and a recommendation that the Oregon Parks & Recreation Commission and ORPD forego certain uses of the National Register program in ways that perpetuate institutionalized racism.

I. Role of Elected Officials

Under section 736-050-0250(10)(A) and (B) of the proposed rules, a proposed nomination to the National Register of Historic Places would go to both the locally elected government body (city council or county commission) and to the local landmarks commission. However, the draft rule provides that the objection of the locally elected body is valid **only** if its landmarks commission also agrees with the objection. If the local elected body objects to the nomination, but the local landmarks commission approves it, then the nomination would go forward to the

state level and on to the National Parks Service (where the National Register of Historic Places resides).

As noted by the SHPO staff in its June 17 memo to this Commission, the RAC favored a stronger role for the chief local official of the jurisdiction in which a nominated historic resource is located. Under this, the elected body would have the *sole* authority to decide whether a proposed listing should go forward to SHPO and the National Register. The local landmarks commission would be advisory to the elected body, just as local planning commissions are today, among other examples. Only the local elected body is charged with balancing *all public policy interests*, as reflected in such things as the local comprehensive land use plan, public investments, and other adopted public policies.

We recommend that these rules provide that a local landmarks commission operate as any other local advisory body and make a recommendation to the elected body, and that the local elected body have the final decision-making authority on whether a privately nominated structure or structures should proceed forward. A variation on this could be that if the entity making the nomination is also the property owner, then the application need go only to the landmarks commission for consideration. However, if the nominating entity is not the property owner, or if not all property owners have signed on to the nomination, then the nomination goes to the landmarks commission for a recommendation and then to the local elected body for the final determination.

We find the staff rationale for the structure it proposes to be flawed. Staff states that it is concerned with “identifying specific types of resources for special consideration when such considerations are not provided for in federal law or regulation and similar arguments for balancing historic preservation against other public needs is just as valid in other situations.” However:

- Failure to be provided for in federal law is not the same as federal law prohibiting such a process, especially when under state law, automatic use restrictions often result that are not required by a federal listing.
- One cannot invoke federal law and “balancing” claims without embracing *all* of what it means to be listed on the National Register of Historic Places: it is *purely honorary*. Under federal law, the owner of property on the National Register may alter or destroy the resource without any hinderance.¹ However, in Oregon, there are restrictions on resources listed on the National Register because of other state statutory and administrative rule provisions.² Therefore, the local elected body should be the decision-maker that balances all public policy interests and determines whether the

¹ “Under Federal Law, the listing of a property on the National Register places no restrictions on what a non-federal owner may do with their property up to and including destruction....” National Park Service, National Register of Historic Places, <https://www.nps.gov/subjects/nationalregister/faqs.htm>

² ORS 197.772; OAR 660-023-0200.

additional restrictions that, in Oregon, come along with a federal listing should be imposed.

- The input of a local elected body is most likely to be to modify a proposal in some way, not to reject it altogether. For example, a city council might trim the boundaries of a proposed multi-property historic district, or provide a way to protect the amenity value of water conveyance infrastructure while allowing water conservation measures to be implemented.
- The proposed structure in the draft rules - in which a landmarks commission would essentially have the final say when there are multiple owners and/or lack of agreement among owners - is exactly when the elected leaders of a jurisdiction should balance competing public policies in making a conclusion on whether the nomination should proceed as proposed, be modified, or not proceed.

II. Public Process

When this Commission approved, in May, going forward with a public hearing process on these proposed rules, we recommended that you require an even broader public outreach than was proposed by the staff. At that time, the staff stated:

“The outreach effort will include public meetings in the Portland and Bend metro areas, Astoria, and Coos Bay. The agency will provide notice of the meetings and rulemaking through broad and specific press releases, and the agency website and various social media outlets, publications, and relevant events.”

We said that while that was a good start, more needed to be done, and we listed some suggestions. Since then the public process appears to have been scaled back further, to consist of a comment period until August 14 and one call-in hearing. We understand the limitations resulting from the coronavirus, but **we urge you to instruct staff to do more outreach, both geographically and to those who have not been engaged in these decisions.**

III. Disconnect the Federal and State Processes

As noted above, Oregon is the only jurisdiction in the country that automatically links state law restrictions to listing on the otherwise honorary federal National Register of Historic Places. As described by SHPO staff during the RAC meetings, this connection causes multiple problems across the historic preservation program and has had statewide impacts, often adverse to other public policy interests, and for which there is, apparently, not much sympathy at the federal level. Much of the time and energy of RAC members was spent discussing and crafting rather convoluted processes due to this connection, which are reflected in the proposed rules.

Therefore, we recommend that the Commission direct SHPO, working with the Department of Land Conservation and Development, to seek legislative and/or administrative rule changes to

disconnect these programs so that the state and local level work of historic protection can separately operate as intended.

IV. Some Use of the National Register Program Can Perpetuate Institutionalized Racism

Due to the statutory³ and administrative rule⁴ connection between Oregon's state historic preservation laws and the National Register of Historic Places, listing of large residential neighborhoods on the National Register operates, intentionally or unintentionally,⁵ to make redevelopment, infill, and overall change more difficult, expensive, or impossible. The result is that more diverse and affordable housing types (such as duplexes, fourplexes, and rowhouses) are not built. These same restrictions have also prevented money-saving, common energy efficiency improvements.⁶ These national listings have occurred without going through the local elected body – the representative body that is charged with balancing all the public policies important to that jurisdiction as reflected in local laws, including housing, and thereby balancing diverse and sometimes conflicting public interests.

Several large neighborhoods in Oregon – totaling thousands of homes - currently on the National Register or that have recently attempted to be listed, were established around 1900 with racially restrictive covenants to prevent, most commonly, “Chinese, Japanese, and Negroes” from owning property in them.⁷ The applications for historic designations describe how restrictive covenants insured the long-lasting “architectural uniformity” of these neighborhoods,⁸ but neglect to mention or underplay that these covenants also acted – intentionally – to ensure racial “uniformity.”

³ ORS 197.772

⁴ OAR 660- 023-0200(8)

⁵ For example, concern about infill, smaller lot sizes even for single family homes, “multi-family” housing, and changing “character” of a neighborhood have been expressed as reasons to pursue listing on the National Register. http://historicdistrict.eastmorelandpdx.org/wp-content/uploads/2016/08/2016.05.26-ENA-HDNeighborhood-Workshop-May-2016_Final-s.pdf See also, Randy Gragg, OPB, *Can A Stranger Designate Your House As Historic? In Oregon, They Can*, <https://www.opb.org/radio/article/keep-eastmorland-free-historic-controversy/>

⁶ For example, replacing original wood frame windows with energy-efficient synthetic material frames and placement of solar panels on front-facing roofs can be prohibited. See, e.g., 33.846.060.(5), <https://www.portlandoregon.gov/bps/article/53488> and <https://www.portlandoregon.gov/bds/article/445462>; Irvington Historic Review guide <https://static1.squarespace.com/static/54497280e4b02ea0ed3493fb/t/54d7c17ae4b01c3fbc0253da/1423425914685/PrimerForIrvingtonHistoricResourceOwners-2-6-15+final.pdf>

⁷ See National Register nominations of Portland's Irvington historic district and Eastmoreland proposed historic district.

⁸ For example, from the Irvington Historic District application, approved in 2010 and encompassing over 2000 homes (emphasis added): “An early example of a streetcar suburb, Irvington is significant as one of the earliest real estate developments in Oregon to use privately imposed and enforced restrictive covenants as a means of controlling unwanted land uses and guiding residential development. These restrictions included street setbacks, establishment of baseline house values, use restrictions, and **race-based exclusions**. *** First platted in 1887 and opened for sale in 1891, Irvington's developers sought to impose restrictive deed covenants upon lots within the neighborhood to bring a **modicum of social and architectural uniformity** as well as predictability to the overall

However, the impact of these racially restrictive covenants was described well in the nomination to the National Register for the “African American Resources in Portland, Oregon, from 1865 to 1973”:⁹

“The concentration of African American settlement in the Lower Albina district was far from coincidental. Two major forces, both controlled by the White power structure, ensured that Albina became the center of African American residence in early twentieth-century Portland. The first was the racially restrictive real estate covenant, which became a common practice nationwide beginning in the early 1900s. Such covenants were legal clauses written into deeds of home ownership that specifically forbade sale to or occupancy by African Americans and other people of color. These covenants were widely utilized in Portland neighborhoods, particularly in the newly developed suburbs of the early twentieth century. A Laurelhurst warranty deed, created by the neighborhood’s developers in 1913, reads: “. . . nor shall said premises or any building thereon . . . be in any manner used or occupied by Chinese, Japanese or negroes, except that persons of said races may be employed as servants by residents.”

After the US Supreme Court declared such covenants unconstitutional, the exclusionary nature of these neighborhoods was continued in Oregon – as was typical around the country – through detached single family zoning, discriminatory lending by the federal Home Owners' Loan Corporation,¹⁰ and other state and federal laws and financing practices that made it, intentionally, very difficult or impossible for people of color to purchase

development process. Irvington’s extensive use of these restrictions was replicated in other subsequent residential developments in Portland such as Laurelhurst and Alameda Park. These explicit rules reveal how trends in restrictive covenants had **palpable and long-lasting impacts upon the architectural character** of streetcar suburbs in the late-nineteenth and early-twentieth centuries....”

See also the application for National Register listing of the Eastmoreland neighborhood in Portland, pp. 25-26, 33 at

http://www.eastmorelandpdx.org/wp-content/uploads/2020/06/OR_MultnoCo_Eastmoreland-Historic-District_NPSFinal_whole.doc.pdf

and news articles on the use of racially restrictive covenants in many neighborhoods:

https://www.oregonlive.com/news/erry-2018/05/fcd13cb4387071/racist_restrictions_now_illega.html

⁹https://www.oregon.gov/oprd/OH/Documents/2020Feb_OR_MultnomahCounty_AfricanAmericanResourcesinPortlandMPD.pdf, p. 18.

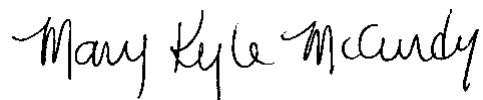
¹⁰ See, HOLC “Redlining” Maps; National Reinvestment Coalition, *The Persistent Structure Of Segregation And Economic Inequality*. <https://ncrc.org/holc/>

homes in these neighborhoods.¹¹ The impact of that can be seen today in the economic and racial segregation that continues,¹² including in Portland and other Oregon cities.¹³

We ask the Oregon Parks & Recreation Commission to undertake a process to ensure that the state does not encourage, assist, or approve designating any primarily residential neighborhood, on a state or federal list, that was born out of intentional racial discrimination.¹⁴

Thank you for consideration of our comments.

Sincerely,



Deputy Director

¹¹ The discrimination of state and federal laws and financing institutions was reinforced by real estate practices, as also described in the National Register application for “African American Resources in Portland, Oregon, from 1865 to 1973,” on p. 18.

“Restrictive covenants were made legally unenforceable in 1948 through action of the U.S. Supreme Court, but subtler actions could still be taken to prevent African Americans from moving into predominantly White neighborhoods. The second method of White control over the location of African American residence was the local real estate industry’s practice of preventing licensed real estate agents from selling homes in areas that were uniformly White. In 1919, the Portland Realty Board formally included an article in its Code of Ethics that called for punitive measures against any agent who sold a home to an individual for whom “such sales tended to cause a drop in property values”; this coded language was understood to prohibit the sale of homes in majority-White neighborhoods to African Americans and other minority populations. Instead, Black homebuyers were to be concentrated in Albina, so that the projected “drop in property values” could be contained within a limited geographic boundary. As racially restrictive covenants ensured that new suburban developments would be inhabited primarily—even exclusively—by White Portlanders, discriminatory real estate practices served to maintain the predominantly White character of existing neighborhoods in other areas of Portland.”

¹² Richard Rothstein, *The Color of Law*.

¹³ Much of the documentation has been in Portland, but it is not the only Oregon town or city with a residentially discriminatory history. See, e.g., Gregory Nokes, *Breaking Chains - Slavery on Trial in the Oregon Territory*; City of Portland, *History of Racist Planning in Portland*, <https://www.portland.gov/bps/history-racist-planning-portland>; Prof. Karen J. Gibson, *Bleeding Albina*, <http://kingneighborhood.org/wp-content/uploads/2015/03/BLEEDING-ALBINA-A-HISTORY-OF-COMMUNITY-DISINVESTMENT-1940%E2%80%932000.pdf>

¹⁴ This does not preclude historic designation of individual buildings that have outstanding architectural significance or are related to a person(s) or event(s) of historical significance, but as also documented in these neighborhood-scale nominations, those are a very small number of all the homes included in a multi-property historic district of hundreds or thousands of homes.



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May 19, 2020

To: Ian Johnson, SHPO Associate Deputy State Historic Preservation Officer
Ian.Johnson@oregon.gov

From: Mary Kyle McCurdy, Deputy Director

Re: Draft historic resources administrative rules, OAR chapter 736, division 50.

Thank you for the opportunity to comment on the draft rules for OAR chapter 736, division 50. As a member of the Rulemaking Advisory Committee (RAC), we would like to thank the staff and RAC chair for the well-run meetings.

These comments are preliminary, and we might add to or revise them as this process continues. The short timeframe in which to make them on this draft means that we were not able to consult with all those we would have liked to, and which we will do as these move forward. We understand there will be a full public comment period in the later summer or fall.

OAR 736-050-0230(9)

This first part of this subsection defines “historic resource” consistent with the cited CFR, but the second clause is not in the cited CFR and so should be defined, in particular, the term “potentially eligible.”

OAR 736-050-0230(16)(a)

The CFR citation is incorrect; it should be 36 CFR 60.3(k).

OAR 736-050-0250(7)

This subsection states that that “SHPO staff must establish a procedure for applying the conditions of ORS 192.355(4)....” We recommend setting a date by which that procedure will be adopted.

736-050-0250(8)(a)

A 30-day public comment period may not be adequate to allow for a CLG to review a National Register nomination form. A minimum 60-day public comment period would be preferable.

736-050-0250(8)(c)

We are glad to see and support the addition of the provision that SHPO must mail written notice to every property owner of a proposed historic resources, including to those in a proposed historic district.

736-050-0250(8)(e)

For consistency with other sections, consider changing (e) to be based on the Committee meeting date (i.e. “150 days prior to the Committee meeting”)

736-050-0250(10)(a)(A)

We find this language - “within 60 calendar days of dated notice provided by the SHPO prior to the Committee meeting scheduled” – is confusing as to when written comments from a CLG must be submitted to SHPO. And, it might be too limiting. The timing considered in (a) should be identical to that provided for all public comments (i.e. at any time between a CLG being notified of a property’s nomination and the date of the Committee meeting). Without affording maximum opportunity for a CLG to object, there will not be adequate time to schedule hearings, solicit public input, and draft objection letters. Please review the specific language in 54 USC § 302504 (b) which provides for a 60-day review window for CLGs.

736-050-0250(10)(A) and (B)

As noted by the SHPO staff in their accompanying memo, the RAC favored a stronger role for the chief local official of the jurisdiction in which a historic resource nomination is located, such that the elected body would have the sole authority to object or recommend a listing to SHPO.

However, the draft rule provides that the objection of a locally elected body (city council, county commission) is valid only if its landmarks commission agrees with the objection. If the local elected body objects to, but the local landmarks commission approves, the nomination, then the nomination will go forward to the state level.

We recommend that the rules provide that a local landmarks commission operate as any other local advisory body and make a recommendation to the elected body for it to make the final decision. A variation on this could be that if the entity making the nomination is also the owner, then the application need go only to the landmarks commission for consideration. However, if the nominating entity is not the owner, or not all owners have signed on to the nomination, then it goes to the landmarks commission for a recommendation and then to the local elected body for the final determination.

We find the staff rationale for the structure it proposes flawed. Staff states that it is concerned with “identifying specific types of resources for special consideration when such considerations are not provided for in federal law or regulation and similar arguments for balancing historic preservation against other public needs is just as valid in other situations.” However:

- One cannot invoke federal and “balancing” without acknowledging that if this was only about federal law, designation as an historic resource on the National Register of Historic Places would be purely honorary, and the owner could alter or destroy the resource without any hinderance. However, in Oregon, there are restrictions on resources listed on the National Register because of other state statutory and administrative rule provisions.¹
- The proposed structure, in which a landmarks commission would essentially have the final say, when there are multiple owners and/or lack of agreement among owners is exactly when the elected leaders of a jurisdiction should balance competing public policies in making a conclusion on the merits of the proposal.

OAR 736-050-250(12)(c)(D)

This subsection states that “The owner must identify both the name they were previously known by and listed in the county property tax records and their current legal name as applicable.” What is the purpose of this? Must they list every name they might have been listed as at any time on any property tax records in the county? Many property owners might not even know or remember how their name is listed for property they might have bought, say, two decades ago. In that time they might have gotten married or divorced, changed the ownership to a different form (LLC, trust, etc...). This seems unreasonably burdensome.

OAR 736-050-250(13)

We recommend this slight change:

“This may occur when the SHPO determines that the reasonably possible outcome of identifying potential error(s) may change the total number of owners on the property owner list or objections to the extent that the outcome ~~w~~could determine if the nominated historic resource is or is not listed in the National Register.”

OAR 736-050-250(15)(d)

This subsection states that “...SHPO must decide whether to resubmit the National Register nomination form to the Committee or the NPS” What criteria would SHPO use for that determination? The draft rule also states that SHPO will “consult with the proponent,” but that consultation should also include any opponents and the local government(s) and/or state agencies impacted.

OAR 736-050-0260(16)

Please review the word “not” to ensure intent.

¹ ORS 197.772; OAR 660- 023-0200.

535 NW 18th Ave.
Portland, OR 97209
July 21, 2020

Oregon Parks and Recreation Commission
725 Summer St. NE, Suite C
Salem, OR 97301

Re: ~~Proposed Administrative Rules for National Registry Program, OAR 736-050-0220 to~~
0270


Dear Commissioners:

I have read, and agree with, the letter submitted by 1000 Friends of Oregon with regard to the above matter. In particular, I am concerned that neighborhoods and cities may attempt to evade their housing obligations under state and federal law by advancing faux "historic districts" that would not be able to accommodate persons less well-off than their current residents and thus will be used as a tool for the perpetuation of *de facto* segregation.

The suggestions posed by 1000 Friends address this issue in terms of both process and substantive criteria. I urge the Commission to include these suggestions in the final version of its rules.

I appreciate the opportunity to participate in these rulemaking proceedings.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Sullivan', with a stylized flourish at the end.

Edward J. Sullivan



M A R C R I E S

July 14, 2020

Oregon Parks and Recreation Department

attn. Katie Gauthier

725 SUMMER ST NE STE C

SALEM OR 97301-1266

Re: Public Comments on Proposed Changes to OPRD rules

Elements of the “cancel culture” mindset and movement have been seen in the tearing down of statues, demands for removing from buildings and other monuments the names and imageries of various people, and the ostracizing of certain individuals, living or dead, who are accused of and condemned for racist, sexist, and other politically incorrect words or deeds at any time during their life.

The civil liberties expressed in the Bill of Rights no longer apply to some while not to others. Where violations, abuses, and any other willful acts may occur, legal defenses, advocacy groups, and general public opinion in the age of mass and social media try to limit or turn a bright light onto such conduct in most instances today; and pressures are made for the introduction of reforms that would make such behavior less frequent, if not impossible, and not to go unpunished.

The obligation of an American citizen was to live up to this ideal of a land dedicated to the liberty and rights of each and every individual. To strive to practice what was preached. Clearly, to overcome those weaknesses in human nature that resulted in a failure to fully respect and live by the idea of human freedom, a society in which the government exists to protect the individual in his rights and not to make the individual a subject to those in political power for their own purposes, whether those in power was one, or a few, or even many.

The “cancel culture” radicals, made up of the “politically correct,” the “identity politics” warriors, and “democratic” socialists, who all are dreaming dreams of a new tribal collectivism of mind control, political planning, and the social engineering of their own versions of a “new person,” want to wipe out any knowledge, memory, or belief in that American ideal.

Yet today there is no room or time for such reasoned discourse, just destruction that often transcends any rationalization of history. Rioters defaced the Lincoln Memorial in Washington and a statue of Abraham Lincoln in London. Besides attacking those monuments to the man who ended slavery, rioters attacked statues of military figures who defeated the Confederacy, like Grant and David Farragut, who refused to follow Tennessee and stayed loyal to the Union. In Boston, rioters defaced the monument to the 54th Massachusetts Infantry, the all black volunteer regiment of the Union Army. In Philadelphia, the statute of abolitionist Matthias Baldwin was attacked, despite his fight for black voting rights and his financial support for the education of black children.

This systematic destruction of public art is now often rationalized as the natural release of anger by those who have been silenced or marginalized. Even rioting and looting has been defended by some as an expression of power.

There is a reason why America is a Republic and not a democracy. From book-burning to statue-toppling, history shows *Free Speech* – and its historical representations – is the loser in Mob Rule.

July 14, 2020

I read through the “gobbley-gook” of line-outs in your publication “PRP-RUL-6-26-2020-NR-Rulemaking-Filing-Document”.

I did a search of the document on the word “protect” and did not get a single hit. I am more concerned about protecting our existing historical statues, monuments, places, etc. than FUTURE works.

British Prime Minister Boris Johnson has said if best:

"We cannot now try to edit or censor our past. We cannot pretend to have a different history. The statues in our cities and towns were put up by previous generations. They had different perspectives, different understandings of right and wrong. But those statues teach us about our past, with all its faults. To tear them down would be to lie about our history, and impoverish the education of generations to come."

If your “proposed” rules changes do not deal with protecting and preserving existing invaluable – irreplaceable – historic entities that reflect Oregon’s and America’s diverse and historical past from “Mob Rule”, then what is the point of the revisions?

Sincerely,

A handwritten signature in black ink that reads "Marc Ries". The signature is written in a cursive, flowing style.

MARSHALL Janelle * OPRD

From: Patricia Brandt <tpbrandt@comcast.net>
Sent: Saturday, July 18, 2020 7:46 AM
To: GAUTHIER Katie * OPRD
Cc: PUBLICCOMMENT * OPRD; JOHNSON Ian * OPRD
Subject: Re: Opportunities to comment on proposed National Register state rules

This is deceptive...Oregon does and Eastmoreland has every intention to place restrictions

on property clearly communicated by Rod Merrick.

The National Register has paused during this time of Covid. SHPO should too.

Two conference calls the last week in July is not a public campaign.

National Register listing does not place any restrictions on a property at the state or federal level, unless property owners choose to participate in tax benefit or grant programs. Learn more about the National Register of Historic Places program in Oregon at oregon.gov/oprd/OH/pages/national-register.aspx

Sent from my IPAD

Patty Brandt

On Jul 17, 2020, at 4:15 PM, GAUTHIER Katie * OPRD <Katie.Gauthier@oregon.gov> wrote:

**PUBLIC COMMENTS ACCEPTED THROUGH AUG. 14 FOR
UPDATES TO STATE RULES FOR NATIONAL REGISTER
PROGRAM**

Oregon Parks and Recreation Department (OPRD) is accepting public comments on proposed changes to rules governing how the state protects important historical places.

The state is proposing updates to the Oregon Administrative Rules that govern how the state administers the federal National Register of Historic Places Program, which lists buildings, districts and other sites important to local, state or national history. The Oregon State Historic Preservation Office (SHPO) — an office of OPRD — administers the local program, which is run by the National Park Service.

In the last several years, several high-profile, controversial nominations exposed problems with the National Register process, including determining owner consent and public involvement. Proposed changes seek to establish a fair and transparent process in alignment with federal requirements.

“We’re moving to fix those issues and refine the state rules to work better for Oregonians,” said Ian Johnson, associate deputy state historic preservation officer.

OPRD developed draft rules with the help of a committee of appointed members from state, county and local governments; preservation and natural resource organizations; and citizens with an interest in the National Register program.

OPRD will accept public comments on the proposed changes through 5 p.m. August 14, 2020. Comments can be made online, in writing or via email:

- Online: oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx
- In writing: Oregon Parks and Recreation Department, attn. Katie Gauthier, 725 Summer St NE, Suite C, Salem OR 97301
- Email: OPRD.publiccomment@oregon.gov
- Via video or telephone in one of three virtual public hearings:
 - July 23 at 2 p.m. and 7 p.m.
 - July 28 at 7 p.m.
 - Information on registering to provide comments during the public hearing is at: oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx

After reviewing public comments, OPRD staff plan to present a final recommended rule for consideration to the Oregon State Parks and Recreation Commission.

The full text of the proposed change is available online: oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx

Properties listed in the National Register are:

- Recognized as significant to the nation, state or community;
- Considered in the planning of federal or federally assisted projects;
- Eligible for federal and state tax benefits;
- Eligible for historic preservation grants when funds are available;
- Eligible for leniency in meeting certain building code requirements.

National Register listing does not place any restrictions on a property at the state or federal level, unless property owners choose to participate in tax benefit or grant programs. Learn more about the National Register of Historic Places program in Oregon at oregon.gov/oprd/OH/pages/national-register.aspx

Katie Gauthier | Government Relations and Policy Manager

<image001.png>

Oregon Parks and Recreation Department
Desk: 503.947.8625 cell: 503.510.9678
Currently teleworking 8-4:30 M-F
she/her/hers

MARSHALL Janelle * OPRD

From: Robertson, Sara <Sara.Robertson@oregonstate.edu>
Sent: Thursday, August 27, 2020 12:07 PM
To: PUBLICCOMMENT * OPRD
Cc: Richardson, Robert; Ramirez, Libby
Subject: Comments regarding proposed OARs governing how the state administers the federal National Register of Historic Places Program
Attachments: OSUTestimony_2020_08_21.pdf

Ms. Gauthier,

Thank you for the opportunity to provide comments on the proposed changes to the state rules governing National Register properties. Oregon State University has prepared comments regarding the proposed rule changes. They are attached.

Thank you,
Sara Robertson

Sara Robertson, Associate Campus Planner
Oregon State University | Capital Planning & Development | 541-737-0459

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Oregon State
University

Capital Planning and Development

Western Building
850 SW 35th Street
Corvallis, Oregon 97333

P 541-737-5412

F 541-737-4810

cpd.oregonstate.edu

8/21/2020

Oregon Parks and Recreation Department
Attn.: Katie Gauthier
725 Summer St NE
Suite C
Salem OR, 97301

Dear Ms. Gauthier,

Thank you for the opportunity to provide comments on the proposed changes to the state rules governing National Register properties. Oregon State University has reviewed the proposed rule changes and has several comments and concerns about the proposed changes.

As a university with a National Register historic district on its campus, OSU is the steward of the historic district as well as the more than 50 contributing resources in the district. While the presence of the historic district has helped the university maintain its character and physical connections to its history, the presence of listed properties on campus has complicated and added costs to the university's efforts to maintain, renovate, and repurpose buildings to ensure their continued use.

Since the creation of the OSU National Historic District, OSU has needed to revise the district nomination on several occasions to clarify the district boundary and to revise the contributing status of several resources that lacked historic integrity. These changes were necessary for OSU to better manage the district and plan for the future of the campus. The National Park Service guidance anticipates the need for these types of revisions; the National Register Bulletin *Defining Boundaries for National Register Properties* notes that:

Boundaries for listed properties need to be revised when there are changes in the condition of the resources or the setting. If resources or setting lose integrity and no longer contribute to the significance of the property, it is appropriate to revise the boundaries. Revisions may also be appropriate for nominations prepared in the early years of the National Register program, when nominations had limited or vague boundary documentation.

If the proposed rule changes are adopted as currently drafted, OSU's ability to revise the district boundary or the status of resources in the district could become more difficult and burdensome. Per the definition of substantive revision in the proposed OAR 736-050-0230(21) and the procedures outlined in the proposed OAR 736-050-0250(10), if Oregon State University requested a change to the OSU National Historic District boundary or a revision to the classification of a structure from contributing to non-contributing, that action could be blocked by the Certified Local Government (CLG) if both the local landmarks commission by majority vote (the non-elected Corvallis Historic Resources Commission) and the head of the local CLG (Corvallis Mayor) object to the change.

If the CLG objected to the substantive revision, OSU would have the option to appeal the CLG's objection per the proposed OAR 736-050-0250(10)(c), which states that "[a]ny person may appeal a CLG's objection by submitting a written appeal to the Oregon SHPO within 30 calendar days after the date the SHPO received the

OSU Public Testimony on Proposed State Rules for National Register of Historic Places Program

CLG's objection." The Committee would evaluate the proposed revisions and the CLG's objection to those revisions based on National Register Criteria. An OSU proposed revision could ultimately be supported by the Committee if the revisions were based on a strong argument related to the National Register Criteria, but this would be only after a lengthy and potentially costly appeal. As it is currently written, we are concerned that the revised rule would allow a few people representing the CLG, many of them non-elected volunteer appointees of a local landmarks commission with a limited purview, to stop a substantive revision or initiate a burdensome and expensive appeal process through their objection, despite the broader public interest in efficient and cost effective management of public (university) resources.

It is particularly important to the university that it is able to efficiently make revisions to an approved nomination, given that proposed OAR 736-050-0250(3) allows a proponent to "nominate a historic resource to the National Register regardless of ownership status" and that, as a state entity, OSU cannot prevent a historic resource from being listed per OAR 736-050-0250(11). While the OSU National Historic District will maintain the connection to the past, the OSU campus will and must continue to change to support the university's mission now and into the future. OSU must be able to efficiently make substantive revisions when necessary to ensure other public interests in addition to historic preservation are supported as well.

Again, we thank you for the opportunity to comment on the proposed rules and hope you will take our concerns under consideration.

Respectfully,

Sara Robertson
Associate Campus Planner
Oregon State University

CC: Bob Richardson
Katie Fast

MARSHALL Janelle * OPRD

From: June Chapin <junechapin@ymail.com>
Sent: Saturday, August 29, 2020 7:28 AM
To: PUBLICCOMMENT * OPRD
Subject: Eastmoreland Historic District

I am writing to you regarding Eastmoreland, If any neighborhood in the City should qualify for historical it should be Eastmoreland. The area was platted in the early year of 1900. With quality built homes. The majority are still here and in great shape. My home was built in 1924.

Our family moved into the neighborhood summer of 1973.

Since my husband passed away eight years ago my Attorney recommended that put the property in a Revocable Trust. which I did. I live in my home. and I have One Vote.

How is it possible some residents in the neighborhood have add 1000 TRUSTS to their property

I call this very dishonest would not agree?

These owners are dishonest and should not be allowed to cheat,

So I trust with all my heart that SHPO will do what is right.

Sincerely

June Chapin
2830 S.E. Knapp St,
Portland, Or.

P.S. I am a retired Realtor. Worked with Eastmoreland Realty in the Seventies.

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Sunday, August 30, 2020 3:01 PM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	EDWARD
Last Name	DUNDON
Email	ED@DUNDONCOMPANY.COM
Public Comment	<p>I served on the Eastmoreland Neighborhood Association land use committee prior to the decision to apply for the historic district nomination. I have subsequently followed the painstaking process the ENA has followed to fairly represent the wishes of the neighborhood which through several board elections have, without any doubt, made clear that the majority of the residents are in favor of the historic district. I have also witnessed the underhanded efforts of a small group of opponents to prevent the process from moving forward. The most egregious of these efforts has been the creation of 5,000 sham trusts to circumvent the wishes of the majority. I urge you to carefully consider the proposed rules changes with the understanding that they should provide for a fair process that reflects the majority of the property owners in a neighborhood. With this in mind please consider the following: - What is a fair definition of an owner? My understanding is that there are still 2000 sham trusts that are not necessarily ruled out due to the ambiguous definition of an owner. - The few leaders of the opposition have and will continue to use unethical means to subvert the wishes of the owners. Please close the loopholes available to them.</p>

Submission ID: c30a7a47-768e-4577-b36f-edafb164b011

Record ID: 143

MARSHALL Janelle * OPRD

From: Edward Dundon <ed@dundoncompany.com>
Sent: Sunday, August 30, 2020 3:45 PM
To: PUBLICCOMMENT * OPRD
Subject: Proposed National Register State Rules

My Comments:

I am a resident of Eastmoreland and served on the land use committee of the Eastmoreland Neighborhood Association prior to the decision to apply for the historic district nomination. I have subsequently followed the painstaking process the ENA has followed to fairly represent the wishes of the property owners in the neighborhood which, through several board elections, have without any doubt, made clear that the majority of the residents are in favor of the historic district. I have also witnessed the underhanded efforts of a small group of opponents to prevent the process from moving forward. The most egregious of these efforts has been the creation of 5,000 sham trusts to circumvent the wishes of the majority. I urge you to carefully consider the proposed rules changes with the understanding that they should provide for a fair process that reflects the majority of the owners in a neighborhood. With this in mind please consider the following:

- What is the definition of an owner? My understanding is that there are still 2,000 sham trusts that are not necessarily ruled out due to the ambiguous definition of an owner.
- The few leaders of the opposition have and will use unethical means to subvert the wishes of the majority. In addition to the sham trusts they have submitted a substantial number of unsubstantiated statements to the NPS. They will continue to look for other loopholes to deny Eastmoreland's listing.
- I am concerned about the proposed rule allowing the Certified Local Government to prevent a nomination from advancing. This language allows politics into the process and provides another avenue for opponents to circumvent the wishes of the majority of property owners.
- The Eastmoreland historic district nomination began about 4 years ago and carefully followed the nomination rules. The opposition has successfully stalled the process through unethical means. I urge you to adopt new rules that will allow for the immediate submission to the NPS.

Thank you for your careful consideration of a process that is democratic and fairly represents the wishes of the majority, not only for Eastmoreland but for other nominations in the future.

Regards,
Edward Dundon

Ed Dundon, President
The Dundon Company, LLC
205 SE Spokane Street, Suite 358
Portland, OR 97202
503-297-0208 - Phone
503-297-0218 - Fax
www.dundoncompany.com

MARSHALL Janelle * OPRD

From: Tracy Schwartz <schwartzpreservation@gmail.com>
Sent: Sunday, August 30, 2020 7:31 PM
To: PUBLICCOMMENT * OPRD
Subject: Public Comment on the National Register of Historic Places Rulemaking

To the Oregon Parks Commission:

Before I offer comments on the proposed National Register of Historic Places (NRHP) rule, I want to thank the Oregon State Historic Preservation Office (SHPO) staff for the time and thought that has gone into the NRHP program and rulemaking process. It is not an easy task and I applaud their efforts to preserve Oregon's cultural resources.

As you consider the proposed NRHP rule and the comments that have been submitted I ask that you keep in mind two main things. First, NRHP listing was intended to be an *honorary* designation. So honorary in fact that a homeowner has to purchase their own commemorative plaque once listed. The State of Oregon has linked NRHP designation to land use decisions (Goal 5). For that reason, in Oregon, a program meant to commemorate may come with a level of controversy. While I hope that the State will consider decoupling the NRHP from Goal 5 (obviously beyond the scope of this rule), I ask that you remember the NRHP was designed to be honorary and enact a rule that accounts for the purpose and spirit of the federal program.

Second, I have been greatly disappointed with the Eastmoreland centric tone the NRHP rulemaking process has had. As you review all the comments and public testimony, *please* remember that this is a rule for the entire State of Oregon, not one neighborhood. The definitions and processes in the rule should not be established with the fate of listing *one* district in mind. They *must* account for listing a bungalow in Burns, a lighthouse in Lincoln City, a statue in Sisters, a park in Pendleton, and an archaeological district in Amity. The rule must be for all of Oregon.

Three more technical comments include:

- I would request some clarification regarding the definition of "historic property (736-050-0230(10)). It has always been my understanding, though in the context of 36 CFR 800 and not 36 CFR 60, that a historic property includes those buildings, sites, objects, structures, and districts that are either eligible for or listed in the NRHP. I am curious if this definition as currently written in the rule conflicts with the federal definition.
- "Tribes" (736-050-0230(22)) should refer to more than Oregon's nine federally recognized tribes. Since the NRHP is a federal program, it is my opinion that all federally recognized tribes who ascribe significance or have ceded lands in Oregon should be consulted on nominations when appropriate.
- 736-050-0240(8)(a) calls for the Committee to meet three at least times each year. I recommend that the rule not be so specific in the number of meetings annually, and instead call for a minimum of one meeting each year with additional meetings added at the discretion of Oregon SHPO staff. There might be instances where the number of nominations in a year does not warrant three meetings, and this should be ok.

Again, thank you to the Oregon SHPO for the hardwork and dedication. I look forward to reading the final rule and appreciate the opportunity to be engaged in the process despite extraordinary circumstances.

-Tracy Schwartz
965 Shipping Street
Salem, OR 97301

P.S. I would like to disclose that I worked for the Oregon SHPO from December 1, 2018 until May 8, 2020. During this time, I did interact with the NRHP program but did not have any roles or responsibilities in writing

this rule or participating in the RAC meetings. If you would like clarification, please do not hesitate to contact me.

MARSHALL Janelle * OPRD

From: Anna Choe <anna.h.choe@gmail.com>
Sent: Sunday, August 30, 2020 8:23 PM
To: PUBLICCOMMENT * OPRD
Subject: Comments to the Proposed Rules Historic District
Attachments: A Choe Rule Changes Testimony (Aug 24).pdf

Attached please find our comments to the Proposed Rules.

Anna Choe & Don Lee

August 30, 2020

Oregon Parks and Recreation Commission
725 Summer Street NE, Suite C
Salem, OR 97301

Re: Proposed administrative rules for National Register Programs, 736-050-0220 to 736-050-0270 (the "Proposed Rules")

Dear Commissioners:

We are residents of the Eastmoreland neighborhood in Portland, Oregon and members of the Eastmoreland Neighborhood Association. We appreciate the opportunity to be able to comment on the Proposed Rules - on what it includes and what it omits. The lack of clear, logical rules that apply to a nomination is one of the reasons that Eastmoreland's nomination as an historic district has been troubled; this is evidenced by the April 2019 ruling by the Court of Appeals of the State of Oregon in *Brown v. Parks and Recreation Department*. The Proposed Rules is a step forward in remediating that opaque process, but there are certain Proposed Rules when applied, will continue to cause confusion, and result in arbitrary outcomes. In addition, the Proposed Rules fail by omission to address "racism in historic places and heritage organizations resources," something that the Oregon SHPO has stated as a part of its mission statement on its web-landing page.

The Proposed Rules - Section 736-050-0270 (4)

The very last provision of the Proposed Rules excludes two very relevant and significant provisions that should apply to the Eastmoreland historic district nomination:

- (1) One of the two excluded provisions provides that if a "historic resource is not listed in the National Register within two years from the date the NPS first returns the National Register nomination for correction, the SHPO must decide whether to resubmit the National Register nomination form to the Committee or the NPS as described in this rule or end the National Register nomination process." This rule makes sense as the nomination and its supporting documents (i.e., the survey that identifies contributing resources and home ownership counts) will cease to be correct after a period of time. After a period of two years, the nomination and supporting documentation would be stale given the renovations that occur in a neighborhood and the turnover in home ownership during such period of time.

For Eastmoreland, the nomination was initially returned from the NPS on July 5, 2017. The nomination that the Eastmoreland Neighborhood Association submitted that identifies contributing resources is dated November 1, 2016. The nomination for the Eastmoreland historic district is currently stale, and has failed to be approved by the NPS twice. For this very reason, this provision should apply to the nomination.

- (2) The second provision that would not apply to Eastmoreland's nomination seems to inexplicably excuse the SHPO from making a determination on whether Eastmoreland's nomination "requires substantive revision or if it is in the public interest the public comment period must close and the nomination process must stop." If this rule were to apply to Eastmoreland's

nomination, would the SHPO have to conclude that Eastmoreland's nomination requires substantive revision? Or, that it would be in the public interest that the nomination process should and must stop?

Considering that Eastmoreland's nomination is the only nomination that would be affected by this particular provision, it seems this was drafted to pre-determine a specific outcome for Eastmoreland's nomination.

The Proposed Rules - Section 736-050-0250 (12)

Section 12 sets forth a series of rules that proscribes how a majority of owners (that can object to the historic district nomination) is determined. Without addressing fundamental issue of an inherently undemocratic process of *objecting to* a nomination rather than *voting for* a nomination, we note that section 12 (a)(B) requires the SHPO to use the county tax records to create the list of owners without defining at which point in time such ownership must be determined. We can unequivocally state and without looking at any county tax record or any other record, that ownership of homes in the nominated district on November 1, 2016 (date of submission of the application) v. July 5, 2017 (date of first NPS rejection) v. July 19, 2019 (date that the NPS returned the nomination for a second time) v. August 23, 2020 (date of this letter) will be different. Without looking at the relevant records at these different points in time, neither I nor anyone else will be able to determine whether ownership of homes in the nominated district is *materially* different from the date of the nomination, and whether such difference could deprive homeowners of an opportunity to voice their objection or support of a nomination that will affect what it means to own a home in a designated historic district.

This date must be fixed in the rules, and importantly, a process for reconciling ownership at various points in the nomination process must also be addressed. Otherwise, the broad latitude that the SHPO is afforded in the Proposed Rules (by the use of the word "may" rather than "shall") will lead to arbitrary and inconsistent outcomes depending on whether a nomination is prolonged or disputed.

What is Missing from the Proposed Rules - Addressing Racism

It is easy enough to find out that the Eastmoreland neighborhood, as with neighborhoods elsewhere in Portland, was once riddled with covenants that prohibited "Chinese, Japanese and Negroes" from owning property. I also believe that there was no explicit racial animus or racist intent in nominating our neighborhood as a historic district. However, this doesn't mean history (apart from architectural and design history) should not be acknowledged or considered in the nomination process. A neighborhood has a history beyond architecture that continues to this day.

During the nomination and objection process for our neighborhood, we posted a lawn sign reflecting our opposition to the designation of our neighborhood as an historic district. We are both first generation Korean immigrants, and we are hard to ignore in our neighborhood both by the architecture of our house and our race (approximately 84% of the neighborhood identifies white as of 2018). While doing yard work one day, a neighbor, whom we never met and continue to see in our neighborhood, went out of his way to call us out on our position against the historic district and told us, "you don't belong here." That was on April 23, 2017.

Our point in sharing this experience is that a neighborhood is a collection of buildings and people. To address only the historic merits of buildings in evaluating a nomination for a historic district, and not address the experiences of the people who were excluded from this neighborhood and the living experiences of people of color like us, is a glaring omission that perpetuates racism. The racist history of Eastmoreland and the inherent exclusive nature of nominating a neighborhood as an historic district needs to be evaluated and considered along with the architectural merits – it can no longer be ignored because federal or state laws do not require it. It is imperative that the SHPO consider this in its rule making process as a part of satisfying its mission statement.

Sincerely,

Anna Choe

Don Lee

6712 SE Reed College Place
Portland, OR 97202

MARSHALL Janelle * OPRD

From: Robert Papkin <rdpapkin@gmail.com>
Sent: Sunday, August 30, 2020 9:49 PM
To: PUBLICCOMMENT * OPRD
Subject: Comments to Proposed Rule Change
Attachments: OAR revision.docx

Please accept the attached comments. Thank you.

My name is Robert Papkin and I live in the Eastmoreland district in Portland. I am submitting these comments on the Notice of Proposed Rulemaking that would revise state rules for the National Historic Places program in Oregon.

That Notice contains a Statement of Need which refers to a number of controversial issues involved in recent historic district nomination cases and asserts that “especially controversial is counting property owners and objections to establish owner consent as required by federal rule, specifically trusts” and that the proposed rule changes are needed “to provide general clarity”.

Although the Statement of Need does not explain how trusts can be especially controversial in counting property owners, the creation of 5000 trusts in the Eastmoreland nomination case is not further mentioned in any of the proposed rule changes. Nevertheless the generic term “trusts” is included in proposed rule 736-050-0250 as part of the definition of the word “owner”. Without any limitation on this word in the revised rule, the creation of a huge number of sham trusts could be used again to thwart a fair and democratic vote on the nomination of Eastmoreland for historic district status.

There is a way to allow proper use of a trust to be treated as an owner while prohibiting the creation of a huge number of additional votes from a single trust property. Article 130 of the Oregon Revised Statutes (ORS) adopts the terms of the Uniform Trust Code. Section 130.020(3)(c) of that article provides “that a trust must have a purpose that is lawful, and not contrary to public policy. While the creation of several thousand trusts for a single property may not in itself be unlawful, the transformation of those trusts into several thousand votes for the owner of the trust property is ballot stuffing that would be a fraudulent and unlawful tactic in any election and is clearly contrary to the basic public policy in favor of fair and honest elections”.

In reaching final revision of the rules applicable to votes on nominations for property to be placed on the National Register of historic places, it should be clearly set forth that any trusts formed for the sole purpose of additional owner votes for or against a historic district status are violative of Section 130.020(3)(c) and that any votes by such trusts will not be included in the property owner list that SHPO must prepare under proposed Rule OAR 736-050-0250(12) and will not be counted in determining the outcome of a nomination case.

While 3000 of the 5000 sham trusts have been unwound, there are still 2000 of these trusts remaining and the revised rule should specifically prohibit the counting of votes by these trusts in any further Eastmoreland nomination proceedings. The suggestions in these comments would provide an important element of the “general clarity” that is the goal of the Statement of Need for revising the state rules.

Thank you for the opportunity to submit comments on this issue and thank you also for the effort you have made to provide needed changes to the state rules for the National Historic Places program in Oregon.

Robert D. Papkin
6500 SE 36th Avenue Portland Oregon 97202

503-841-6802

19 August 2020

TO: Oregon Parks and Recreation Department
ATTN: Katie Gauthier
725 Summer Street NE, Suite C
Salem, OR 97301

FROM: Sam Pambrun
76928 Pambrun Road
Adams, OR 97810

RE: Updates to State Rules for National Register Program
OAR 736-050-0220 et. al.

This whole process is not user friendly, and it feels like it is purposefully so. I missed the 18 August Webinar. I tried to follow the "full text" link for the proposed changes and all I got was the topics of the OAR's to be changed. I tried to email Chris at OPRD and Ian at SHPO but would have had to change my computer's internet settings to do so.

My first recommendation is to quit trying to be bureaucracy and start worrying about preserving Oregon's rich history. Both OPRD and SHPO are the problem. You have effectively insulated yourselves from the public by making it so difficult to communicate with you. Quit hiding what you are doing behind layers of rhetoric.

My second recommendation is the result of experience dealing with SHPO. SHPO is abetting an effort to destroy 9 ½ miles of Oregon Trail on the Umatilla Army Depot. This is federal land being transferred to private, greedy hands. Thanks to SHPO there is no official voice to counter this pilfering of history. SHPO has been compromised, by state government and by powerful economic development interests.

So, quit worrying about miniscule word changes designed to align Oregon Administrative Rules with National Register of Historic Places language. Get your own house in order first. I'm fully aware that doing what is politically expedient without being crooked and doing what is right is sometimes difficult for a state agency.

Oregon citizens expect honesty, integrity and transparency from their state government. I expect our invaluable historic resources to be protected. Deal with the real problem first.

MARSHALL Janelle * OPRD

From: Tom Brown <sellwoodbrown@gmail.com>
Sent: Monday, August 31, 2020 5:31 PM
To: PUBLICCOMMENT * OPRD
Subject: H D Rule Making
Attachments: IMG_0139.jpeg

Please add this flyer to the public record.

This shows how the Eastmoreland Neighborhood Association used the NPS Historic program to “protect” the neighborhood when all of their other efforts failed.

If Oregon didn’t have demolition protection for historic resources Eastmoreland NA would have never pursued an historic nomination.

The HD program is being abused because Oregon offers demolition protection.

Thank you.

Tom Brown
503-381-6543

Working Together and

neighborhood

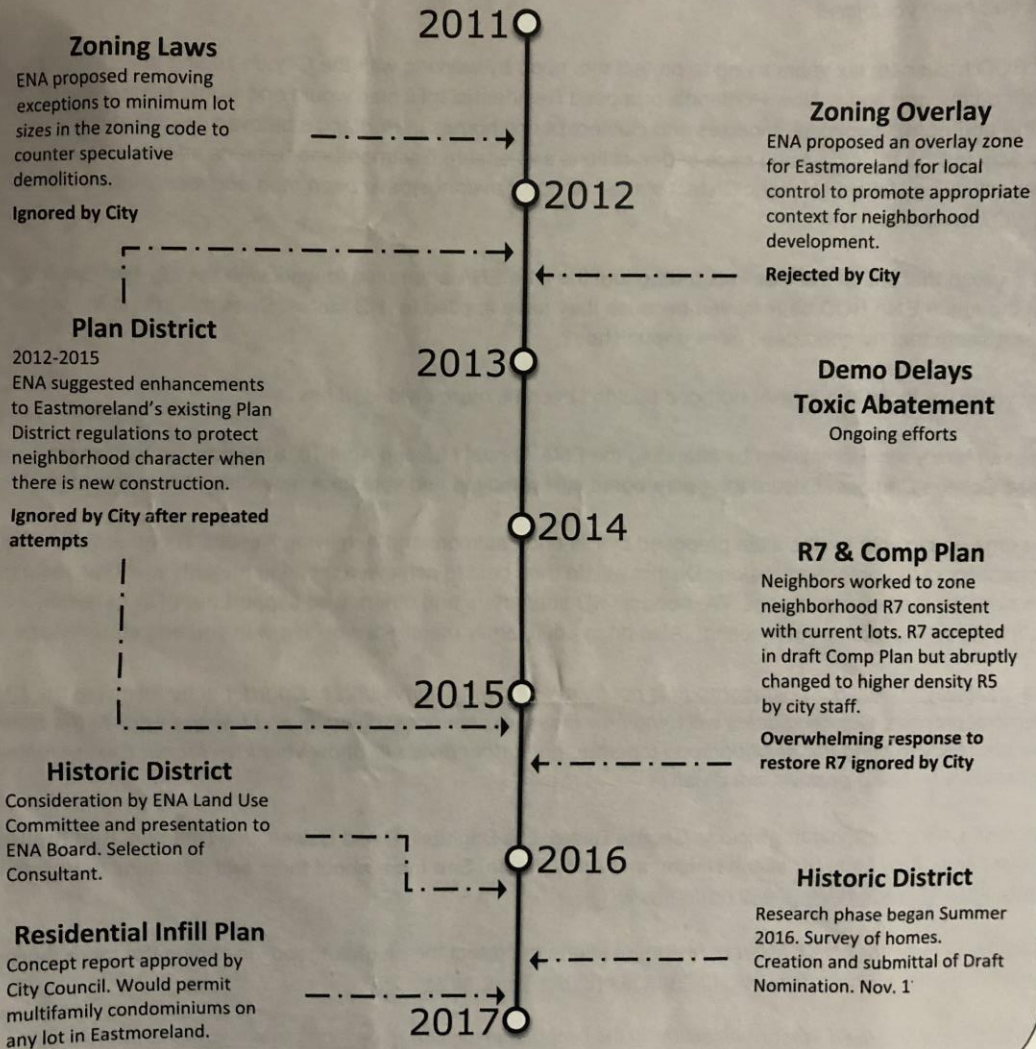


6 Years of Neighbors Working Together to Protect Eastmoreland

By Bob Schlesinger

How We Got Here

Major efforts to protect the character of our neighborhood



MARSHALL Janelle * OPRD

From: boyd clan <boydclan@bendbroadband.com>
Sent: Tuesday, September 1, 2020 1:47 PM
To: PUBLICCOMMENT * OPRD
Subject: Changes - national Register Nominations

Sir:

I own the Charles Boyd buildings which are on the National Register in Bend, Oregon. I believe it is a mistake to give the county commissioners jurisdiction over new nominations for the register. The present commissioners are totally business and economical oriented and give little priority to the environment, or the saving of historic sites. The landmarks commission and historical society would be a better choice.

Very truly yours,

Charles Boyd
20160 Tumalo Rd.
Bend, OR 97703

Sent from [Mail](#) for Windows 10

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Tuesday, September 1, 2020 2:43 PM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	Julie
Last Name	Nelson-Thiele
Email	mallardgold@yahoo.com
Public Comment	<p>When considering changing the rules for registering historic places, please take into account the cost to the owner of the property. If it is an individual who has owned a property and loves living there don't make it impossible for them to continue living there because the rules state they must register the property and the cost of registering will cause a financial burden not bearable. Also, when they need repair or upgrade a part of the building it would be good to have a no interest loan available. Often to maintain an historic building is more costly. I would love to see more historic buildings kept. I am sick that School Dist 4J in Eugene is tearing down a 100 year old school. It would be good if there was funding to compensate organizations so that we could keep the history for future generations. I know funding is an issue. Who pays. Do your best.</p>

Submission ID: 46e8793d-691a-406c-a8ac-3755b4bea284

Record ID: 146

MARSHALL Janelle * OPRD

From: Harvey Schowe <hlschow6425@centurylink.net>
Sent: Wednesday, September 2, 2020 9:04 AM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Changes and Comments
Attachments: caulkcontractors.pdf; removing-pcb-caulking.pdf; USEPA-Steps-SafeAbatement-BuildingswPCBContainingCaulk.pdf; An Unrecognized Source of PCB Contamination in Schools and Other Buildings Environmental Health Pe.webarchive; PCBs in Building Caulking - Beware the Enforcer E2 Law Blog.webarchive

Dear: Katie Gauthier

I reviewed the changes in the statutes and no thing that seems missing. Many older buildings or sites may have contamination or have materials that are hazardous to human health or the environment. Years ago there was no or little regulations in regard to hazardous materials. The historic registration review process should include some provision especially in the case where a local or state government will take over the property for historical preservation.

A hazardous materials assessment of the structure or site completed before being placed on a historic register as mentioned especially in case if government entity takes over the property. Materials sampled and tested for include the following:

Asbestos

Lead especially lead paint

Heavy metals that include mercury, arsenic and chromates. These materials could be found in paint and in case wall paper arsenic green.

PCBs in paint and caulking. Buildings built between 1950 and 1979 can have high levels of PCBs in the several hundred or in the 1,000 parts per million for paints, caulking and expansion joints. I attached some information about this item with this e-mail.

Up to the 1950s, one could buy paint that contained radium. The radium paint glowed in the dark.

Toxic hydrocarbons pentachlorophenol, creosote and other petroleum products

If the property was a business over 100 years ago what materials and items that was sold, manufactured, and stored on the property needs some investigation.

Sincerely Yours:

Harvey Schowe

C O N T R A C T O R S

Handling PCBs in Caulk During Renovation



EPA-747-F-09-004

This brochure is meant to provide contractors, parents, teachers, and school administrators a general overview of the practices a contractor should consider when conducting the renovation of a building that has polychlorinated biphenyl (PCB)-containing caulk. PCBs were not added to caulk after 1978. Therefore, in general, schools built after 1978 do not contain PCBs in caulk.

Contractors play an important role in protecting public health by helping prevent exposure to toxic PCBs. Ordinary renovation and maintenance activities involving the removal of PCB-containing caulk and the surrounding contaminated substrate (brick, masonry, cinder block, wood, etc.) can create dust that contains PCBs which can expose children and adults. PCBs have been demonstrated to cause a variety of adverse health effects, including cancer in animals. PCBs have also been shown to cause a number of serious non-cancer health effects in animals, including effects on the immune system, reproductive system, nervous system, endocrine system, and other health effects.

Consider Testing the Air in Buildings Built Between 1950 and 1978 to Determine Whether Your School or Building May Have PCBs

If school administrators and building owners are concerned about exposure to PCBs and wish to supplement the steps recommended in this brochure, EPA recommends testing to determine if PCB levels in the air exceed EPA's suggested public health levels. If testing reveals PCB levels above these levels, schools and buildings should be especially vigilant in implementing and monitoring practices to minimize exposures.

If PCBs are found in the air, EPA will assist in developing a plan to reduce exposure and manage the caulk. Caulk that is peeling or deteriorating may be tested to determine its PCB content. Your EPA regional PCB coordinator can direct you to a PCB testing lab.

Take Site-Specific Protective Measures

- Be in compliance with occupational protection regulations for contractors. (http://www.osha.gov/OshDoc/data_General_Facts/ppe-factsheet.pdf).

- Protect building occupants and passersby by containing the work area to prevent PCB-containing caulk dust from getting into the surrounding environment.
- Determine disposal options based on concentration and type of material.
- Use replacement caulk/sealant that is free of environmental hazards.



A pilot renovation project may be warranted to verify whether the renovation goals can be met. It will allow you to compare methods, tools, and protective measures to get specific information about their effectiveness and cost.

Before Starting the Job, Consider the Types of Tools and Machinery for Removing Caulk

- Manual tools are recommended for soft flexible caulk:
Advantages: no dust and no heat.
Disadvantages: labor intensive and slow.
- Electric tools are recommended for hardened/brittle caulk:
Advantages: faster, less labor intensive.
Disadvantages: generate heat (which can volatilize the PCBs) and dust, requiring added protective measures. Also must consider the potential abrasive effects on sensitive adjoining structures (e.g., wood and metal).

Notify Interested Parties and Plan for Emergencies

- Communicate the goals, type, and length of projects and specific behavior rules to the affected groups (PTA, school principal, etc.).
- Have an emergency contact list (hospitals, police, etc.).
- Ensure workers are properly trained.
- Prevent unauthorized persons from entering the site.

Take General Protective Measures

- Ensure workers are properly trained.
- Choose the method that minimizes the amount of dust generated.
- Choose methods that protect workers, building users, passersby, and the surroundings of the restoration project.
- Use proper containers to hold removed caulk.
- Use gloves and skin protection.
- Use eye goggles.



- Do not smoke, drink, or eat in the work area.
- Wash hands prior to breaks.
- In dusty work areas, have showers available and separate changing areas so that dust on clothing is not brought home.
- If working with solvents, provide respirators.

Interior Areas

- Cover work areas with plastic.
- Use signs to keep residents and pets out of the work area.
- Remove furniture and belongings, or cover them securely with heavy plastic sheeting.
- Use heavy plastic sheeting to cover floors and other fixed surfaces like large appliances in the work area.
- Improve ventilation and add exhaust fans. Close and seal the ventilation system in the work area and, if necessary, turn off forced-air heating and air-conditioning systems.
- Regularly clean the work area with an industrial HEPA vacuum and by wet mopping.
- Properly dispose of personal protective equipment and cleaning material.

Exterior Areas

- Mark off the work areas to keep non-workers away.
- Cover the ground.
- Enclose scaffolding.
- Cover the ground and plants with heavy plastic sheeting.
- Close windows and doors near the work area.
- Move or cover play areas near the work area.

Leave the Work Area Clean

On a daily basis you should:

- Put trash and debris in heavy-duty plastic bags.
- Wrap waste building components, such as windows and doors, in heavy plastic sheeting and tape shut.
- Ensure that everything, including tools, equipment, and even workers, is free of dust and debris before leaving the work area.
- HEPA vacuum the work area.
- Remember, you do not want to bring PCB dust home and expose your family.



- Remind residents to stay out of the work area. When the job is complete, you should also:
 - Remove the plastic sheeting carefully, mist with water, fold dirty side in, tape shut, and dispose of it.
 - HEPA vacuum all surfaces, including walls.
 - Wash the work area with a general purpose cleaner.
 - Check your work carefully for dust because hazardous amounts may be minute and not easily visible. If you see any dust or debris, then reclean the area.



Dispose of Renovation Waste Materials that Contain PCBs in Compliance with the Toxic Substances Control Act (TSCA)

- PCB-containing caulk is considered *PCB bulk product waste* if the concentration of PCBs in the caulk is greater than or equal to (\geq) 50 parts per million (ppm).
- If PCBs have contaminated either the surrounding building materials or adjacent soil, these materials are considered *PCB remediation waste*.

Disposal Options

PCB bulk product waste:

The disposal of *PCB bulk product waste* is regulated under 40 CFR § 761.62 of TSCA. Under this provision, *PCB bulk product waste* must be disposed of in one of two ways: disposal in a permitted solid waste landfill or via a risk-based disposal approval process.

Disposal in solid waste landfills. Certain PCB bulk product waste, such as PCB-containing caulk, even if the concentration of PCBs in the caulk is \geq 50 ppm, may be disposed of in non-hazardous waste landfills permitted by states. Disposal under this option does not require you to obtain approval from EPA.

Risk-based option. The risk-based option allows for a site-specific, risk-based evaluation of whether *PCB bulk product waste* may be disposed of in a manner other than under the performance-based disposal option or the solid waste landfill disposal option. Disposal of *PCB bulk*

product waste under this option requires you to obtain approval from EPA based on a finding that the disposal will not present an unreasonable risk of injury to health or the environment.

PCB remediation waste:

The disposal of *PCB remediation waste* is regulated under 40 CFR § 761.61 of TSCA. There are three options for management of *PCB remediation waste*:

Self-implementing cleanup and disposal. The self-implementing option links cleanup levels with the expected occupancy rates of the area or building where the contaminated materials are present. The disposal requirements for the self-implementing regulatory option vary based on the type of contaminated material and concentration of PCBs in the materials, among other things. Cleanup and disposal under this option requires you to notify your EPA Regional PCB Coordinator (<http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/coordin.htm>).

Performance-based disposal. The performance-based option allows for disposal of the contaminated materials in either a TSCA chemical waste landfill or TSCA incinerator, through a TSCA-approved alternate disposal method, under the TSCA-regulated decontamination procedures, or in a facility with a coordinated approval issued under TSCA. Disposal under this option generally does not require you to obtain approval from EPA.

Risk-based cleanup and disposal. The risk-based option allows for a site-specific evaluation of whether *PCB remediation waste* may be cleaned up or disposed of in a manner other than the alternatives provided under the self-implementing or the performance-based disposal options. Disposal of *PCB remediation waste* under this option requires you to obtain an approval from EPA based on a finding that the disposal will not present an unreasonable risk of injury to health or the environment.



Office of Pollution Prevention and Toxics
United States Environmental Protection Agency
Washington, D.C. 20460
September 2009

**Additional Information on EPA's Website
(www.epa.gov/pcbsincaulk/)**

EPA has developed an informational brochure and fact sheets to provide building owners and managers with key information on the current best practices for addressing PCBs in caulk. You can find these documents at <http://www.epa.gov/pcbsincaulk/> :

[Preventing Exposure to PCBs in Caulking Material](http://www.epa.gov/waste/hazard/tsd/pcbs/pubs/caulk/caulkexposure.htm)
(<http://www.epa.gov/waste/hazard/tsd/pcbs/pubs/caulk/caulkexposure.htm>)

[Fact Sheet: Testing for PCBs in Buildings](http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/caulk/caulktesting.htm) (<http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/caulk/caulktesting.htm>)

[Fact Sheet: Interim Measures for Reducing Risk and Taking Action to Reduce Exposures](http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/caulk/caulkinterim.htm) (<http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/caulk/caulkinterim.htm>)

[Fact Sheet: Removal and Clean-Up of PCBs in Caulk and PCB-Contaminated Soil and Building Materials](http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/caulk/caulkremoval.htm)
(<http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/caulk/caulkremoval.htm>)

[Fact Sheet: Disposal Options for PCBs in Caulk and PCB-Contaminated Soil and Building Materials](http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/caulk/caulkdisposal.htm) (<http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/caulk/caulkdisposal.htm>)

EPA is Helping to Address the Issue of PCBs in Caulk

EPA is conducting research on how the public is exposed to PCBs in caulk and on the best approaches for reducing exposure and potential risks associated with PCBs in caulk. Where PCBs have been found in the air, soil, or in the caulk and other building materials, EPA is committed to helping schools and communities enact plans to reduce exposure. Please contact your regional PCB coordinator at 888-835-5372 for help with assessing contamination and exposure and developing cleanup plans.

Where Can I Get More Information?

For more information on how to properly test for and address PCBs in caulk, contact the Regional PCB Coordinator (<http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/coordin.htm>) for your state. For more detailed information on renovation and removal, go to <http://www.epa.gov/pcbsincaulk/> or call the PCBs in Caulk Hotline at 888-835-5372.



Recycled/Recyclable
Printed with Vegetable Oil-Based Inks on Recycled Paper
(Minimum 50% Postconsumer) Process Chlorine Free



Job Safety Analysis

Safety Information for The University of North Carolina at Chapel Hill

All UNC Shops



Polychlorinated Biphenyls (PCBs) Window Caulk Removal



**The term “caulk” will be used to describe caulking, sealants, or paints.





Title	Work Task	Hazards	Controls
Pre-Operation and Preparing for the Job	<ol style="list-style-type: none"> 1. Contact EHS concerning the presence of PCBs, asbestos and/or lead. 2. Completed the Training Course titled, “Management of PCBs in caulking and Sealants” and Hand and Power Tools Training. 3. Based upon the condition of the caulk, tools may include utility knife, chisel, hammer, crowbar, putty knife, scraper, electrical joint cutter with oscillating blade, and HEPA vacuum. For elastic and soft caulking (primarily in areas protected from sunlight and weather or located indoors), use utility knife, putty knife, or scraper. For hard and brittle (aged and weather-exposed caulks), use chisel, hammer, crowbar, electrical joint cutter with oscillating blade. Always use a HEPA vacuum. 	<ol style="list-style-type: none"> 1. Not having correct tools and training to complete abatement. 2. Injury or possible death. 3. Assess for any electrical hazards, overhead issues. 4. Inhalation hazard associated with PCBs. 5. Skin, eye, ingestion and inhalation hazards. 6. High winds can spread contamination beyond the work area. 7. Heat or dry removal will increase the inhalation risk and contamination. 	<ol style="list-style-type: none"> 1. Understand the building/structure that work will be performed. 2. Assess foliage or other obstacles that might impede access. 3. Ladders or scaffolding to assist with heights. Read the JSAs for ladders, scaffolds, man lifts and fall protection. 4. Wet methods and HEPA vacuum are essential dust control requirements. 5. Review all SDS for the solvent and new caulk application.



	<ol style="list-style-type: none"> Items required include Rags, PIPE-X-METAL-X (solvent for the removal of oily, dirty metal surfaces) or Less-Than-Ten (for porous surfaces such as wood) or a similar product. Containment items required include polyethylene sheeting (minimum of a 4 mil thickness), tape, water, disposal bag and waste drum (provided by EHS HMF location) Ask the Supervisor to alert building occupants of the work request, the hazard and work procedures including PPE requirements. Do not perform any abatement activities in high winds. 		
Selection of Personal Protective Equipment (PPE)	<ol style="list-style-type: none"> Ensure that the employee understands and don's all proper PPE that is adequate for this job description. 	<ol style="list-style-type: none"> Not having adequate PPE can cause injury or death. 	<ol style="list-style-type: none"> HMP Plan-PPE Wear safety glasses, chemical resistant gloves (nitrile), Tyvek® coveralls, and ½ mask air purifying respirator equipped with a dual HEPA and organic vapor cartridges.
Site Preparation	<ol style="list-style-type: none"> Assess and connect to power source for HEPA vacuum and other electrical tools. Install a trough beneath the window using the polyethylene sheeting to capture all solid and liquid waste from the removal activities. Install a poly seal on the interior of the window. Install a layer of 6 mil polyethylene sheeting beneath the work area and extend 10 from the building. Demarcate the area with Red Danger barrier tape. Don necessary PPE. 	<ol style="list-style-type: none"> PCB hazard Slips, trips and fall hazard when working on a ladder/scaffold/man lift. Solvents – eye, skin, ingestion or inhalation hazard. 	<ol style="list-style-type: none"> Dust control measures Review JSA for ladder, man lift and/or scaffolding safety and fall protection. Prepare to install temporary lighting if required. Demarcate the area with Red Danger Tape Isolate and restrict access to any building egress locations within the work zone. 

Title	Work Task	Hazards	Controls
Performing Removal of the Caulking/Cleanup	<ol style="list-style-type: none"> 1. Based upon the condition of the caulk, utilize the necessary tools to begin removing the caulk. Use a HEPA vacuum in conjunction with the removal process if dust is generated. 2. Thoroughly clean all surfaces of loose debris using a HEPA vacuum. 3. Pour or dispense an acceptable cleaning-grade solvent onto the cloth. A plastic (solvent-resistant) squeeze bottle works best. Do not dip the cloth into the container of solvent, as this will contaminate the cleaning agent. 4. Wipe vigorously to remove contaminants. Check the cloth to see if it has picked up contaminants. Rotate the cloth to a clean area and re-wipe until no additional dirt is picked up. 5. Immediately wipe the cleaned area with a separate clean, dry cloth. 6. Allow time for the solvent to completely dry. 7. Collect and place the polyethylene sheeting and all waste into a waste container. 8. Gloves and disposable suits and similar materials resulting from cleanup activities, will be disposed of as construction debris. 9. The caulking, rags, and contaminated polyethylene sheeting must be discarded as hazardous waste. Contact EHS, Environmental Specialist at 919-962-5723. 10. Thoroughly wash hands prior to installing the new caulk. 11. Install new caulk such as Master Seal MP-1. 	<ol style="list-style-type: none"> 1. Potential employee injury 2. Inhalation, eye, ingestion, skin hazard. 3. Cuts, abrasions, or other physical injury when using knives, chisels and hammers. 	<ol style="list-style-type: none"> 1. Wet methods and HEPA vacuum. 2. Containment procedure in place. 3. Prompt cleanup 4. Collection and proper disposal of waste. 

Training	Employees must receive training on this JSA, PPE, ladder safety, scaffolding, and man lifts. EHS website at http://ehs.unc.edu/training/self-study/	Supervisor is responsible for ensuring the employee reviews the JSA and the EHS website guidelines. .
Referenced Material	EHS Website; http://m2polymer.com/html/pcb-removal-cleaning.html?clid=Cj0KCQjw_o7NBRDgARIsAKvAgt2VWS-yCHgbWeR7fBZLgY_OX2p_oCNMcp5GvOrA1wCRSoVuDwyzxLoaAmBqEALw_wcB , http://www.dowcorning.com/content/publishedlit/weatherproofing_joints_surface_preparation_and_sealant_application.pdf , , https://www.epa.gov/pcbs/steps-safe-pcb-abatement-activities_Assessment ; <i>Remediation of PCBs in the Built Environment</i> , A Publication by American Industrial Hygiene Association.	
Contact Info	For more information about this JSA and other JSAs, contact: <i>Department of Environment, Health and Safety</i> UNC-CH, 1120 Estes Drive Extension, Chapel Hill NC 27599 CB# 1650 (919) 962-5507 http://ehs.unc.edu Prepared By: David Catalano 08.28.17	 



Polychlorinated Biphenyls (PCBs)

You are here: [EPA Home](#) » [Wastes](#) » [Hazardous Waste](#) » [Polychlorinated Biphenyls \(PCBs\)](#) » [PCBs in Caulk in Older Buildings](#) » [Steps to Safe Renovation and Abatement of Buildings That Have PCB-Containing Caulk](#)

Steps to Safe Renovation and Abatement of Buildings That Have PCB-Containing Caulk

- [Overview](#)
- [Disclaimer](#)
- [Example of a Decision Flowchart for Classifying Suspect Building Materials](#)

Overview

This information is designed to assist building owners and abatement contractors who may be handling PCB-containing or PCB-contaminated building materials during planned renovation or repair activities or planned PCB abatement efforts in older buildings. The following pages include information on:

- [Facts about PCBs in Caulk](#) - Provides basic information on PCBs and how to identify PCB-containing materials, primarily caulk.
- [Steps to Safe Renovation and Repair Activities](#) - Provides guidance on safe work practices during renovation or repair projects in older buildings where PCB-containing caulk and PCB-contaminated surrounding materials could be encountered.
- [How to Test for PCBs and Characterize Suspect Materials](#) - Discusses building characterization and sampling procedures to identify PCBs and determine the extent of contamination.
- [Steps to Safe PCB Abatement Activities](#) - Provides information on steps that should be considered for projects intended to remove and dispose of known or suspected PCB-containing caulk (i.e., PCB abatement activities). You can find the [PCB regulations](#) that support this information at Title 40 of the Code of Federal Regulations Part 761 (40 CFR Part 761).
- [Summary of Suggested Tools and Methods for Caulk Removal](#) - Describes tools for removal, advantages and disadvantages, and protective measures to consider in table format.



Disclaimer

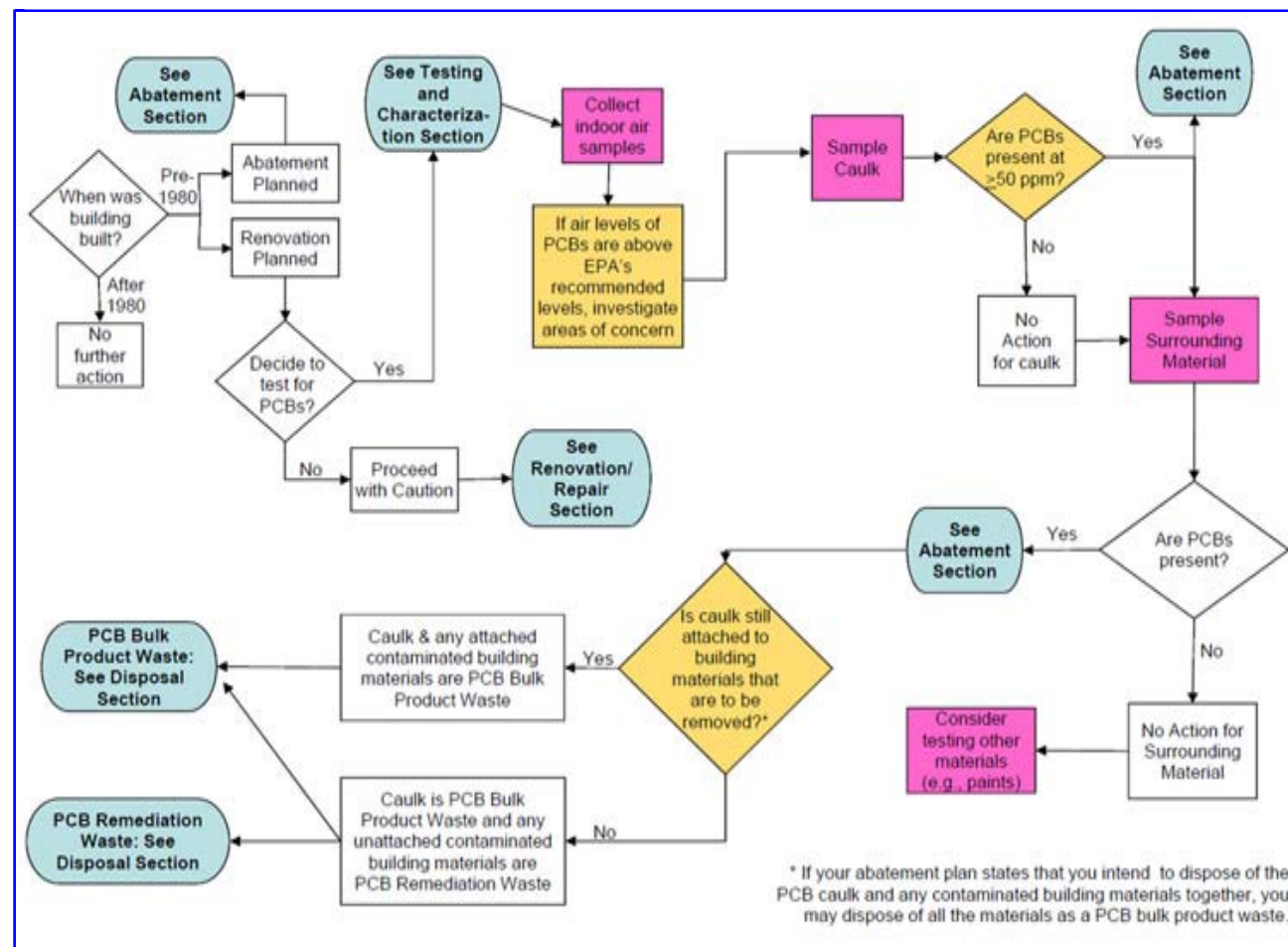
Regardless of the size of a project involving potentially contaminated building materials, contractors and building owners should be especially aware of the impact of their work in buildings occupied by high-risk populations, such as schools and daycare centers. The information provided in this document is intended solely for guidance and does not replace or supplant the requirements of the Toxic Substances Control Act (TSCA) or the PCB regulations at 40 CFR Part 761. Those responsible for renovation, repair, or abatement activities of potential PCB-containing or PCB-contaminated materials should review and understand the regulatory requirements, and are encouraged to consult the EPA or environmental professionals experienced with PCB cleanup activities. This document does not impose requirements or obligations on EPA or the public. The use of the word "should" in this document reflects an EPA recommendation, not a requirement.

In addition to the PCB regulations under TSCA, renovators and abatement personnel should also be aware that their activities may also disturb asbestos-containing materials and/or lead-based paint. Read more about EPA's regulations and guidance for [lead-based paint](#) and [asbestos](#). The Occupational Safety and Health Administration (OSHA) also has standards and guidance on the hazards of [lead](#) and [asbestos](#) specifically for workers and employers.

The use of the term "caulk" in this document refers to any building joint, window, or door sealer or filler found on the inside or outside of a building.

Example Decision Flowchart for Classifying Suspect Building Materials

This [flowchart \(PDF\)](#) (1 pp, 32K, [About PDF](#)) can be used to help navigate through the information on this site.



Note:

- Items in blue above are links to relevant sections of this website
- Items in pink are potential sources of PCB contamination
- Items in yellow are EPA standards or levels of concern

Next page: [Facts About PCBs in Caulk](#)



<http://www.epa.gov/pcbsincaulk/guide/guide-sect1.htm>

Last updated on Friday, November 30, 2012

Polychlorinated Biphenyls (PCBs)

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Facts About PCBs in Caulk

- [What are PCBs and Why Should I be Concerned?](#)
- [Why Were PCBs Used in Caulk?](#)
- [How Do I Determine if My Building May Have PCBs?](#)
- [How Can Exposure to PCBs Occur?](#)
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- Steps to Safe Renovation and Repair Activities
- How to Test for PCBs and Characterize Suspect Materials
- Steps to Safe PCB Abatement Activities
- Summary of Tools and Methods for Caulk Removal

What are PCBs and Why Should I be Concerned?

Polychlorinated biphenyls (PCBs) belong to a broad family of man-made organic chemicals known as chlorinated hydrocarbons. Due to their non-flammability, chemical stability, high boiling point, and electrical insulating properties, PCBs were used in hundreds of industrial and commercial applications including electrical, heat transfer, and hydraulic equipment; and as plasticizers in paints, plastics, rubber products, and building caulk. PCBs were manufactured domestically starting in 1929, until they were banned from manufacture in 1979.

Exposure to PCBs can cause a variety of adverse health effects in animals and humans. In animal studies, PCBs have been shown to cause cancer as well as serious non-cancer health effects. In humans, PCBs are potentially cancer-causing and can cause other non-cancer effects including immune system suppression, liver damage, endocrine disruption, and damage to the reproductive and nervous systems. [Read more about the health effects of PCBs.](#)

Why Were PCBs Used in Caulk?



PCBs were a common additive to caulk because of their water and chemical resistance, durability, and elasticity. PCBs were added as a plasticizer in caulking used to seal joints between masonry units and around windows. Caulk containing PCBs was used in some buildings, including schools, primarily between 1950 and 1980. PCBs were also used in other building materials such as paints, mastics, sealants, adhesives, and specialty coatings.

EPA does not have information on the extent of the use of PCB-containing caulk or whether it was primarily used in certain geographic areas. To date, it has been found in school buildings and other buildings in the northeastern, southern, and mid-western United

States. PCB-containing caulk has also been found in the joints in concrete water storage basins in the western United States, and in an airport runway in the Pacific Northwest.

How Do I Determine if My Building May Have PCBs?

The age of the structure can tell you a lot about whether PCB-containing caulk is likely to be present.

- If it was built or renovated between 1950 and 1980, it is more likely to have PCB-containing caulk.
- It is important to consider when additions or renovations were constructed. Some parts of the building may have been constructed or renovated later than others. More recent additions are less likely to contain PCB caulk and contaminated dust.
- PCB-containing caulk may be found either inside or outside the building, and is found in window caulk as well as masonry joint caulking.
- PCBs could also be present in other building materials including paints, mastics, sealants, and fluorescent light ballasts.

How Can Exposure to PCBs Occur?

Exposure to PCBs can occur by directly touching PCB-containing caulk and surrounding building materials or soil (dermal contact), hand to mouth contact after touching PCB-containing caulk and surrounding building materials or soil (ingestion), and breathing in air or dust contaminated with PCBs (inhalation).



PCBs may also be released into the surrounding soil from exterior caulk. Caulk that is not intact and is peeling, brittle, cracking, or visibly deteriorating in some way has a high potential to release PCBs into surrounding soil. PCB-contaminated soil can be a source of exposure for individuals who visit adjacent play areas or gardens.

Indoor air quality may be affected by PCBs. PCBs can slowly be released into the air from caulk and be inhaled. Caulk dust particles can come into contact with people in the building. They can also enter the air handling system and move to other areas of the building. In addition to deteriorating caulk, caulk with the highest PCB concentrations should also receive a high priority for removal, as these materials may pose a greater potential for direct exposure and release of PCBs to indoor air.

What are the Regulations Governing PCBs?

PCBs are regulated under the Toxic Substances Control Act (TSCA), which became law in 1976. TSCA bans the manufacture, processing, use and distribution in commerce of PCBs, and gives EPA the authority to regulate the use, manufacture, cleanup, storage, and disposal of PCBs.

The current PCB regulations were published pursuant to this Act, and can be found in Title 40 of the Code of Federal Regulations ([40 CFR Part 761](#)). The use of PCBs in caulk is not authorized under TSCA's PCB regulations. Caulk and surrounding contaminated building materials that have been removed are considered waste under the PCB regulations and must be cleaned up and disposed of in accordance with Subpart D of 40 CFR 761. Please consult with your state's [PCB Regional Coordinator](#) and environmental agency for the disposal options for this waste material.

In addition, states may have their own regulatory requirements applicable to PCBs. You should consult your [state environmental agency](#) for information on such requirements, if any.

Do I Need to be Concerned about PCBs if I am Conducting a Building Renovation?

Before you begin a renovation or repair job, consider whether PCB-containing caulk may be an issue. If your building was built in 1980 or later, you are unlikely to have PCB-contamination from caulk. If your building was built between 1950 and 1980, you have several options:

- You can assume you have PCB-containing materials but not remove them. You should renovate with caution however since caulk and surrounding materials may be contaminated with PCB; or
- You can proceed to test the air to determine if the PCB-containing materials are causing a potential public health problem and therefore should be removed.
- If you decide to remove the PCB-containing caulk and/or other materials, you are now doing an abatement project, and should refer to [Steps to Safe PCB Abatement Activities](#).

Where can I Get More Information about PCBs in Caulk?

More information on PCBs in caulk may be found at EPA's [PCBs in caulk Web page](#).

You may direct additional questions to the [Regional PCB Coordinator](#) for your state.

Next page: [Steps to Safe Renovation and Repair Activities](#)

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<http://www.epa.gov/pcbsincaulk/guide/guide-sect2.htm>

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Steps to Safe Renovation and Repair Activities

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This section highlights precautionary measures and best work practices to follow when conducting a repair or renovation in older buildings where PCB-containing caulk could be encountered or where you assume PCBs are present, but do not have an abatement planned. A building owner or contractor may be required to utilize additional safety measures based on individual building conditions.

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- How to Test for PCBs and Characterize Suspect Materials
- Steps to Safe PCB Abatement Activities
- Summary of Tools and Methods for Caulk Removal

- [Are You Working on a Renovation or Repair Project of a School or Other Building?](#)
- [Safety Considerations: Employ Protective Measures \(Interior and Exterior\)](#)
- [Comply with Occupational Protective Regulations](#)
- [Communication with Building Occupants/Third Parties and Site Security](#)
- [Set up the Work Area to Prevent the Spread of Dust](#)
- [During the Renovation, Use Tools that Minimize the Generation of Dust and Heat](#)
- [Leave the Work Area Clean](#)

Are you working on a renovation or repair project of a school or other building?

If so, you need to know how to work safely with potentially contaminated building materials. This section is designed to help contractors and building owners plan for renovation and repair projects that could disturb caulking and other building materials potentially contaminated with PCBs. Following the work practices discussed in this section will help reduce the exposure risk to workers and building occupants to PCBs. The suggested work practices will assist you in:

- employing protective measures during a renovation;
- leaving the work area clean and safe for building occupants after completing the job; and
- properly disposing of waste materials.

Safety Considerations: Employ Protective Measures (Interior and Exterior)

Depending on the type of building, scope of the project, and the potential volume of dust generated by the corresponding work methods, you should consider employing various protective measures. Protective measures should provide for direct personal protection of workers, protection of building users, and third parties (e.g., students, teachers, and passers-by), as well as safeguard against spreading PCB dust to other surrounding areas of the renovation project.

Comply with Occupational Protective Regulations

The Occupational Safety and Health Administration (OSHA) regulations at 29 CFR 1926.28(a) state that, "The employer is responsible for requiring the wearing of appropriate personal protective equipment in all operations where there is an exposure to hazardous conditions." Therefore, you should use suitable personal protective equipment (PPE) for dust-generating work methods.

The following generally applicable PPE should be considered:

- chemical-resistant gloves
- Tyvec disposable coveralls and shoe covers
- safety glasses or protective goggles
- respiratory protection

These protective measures should be sufficient to prevent PCBs from entering your body through inhalation, oral ingestion, and/or dermal contact (absorption through exposed skin).

In addition, worker hygiene is an important protective measure. Eating, drinking, and smoking should be prohibited in the work site. For work involving significant dust generation, showers and separate changing cabins for work clothing and everyday clothing should be provided.

Communication with Building Occupants/Third Parties and Site Security

Notify Building Occupants of the Work to be Performed

When your renovation and repair project may disturb materials that are potentially hazardous, protective measures for building occupants and third parties are critical. Clear communication with all affected groups (e.g. building occupants, workers, building owners, and community members) is necessary to create a safe working environment. For example, you should continually inform the affected groups of:

- the goals, type, and length of the renovation activities;
- health and safety aspects of the project; and
- site access requirements and limitations.



Keep a Secure Work Area

You should also use site security measures to prevent access of unauthorized persons to the work areas until after the final cleanup. Examples of security measures include:

- Lock fence gates or doors to the work areas during off hours.
- Place signs, barrier tape and/or cones to keep all non-workers, especially children, out of the work area. For apartment buildings or other dwellings, keep pets out of the work area (for their safety and to prevent them from tracking contaminated dust and debris outside the work area). Signs should be in the primary language of the occupants, and should say "Do Not Enter - Authorized Personnel Only" and "No Eating, Drinking, or Smoking."

- Establish a system to identify authorized persons and any limitations to their approved activities.
- Provide a means for approving all visitors to the work area; ensure trained site personnel accompany visitors at all times and provide them with appropriate PPE.

Set up the Work Area to Prevent the Spread of Dust

When working on a renovation or repair job with the potential for PCB-containing caulk, appropriate controls should be put in place to minimize spreading dust during the renovation and/or repair activity. At a minimum, consider separating work areas from non-work areas and select appropriate PPE and tools.

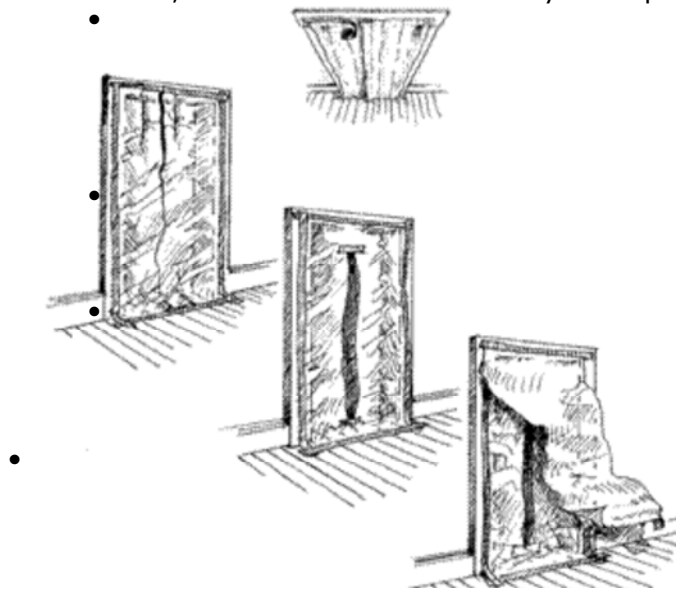
At a minimum, consider separating work areas from non-work areas and select appropriate PPE and tools.

Whenever potentially hazardous material is disturbed and could generate dust, the work area should be protected by constructing a containment area. Plastic sheeting can be applied to the floor, ground, or other applicable surfaces to prevent contamination of the building interior or exterior from dust generated by the work. Construct the containment area so that all dust or debris generated by the work remains within the area protected by the plastic. Placing the containment area under negative air pressure is also an effective tool. EPA also recommends the use of high-efficiency particulate air (HEPA) tools to minimize dust release. The size of the containment area and dust controls that will be used may vary depending on the size of the renovation or repair, the methods used, and the amount of dust and debris that will be generated as a result of the renovation or repair activities.

Inside the Building

The following techniques can be employed to prevent/minimize the spread of dust, which may contain PCBs, when working inside the building:

- Clear room of movable items such as furniture, books, wall hangings, etc.
- Use heavy plastic sheeting (e.g., 4- or 6- mil plastic) to cover floors in the work area. Secure with tape.
- Close all doors in the work area, including closet and cabinet doors, and cover with plastic sheeting. When the work area boundary includes a door used to access the work area, cover the door with two layers of protective sheeting as described here:



Cut and secure one layer of sheeting to the perimeter of the doorframe. Do not pull the sheeting taut. Rather, create a few folds to leave slack at the top and bottom of the door before taping or stapling. To allow workers access, cut a vertical slit in the middle of the sheeting leaving 6" uncut at the top and bottom. Reinforce with tape. Cut and secure a second, overlapping layer of sheeting to the top of the door. To allow worker access, do not secure the sides or bottom of the door. Close and seal the ventilation system in the work area with tape and plastic sheeting. This will keep dust from getting into vents and



moving through the building. If possible, you should turn off your heating, ventilation and air

- conditioning (HVAC) system to prevent contaminating the system.
- Put all necessary tools and supplies on the protective sheeting in the work area before you begin work to avoid stepping off the protective sheeting before the work is complete.

Outside the Building

When working outside the building, the following techniques can be employed to prevent/minimize the spread of dust and debris:

- If at all possible, use heavy plastic sheeting to build an enclosure around the work area.
 - Mobile scaffolding is a convenient frame for constructing such an enclosure.
 - Utilizing a few two-by-fours and the door covering method described above, an entrance/exit to the enclosure can be created.
 - Use heavy plastic sheeting to cover the ground within the enclosure. Secure with tape.
 - Construct a decontamination area just outside of the enclosure by placing heavy plastic sheeting on the ground. This area is used to remove personal protective equipment and to clean equipment used in the enclosure.

For locations where a containment area cannot be constructed, the following techniques should be used, as appropriate:

- Cover the ground and plants with heavy plastic sheeting to catch debris. The covering should extend at least 10 feet out from the building. Secure the covering to the exterior wall with a wood strip and staples, or tape.
- Close windows and doors within 20 feet of the work area to keep dust and debris from getting into the building.
- Seal off any vents or air exchange systems into the building which are located within the work area.
- Move or cover any play areas within 20 feet of the work area.
- To prevent debris from falling beyond the 10 foot covering when working on the second story or above, extend the sheeting farther out from the base of the building and to each side of the area where materials are being disturbed.
- To prevent the spread of debris when work is close to a sidewalk, street, or property boundary, or the building is more than three stories high, scaffolding sides should be covered in plastic.
- Avoid working in high winds if possible. Otherwise, take special precautions to keep the work area contained when the wind is strong enough to move dust and debris. For example, a wind screen can be constructed of plastic at the edge of the ground-cover plastic to keep dust and debris from migrating.

After you construct an effective containment area, make sure you control the spread of dust outside your work area:

- Put all necessary tools and supplies on the protective sheeting in the work area before you begin work to avoid stepping off the protective sheeting before the work is complete.
- Remove or vacuum off Tyvec suits when exiting the work



area so the dust stays inside the work area.

- Every time you leave the plastic sheeting, remove your disposable shoe covers, and wipe or vacuum your shoes, especially, the soles, before you step off the plastic sheeting. A large disposable tack pad on the floor can help to clean the soles of your shoes.
- Change out of your work clothing before going home, and launder non-disposable protective clothing separately from family laundry.



During the Renovation, Use Tools that Minimize the Generation of Dust and Heat

Select tools and work methods that generate the lowest possible dust volume. Remember that as you scrape, drill, cut, grind, etc., you are creating dust. You can breathe in this dust while you are working, or as the dust settles, it can expose building occupants to contaminants.

Select tools and work methods that generate the lowest possible dust volume.

If your tools or work methods produce high heat (temperatures exceeding 212°F), PCB gases may be released into the air. This increases the risk that workers or building occupants may breathe in PCB gases. More comprehensive protective measures are necessary for methods that generate moderate to heavy amounts of dust or heat.

- Use tools that generate the least amount of dust and can still get the job done. Detailed information on tools can be found in [Summary of Tools and Methods for Caulk Removal](#).
 - Manual tools, such as utility knives, chisels, and scrapers, generate lower volumes of fine dust and less heat, but are primarily used for smaller joint lengths or when the joints are difficult to access for structural reasons.
 - Electromechanical tools, such as oscillating knives, jigsaws, and rotary cutting tools, have ergonomic advantages over most manual methods, as they are better suited for projects with many joints and semi-soft to hard and brittle caulk; however, they generally generate higher volumes of dust and more heat, which requires more complex protective measures than manual methods.
- Grinding electromechanical tools generate large volumes of dust, and are therefore not recommended for the removal of potentially PCB-containing building materials, unless appropriate control measures are implemented (see the section on [protective measures](#)). Examples of such tools include angle grinders, masonry groove cutters, circular saws, and slot mills. Jigsaws and saber saws also lead to dust emissions, especially in the case of brittle caulk; furthermore, elastic compounds may gum up the saw blade.
- When using electromechanical tools, use HEPA vacuum attachments to contain the dust generated.
- For larger projects, use wet sanders and misters to keep down the dust created during sanding, drilling, and cutting.

Read additional information on [tool selection and protective measures](#).

Leave the Work Area Clean

The work area should be left clean at the end of every day and especially at the end of the job. The area should be as free of dust and debris as possible. The following cleaning supplies, tools, and equipment you may need are available in hardware or garden supply stores:

- Heavy-duty plastic bags
- HEPA vacuum with attachments and a powered beater bar
- Masking tape, duct tape, or painters tape
- Misting bottle or pump sprayer
- Disposable wet-cleaning wipes or hand towels
- Detergent or general-purpose cleaner
- Mop and disposable mop heads
- Two buckets or one two-sided bucket with a wringer
- Shovel and rake

Daily Activities

On a daily basis, renovators should:

- Pick up as you go. Put trash in heavy-duty plastic bags.
- Vacuum the work area with a HEPA vacuum cleaner frequently during the day and at the end of the day.
- Clean tools at the end of the day.
- Dispose of or clean off your personal protective equipment
- Note that waste water produced during the job from mopping, wet cleaning, cleaning of equipment, or misting may be regulated for disposal by State and/or Federal authorities.
- Continue to separate the work area from the rest of the building and remind occupants to stay out of the area.



End of the Project Activities

When the job is complete, repair workers and/or renovators should:

- Make sure all trash and debris, including building components, are disposed of properly.
- Vacuum any exposed surfaces, including walls and ceilings, with a HEPA vacuum cleaner.
- Consider misting dusty sections of the plastic sheeting with water before taking them down. This will keep dust from becoming airborne again.
- Remove plastic sheeting carefully, fold it with the dirty side in, tape it shut, and properly dispose of it.
- Vacuum all surfaces again with a HEPA vacuum cleaner.
- Scrub the work area with a general-purpose cleaner on a wet rag or mop until dust and debris are removed.
- Visually inspect your work to ensure that no dust or debris is present.
- Re-clean the area thoroughly if you find dust or debris.

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<http://www.epa.gov/pcbsincaulk/guide/guide-sect3.htm>

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Polychlorinated Biphenyls (PCBs)

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How to Test for PCBs and Characterize Suspect Materials

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This section applies if you are conducting a renovation in an older building and would like to test for the presence of PCBs in the building. EPA recommends that you first test the air to determine if PCBs may be causing a potential public health problem. This initial step may help prioritize the steps and/or approaches for the renovation or repair work. If you have identified a PCB problem, you will need to characterize it and determine the extent of PCB contamination. It is important to note that even if PCBs are not present in the air, they still may be present in the caulk and/or other building materials.

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- [Building Characterization and Sampling Plan](#)
- [Sample Collection Procedures](#)
- [Sample Documentation](#)

Building Characterization and Sampling Plan

A sampling plan should be developed to characterize the caulk and other potential building materials that might either contain PCBs or be contaminated through contact with PCB-containing caulk such as wood, masonry, or brick. The sampling plan should consider the following steps:

1. Test indoor air to determine if PCBs are present above the levels of concern. For the reference doses, see [Public Health Levels for PCBs in Indoor School Air](#).

If PCBs are at level of concern, determine the extent of the problem by:

2. Prioritize testing of caulk based on its condition, (e.g. higher priority caulk is that which is weathered, brittle, or deteriorating). See [EPA's Caulk Testing Fact Sheet](#) for more information.
3. Test the caulk to determine if PCBs are present at levels at or above 50 parts per million (ppm). Caulk that is removed and is 50 ppm or greater is regulated for disposal (see [Abatement Step 3](#) and EPA's Caulk Testing Fact Sheet for more information)
4. Evaluate caulk sample results and determine if surrounding materials warrant testing.
5. Outline areas requiring corrective action and prioritize contaminated building materials for removal based on their PCB-concentration levels, potential accessibility, and building occupancy (see [Abatement Step 1](#) for more details).

Sample Collection Procedures

The sampling plans may require the collection of any of the following sample types:

- Bulk solid samples (e.g., caulk, soil, sand)
- Porous surface samples (e.g., concrete, asphalt, wood surfaces)
- Non-porous surface wipe samples (e.g., unpainted metal window frames, polished granite)
- Indoor air samples

The following paragraphs describe the sample collection procedures for each of these sample types. For these various sample types, a sufficient size sample should be collected to ensure the laboratory can measure the concentrations of PCBs at levels required by the PCB cleanup and disposal regulations at 40 CFR part 761.61. It is recommended that you contact the analytical laboratory or your Regional PCB Coordinator to discuss the necessary requirements for each sample type.

... a sufficient size sample should be collected to ensure the laboratory can measure the concentrations of PCBs at levels required by the PCB cleanup and disposal regulations ...

Bulk solid samples -- Bulk solid samples include such materials as caulk, soil, and sand. Bulk solid sampling typically include removing a small portion of the potentially contaminated material for analytical testing. For example, a caulk sample would be the quantity of caulk needed by the laboratory for analytical testing, removed directly from the suspect area. Take care to ensure that only the caulk is included in the final sample and not other adjacent materials, such as wood or concrete that may skew the sample analysis results.

When soil or sand samples are collected, you should consider whether the PCBs are on the soil surface or if they could be located deeper in the soil. An example of when PCBs might be on the soil surface would be if fragments of weathered caulking were deposited on undisturbed soil surfaces. Alternatively, PCBs could be located deeper in the soil in locations such as landscaping areas where the soil surface has been disturbed or where new soil has been added.

Porous surface samples -- Because PCBs can migrate into porous surfaces (e.g., brick, masonry, concrete or wood) surface wipe sampling is not adequate to characterize the PCB concentration of porous surfaces. Instead, core samples should be collected on a bulk basis (i.e., mg/kg) to collect the top 0.5 to 2 cm of the porous surface.

For these porous surface samples, an adequate sample (as determined by the analytical laboratory) should be removed for analysis. Tools such as chisels, drills, and saws can be used to collect the sample, taking care to minimize dust generation. The samples should be collected from the top 0.5 to 2 cm of the surface closest to the likely source of PCB contamination.

Non-porous surface samples -- If the surface to be sampled is smooth and impervious (e.g., unpainted metal surfaces), a wipe sample can be collected to determine if the surface is contaminated with PCBs. A standard wipe test, as specified in 40 CFR 761.123, uses a 10 cm by 10 cm (or equivalent that equals 100 cm²) template to outline the sample area and a gauze pad or glass wool that has been saturated with hexane to collect the sample. The hexane-saturated wipe is used to thoroughly swab the area inside the 100 cm² template. Care must be taken to assure proper use of the sampling template, as the sample results will be based on the 100 cm² sample area (i.e., µg per 100 cm²).

Indoor air samples -- You should collect indoor air samples in accordance with EPA Methods TO-10A (PDF) (37 pp, 288K, [about PDF](#)), TO-4A (PDF) (53 pp, 665K, [about PDF](#)), or

equivalent. Sufficient sample volumes, as referenced in the EPA Methods, should be collected to prove a minimum laboratory reporting limit of less than 0.1 µg/m³. Consult with your PCB Regional Coordinator for the number of samples to be taken and the type of sampling method to be used.

Sample Documentation

You or your supervisor should maintain a field log book that contains all information pertinent to the site inspection and sampling activities. The person making the entry should sign and date all entries in the log book. Entries into the log book should include the following types of information:

- Site and location of the sample extraction
- Date on each page
- Exact times of sampling events or visual observations
- Types of samples collected and sample identification numbers
- Number of samples collected
- Specific description of sample locations
- Description of sampling methods
- Field observations
- Name of all field personnel

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Steps to Safe PCB Abatement Activities

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This section applies when you are renovating a building where you have tested the air and found PCBs present and plan to abate the PCB-containing materials, or when you are undertaking a PCB-abatement activity.

Are you an abatement contractor working on a project involving a school or other building constructed or remodeled between 1950 and 1980?

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If so, it is your responsibility to ensure that the PCB abatement activities are conducted safely and in accordance with EPA and OSHA regulations. This section is designed to help contractors and building owners plan for abatement projects of caulking and other building materials potentially contaminated with PCBs. The work practices discussed in this section are intended to reduce the risk of exposing workers and building occupants to PCBs by making the work area safer during abatement and the building safer for the occupants when the project is complete. Following the suggested work practices will assist you in:

- employing appropriate work practices and protective measures;
- leaving the work area clean and safe for building occupants after completing the job; and
- properly disposing of waste materials.

The following pages describe the necessary steps that you should take to ensure that you are conducting safe removal and abatement activities, and are following appropriate cleanup and disposal measures:

[Abatement Step 1: Prepare an Abatement Strategy](#)

[Abatement Step 2: Conduct Removal and Abatement Activities](#)

[Abatement Step 3: Handling, Storing, and Disposing of Wastes](#)

[Abatement Step 4: Prepare and Maintain Documentation](#)

Previous page: [How to Test for PCBs and Characterize Suspect Materials](#)

Next page: [Summary of Tools and Methods for Caulk Removal](#)



<http://www.epa.gov/pcbsincaulk/guide/guide-sect4a.htm>

Last updated on Thursday, December 20, 2012

Polychlorinated Biphenyls (PCBs)

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Abatement Step 1: Prepare an Abatement Strategy

Based on the results of the sampling plan, an abatement strategy should be developed. This strategy may require assistance from your [Regional PCB Coordinator](#) and [state environmental and health agencies](#).

- [Classification of Removed Materials with PCBs](#)
- [Abatement Prioritization](#)
- [Notifications to EPA May Be Required Prior to Starting a Project](#)

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Classification of Removed Materials with PCBs

You will need to determine the type of PCB waste you are removing and then determine your disposal option prior to commencing the abatement activity because you may be required to notify EPA before you begin work. PCB-contaminated caulk is generally considered PCB bulk product waste. If your abatement plan states that you intend to dispose of the PCB caulk and any contaminated building materials together, you may dispose of all the materials as a PCB bulk product waste, even if the PCB caulk becomes separated from the adjacent contaminated building materials during remediation. On the other hand, if you remove the PCB containing caulk and dispose of it separately from the surrounding building material, any PCB contaminated building material is considered a PCB remediation waste. EPA realizes that the PCB caulk may need to be separated during removal from adjacent contaminated building materials due to the presence of other hazardous materials or may accidentally be separated during the removal process.

Please see [Current Best Practices for PCBs in Caulk Fact Sheet - Removal and Clean-Up of PCBs in Caulk and PCB-Contaminated Soil and Building Material](#) for a discussion of the classification of removed materials with PCBs.

Descriptions and details on the disposal options are discussed in [Abatement Step 3](#). Some of these procedures have requirements for notification and certification; these are described under "[Notifications](#)" below.

Abatement Prioritization

Abatement activities should be prioritized based on the information collected during the building material characterization and classification steps, and based on the following priority drivers:

Materials with the highest PCB concentrations should receive a high priority, as they pose the greatest potential for direct exposure

- **PCB Concentrations and Condition --**

Materials with the highest PCB

concentrations should receive a high

priority, as they pose the greatest potential

for direct exposure and release of PCBs to indoor air. A release of PCB contaminants into the air, or off-gassing, is especially likely in locations with direct sunlight.

Compared to other building materials, caulk will generally have the highest concentrations of PCBs. Caulk with lower concentrations that is not intact and is peeling, brittle, cracking or visibly deteriorating also has a high potential for release of PCBs and also poses a potential to contaminate sand or soil or to be ingested.

and release of PCBs to indoor air.

- **Accessibility --** Materials contaminated with PCBs that are easily accessible by building occupants should receive a higher priority when evaluating the need for removal because of the potential for direct exposure. Note that, in addition to the accessibility of the contaminated material to the abatement workers, the accessibility rating should take into account the potential for building occupants to contact PCB-containing building material directly (dermal or ingestion) or indirectly via the air handling system (inhalation).



- **Occupancy --** PCB-containing materials in locations that have a higher rate of occupancy should receive a higher priority when evaluating the need for removal because of the increased potential for direct exposure. However, consideration should be given to the need for the safe, continued use of portions of the building during removal and clean-up activities. For example, conducting the abatement in phases could allow for partial occupancy of a building. The phasing sequence should consider the physical layout of the building to determine if the removal and clean-up areas and occupied spaces are sufficiently separated.



Interim Measures -- In some cases, interim maintenance measures, such as temporary encapsulation (i.e., covering materials with plastic and securing with duct tape), can reduce or eliminate exposure to PCB-containing building materials until they can be scheduled for abatement. As noted above, PCB-containing caulk typically has the highest PCB concentrations and will be given a higher priority for removal over other building materials. Masonry, wood,

brick, and other building materials contaminated with PCBs typically contain lower concentrations of PCBs. Thus, these PCB-contaminated materials typically pose a lower potential for exposure than caulk and should be dealt with accordingly.

Notifications to EPA May Be Required Prior to Starting a Project

Depending on the method you choose for disposal of contaminated wastes and cleanup debris, you may be required to submit documentation to and obtain approval from EPA prior to starting your removal or abatement project. Please see [Abatement Step 3](#) for your disposal options.

The decision on how to manage PCB contaminated substrate may be subject to a variety of site-specific facts. The appropriate EPA regional office and regional PCB coordinator can be consulted as necessary for assistance with making these decisions. For instance, property owners have identified instances where PCB caulk contained high levels of other hazardous constituents such as asbestos. Similarly, there are cases where PCB paint has been found to contain high levels of leachable metals. In these scenarios, care must be taken to fully characterize the waste to determine the appropriate disposal option.

Abatement Plan

An Abatement Plan (including a cleanup plan) should be prepared prior to commencing any actions at a building. The self-implementing procedures for removal or abatement of PCB-contaminated building materials from which PCB caulk has been removed (i.e., PCB remediation waste), require that an Abatement Plan be prepared [40 CFR 761.61(a)(3)(C)] and submitted as part of the notification and certification requirements described in "Notifications and Certifications" below. The plan must include a description of the removal and abatement schedule, disposal technology, and approach. The cleanup approach described in the plan should identify the proposed cleanup levels, removal and abatement procedures, verification sampling procedures, waste storage and handling procedures, and disposal options. The plan also must also contain options and contingencies to be used if unanticipated higher concentrations or wider distributions of PCBs are found, or other obstacles force changes in the cleanup approach.

Notifications and Certifications for Remediation Waste (40 CFR part 761.61(a)(3))

When conducting abatement activities for PCB-contaminated building materials from which PCB caulk has been removed by the self-implementing procedures or risk-based disposal option under 40 CFR part 761.61(c), you must submit the appropriate notifications to the EPA, as described below.

Self-Implementing Procedure -- At least 30 days prior to removal and abatement of building materials contaminated with PCBs using the self-implementing procedure, the person in charge of the cleanup or building owner must notify the following people of the planned action in writing:

- The EPA Regional Administrator
- The Director of the state or tribal environmental protection agency, and
- The Director of the county or local environmental protection agency where the cleanup will be conducted.

Within 30 calendar days of receiving the notification, the EPA Regional Administrator will respond in writing approving of the self-implementing cleanup, disapproving of the self-implementing cleanup, or requiring additional information. If the EPA Regional Administrator does not respond within 30 calendar days of receiving the notice, it may be assumed that the plan is complete and acceptable and the cleanup may proceed according to the submitted plan. Once cleanup is underway, any changes from the notification must be provided to the EPA Regional Administrator in writing no less than 14 calendar days prior to implementation of the change.

Risk-Based Disposal Approval -- To sample, cleanup, or dispose of building materials contaminated with PCBs materials from which PCB caulk has been removed in a manner other than described under 40 CFR part 761.61 (a) you must submit an application to EPA under the risk-based disposal option, an application must be submitted to EPA. Each

application must contain the information described in the notification requirements outlined in [40 CFR part 761.61\(a\) \(3\)](#). EPA may request other information necessary to evaluate the application. EPA will issue a written decision on each application for a risk-based method, and will approve an application if EPA finds that the method will not pose an unreasonable risk of injury to health or the environment. It is recommended that you contact your Regional PCB Coordinator to discuss the necessary requirements under the risk-based option.

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Next page: [Abatement Step 2: Conduct Removal and Abatement Activities](#)



<http://www.epa.gov/pcbsincaulk/guide/guide-sect4b.htm>

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Abatement Step 2: Conduct Removal and Abatement Activities

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The removal and abatement procedures for building materials such as masonry, wood, and bricks that were contaminated with or contain PCBs should be determined based on the building material classification, described in the section on the [building characterization and sampling plan](#). When caulk with PCB concentrations equal to or greater than 50 ppm is removed along with any attached PCB containing building materials, it must all be disposed in accordance with the methods provided in [40 CFR 761.62](#) and described in [Abatement Step 3](#).

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- How to Test for PCBs and Characterize Suspect Materials
- Steps to Safe PCB Abatement Activities
- Summary of Tools and Methods for Caulk Removal

- [Factors to Consider when Selecting Appropriate Tools and Methods](#)
- [Typical Tools and Methods for Removal Activities](#)
- [Protective Measures](#)
- [Suggested Work Area Decontamination Methods](#)

The following subsections provide an overview of various tools and methods available for removal and abatement of caulk and related building materials. Generally tools should be selected that minimize dust and heat.

Factors to Consider when Selecting Appropriate Tools and Methods

To select the most appropriate tools, it is important to evaluate the location and accessibility of the caulk. Material properties are an important consideration for choosing the right tool to remove old caulk. Check whether the caulk is hard and brittle (aged and weather-exposed caulks, frequently seen in exterior areas) or elastic and soft (primarily in areas protected from sunlight and weather, and located indoors). Furthermore, the material and condition of the adjoining structures (smooth or rough joint faces) play a role in the selection of tools. The most frequently encountered materials of adjoining structures include concrete, sandstone, bricks, polystyrene (with plaster layer), wood, and metals (e.g., window frames).

The anticipated dust and heat generation plays an important role in selecting the right tools and methods for removal. If your tools or work methods generate high heat (temperatures exceeding 212° F.), there is the risk that the PCBs may be released into the air, and workers or building occupants may breathe in PCB gases. More comprehensive protective measures are necessary for methods that generate moderate to heavy amounts of dust or heat.

More comprehensive protective measures are necessary for methods that generate moderate to heavy amounts of dust or heat.

Typical Tools and Methods for Removal Activities

Manual tools are primarily used for smaller joint lengths or when the joints are difficult to access for structural reasons. The [summary of suggested tools and methods page](#) provides a summary of the typical manual tools and methods used for removal activities. Advantages of manual processes compared to electromechanical methods include a lower volume of fine dust, the absence of heat development, and consequently, lower expenditures for personal and environmental protection. Utility knives are particularly suitable for manual processes, provided the caulk is not too hard or brittle. Soft caulk, especially indoors and in external areas without weather or sun exposure, can be quickly and efficiently removed with a utility knife. Hard or brittle caulk is mainly found in exterior areas, especially in places with sun exposure. Hard or brittle caulk may have to be broken or chiseled out with ripping chisels, crowbars, hammers, and chisels. Depending on the condition of the caulk and the surrounding materials, the joint faces can be reworked by shaving and scraping with a putty knife, scraper, or wire brush.

Electromechanical tools have ergonomic advantages over most manual methods. Electromechanical tools are better suited for projects with many joints and semi-soft to hard and brittle caulk. Electrical joint cutters with rotating blades (also known as oscillating knives) have proven especially useful in these situations. Generally, electromechanical procedures generate higher volumes of dust and more heat, which requires more complex protective measures (personal and environmental protection) than manual methods. Some electromechanical tools may have limited applications (e.g., jigsaw) or are unsuitable because they produce significant amounts of dust or high heat. The [summary of suggested tools and methods page](#) provides a summary of the typical electromechanical tools and methods used for removal activities.

Typically, joint faces have to be cleaned after the removal of the old caulk to install the new, high-quality caulking. The removal of the caulk containing PCBs should be as complete as possible, with no visible residue remaining. The selection of tools and methods for cleaning/reworking joint faces is primarily based on structural requirements and consideration of protective measures. Additionally, the material properties of the adjoining structures must be taken into account to ensure that the joint faces are not damaged. Tools with beating, striking, or pronounced abrasive effects are not suitable for working on sensitive adjoining structures, such as limestone, plaster-covered insulation, wood, or metal parts.

An effective method to treat joint faces is dry ice blasting, which is primarily reserved for major restoration projects because of the complex protective measures it requires. In the case of smooth, non-porous surfaces such as metal (e.g., unpainted window frames), glass, ceramic materials, or tiles, that are not to be removed and disposed of, the surface should first be cleaned with a rag dipped in solvent (e.g., acetone). When working with solvents, you should observe protective measures such as, the use of solvent-resistant gloves, increased air exchange with sufficient fresh air supply, compliance with workplace limit values, and measures to prevent fire and explosion. In addition, used solvent and/or cleaning rags may be subject to regulation under federal or authorized state hazardous waste regulations.

Data from individual restoration projects have shown that PCBs spread from the caulk into adjoining structures (e.g., brick, wood, or concrete) over time. Consequently, it is highly likely that the material adjoining the PCB-containing caulk at the joint face is contaminated. In many cases of caulk contaminated with PCBs at > 1,000 ppm, several millimeters of the

adjoining concrete contained PCB contamination in a concentration range of several hundred to several thousand parts per million. As previously discussed, the adjoining materials contaminated with PCBs are typically characterized as PCB remediation wastes. PCB bulk product waste must be handled in accordance with 40 CFR part 761.62 while PCB remediation waste must be handled in accordance with 40 CFR part 761.61 while PCB remediation waste must be handled in accordance with 40 CFR part 761.61. Refer to Abatement Step 3 for more information.

Under certain situations, it may be more practical to separate PCB-contaminated parts of the building materials from adjacent PCB-free materials in the area of the joint faces. This can be done with electromechanical tools such as circular saws or slot mills with diamond blades or with maximum pressure blasting methods. In such cases, the material separation should include sufficient safety spacing from the non-contaminated building parts, and suitable measures to contain the dust volume and retain the blasting materials.

Take note that PCB contaminated building materials are considered PCB bulk product waste when the PCB caulk is still attached, while PCB contaminated building materials are considered PCB remediation waste when the PCB caulk has been separated from the building materials and disposed of separately. If your abatement plan states that you intend to dispose of the PCB caulk and any contaminated building materials together and the PCB caulk becomes separated from the adjacent contaminated building materials during remediation, you may still dispose of all the materials as a PCB bulk product waste.

Protective Measures

- Occupational Protective Measures
- Protective Measures for Third Parties and the Environment
- Heating, Ventilating and Air Conditioning (HVAC)
- Communications about the Job and Site Security

The need for protective measures primarily depends on the volume of dust generated by the particular work method. To limit protective measures needed, it is best to select tools and methods that generate the lowest possible dust volume. Protective measures should provide for direct personal protection (workers), protection of building users and third parties (e.g. passers-by), and safeguard the potential for spreading PCB contamination (cross-contamination) to surrounding areas of the abatement project.

An integral step in implementing protective measures is to assign a containment area for each distinct abatement area. The containment area size and construction should be proportionate to the activities that will be conducted (i.e., amount of dust generation expected). Containment structures should be constructed within the containment area at each location where abatement is performed and in a manner that prevents airborne dust from spreading outside the abatement area. For example, a containment structure can be constructed of poly sheeting draped over existing building features and/or support frames built specifically for the containment area. The containment area should be maintained under negative air pressure by installing an induced draft fan equipped with High Efficiency Particulate Air (HEPA) filters to prevent dust particles from being carried out of the containment area. The filtered exhaust from the fan should be routed outside the containment area and vented outside of the building. When significant

An integral step in implementing protective measures is to assign a containment area for each distinct abatement area.

dust may be produced by the abatement activities, dust monitoring outside the containment structures may be warranted.

Dust aspiration techniques can be used to reduce the amount of dust created from tools/methods that can generate higher dust volumes, such as grinders, cutters, saws, and slot mills as identified on the [summary of suggested tools and methods page](#). These techniques are efficient methods for reducing the amount of dust that can spread through the containment area, and can significantly reduce the amount of dust in the breathing zone of the worker using the tool. Affixing a dust collector nozzle (connected to an industrial vacuum with HEPA filters) to the working end of the electromechanical tool is an example of a dust aspiration technique. The figure below illustrates examples of dust aspiration techniques.



Source: Rex, G.B., www.pcbinschools.org, accessed July 2009.

Examples of Dust Aspiration Techniques at the Point of Generation

Occupational Protective Measures -- This section discusses measures for protecting workers from exposure to PCB gases and dust. Depending on the selection of tools, PCB gases and dust are likely to be released to air when working on an abatement project. Therefore, workers should use suitable protective measures (personal protection gear) when working with dust-generating methods or tools. These protection measures should prevent PCBs from getting into the body through inhalation, ingestion, and/or by absorption through exposed skin.

The following protective measures are generally applicable, and should be considered when handling materials containing PCBs:



Gloves and skin protection -- Chemical-resistant gloves and Tyvek coveralls are the standard personal protective equipment (PPE). Chemical-resistant gloves made of nitrile butadiene rubber (NBR) are particularly protective. Pay particular attention to the type of gloves and how long gloves can be used when working with solvents (e.g. for cleaning non-porous surfaces). Only certain gloves are suitable for working with particular solvents, and how long gloves can be used with that solvent (breakthrough time) differs.

- **Eye protection** -- All workers should wear safety glasses or protective goggles for all removal, abatement, and sampling activities.





- **Respiratory protection** -- Consider using an air-purifying respirator (OSHA/NIOSH approved) with combination organic vapor and HEPA cartridges when working with dust generating activities or solvents.
- **Worker hygiene** -- Eating, drinking, and smoking should be prohibited in the work site. For work involving dust generation, showers and separate changing cabins for work clothing and everyday clothing should be provided.

[Read about OSHA standards for personal protective equipment.](#)

Protective Measures for Third Parties and the Environment

-- To protect third parties and the environment during abatement projects, it is important to prevent PCB-contaminated dust from contaminating the immediate surroundings (i.e. adjoining rooms for interior projects and directly adjoining areas of exterior projects). PCBs can stay in the environment for long periods of time, and can be a source of exposure to building occupants.

Consider the following protective measures for third

parties and the environment when handling materials containing PCBs:

To protect third parties and the environment during abatement projects, it is important to prevent PCB-contaminated dust from contaminating the immediate surroundings.

- Adequately construct a containment area to minimize the spread of PCB dust to other surrounding areas and to make sure proper control requirements are followed (i.e., removal of used PPE prior to exiting the control area).
- Properly store removed PCB-contaminated materials, directly at the place of removal. Materials should be placed in tightly-locking, stable containers, for example fiber drums or polyethylene buckets with polyethylene lining.
- Regularly clean the work area, including tools and machinery, with an industrial vacuum and HEPA filter and/or mopping to remove particles.
- Properly dispose of contaminated protective clothing (gloves and protective suits), filters of aspiration devices, and cleaning aids in the containment area.

In addition to these generally applicable protective measures, consider conducting air sampling in the vicinity of the containment area to assess whether PCB-contaminated dust is escaping the containment area and impacting nearby clean areas. The air sampling should be conducted the procedures discussed in the section on [testing and characterizing suspect materials](#). When determining if air sampling should be conducted during abatement activities, consider the following:

- amount of dust generated by the activities
- location of abatement activities
- duration of dust-generating activities
- size of the area being remediated
- concentration of PCBs in the material being remediated
- effectiveness of the containment area structure

Heating, Ventilating and Air Conditioning (HVAC) -- The HVAC system should be shut down and remain off until PCB abatement is complete. If this is not possible, isolation of the abatement area from the HVAC system should be implemented. During the preliminary assessment of the extent of PCB contamination, sampling should be conducted in all areas/rooms/units serviced by the HVAC system to determine the spread of contamination, and sampling results should be noted in the cleanup plan.

Hire contractors who specialize in cleaning ventilation systems to clean HVAC systems. These contractors have specialized tools and training to ensure thorough cleanup. It is important to remember that not all ventilation system ducts can be cleaned. For example, some ducts are lined with fiberglass or other insulation (which, if damaged during cleaning, can release fiberglass into living areas). Also, flexible ductwork frequently has a porous inner surface and, in most cases, cannot be economically cleaned. For this reason, the ductwork should be discarded and replaced after the ventilation system is cleaned.

If it is determined that the HVAC system can be cleaned, it should be cleaned early in the abatement process. Once cleaned, the HVAC system should be sealed at all openings to prevent potential recontamination. At a minimum, when approaching a ventilation system constructed of non-porous materials, ventilation contractors should:

- Perform a walk-through of the structure to establish a specific plan for decontamination of the ventilation system.
- Follow safety and health procedures, in accordance with OSHA regulations and guidelines and other applicable state or local worker safety and health regulations, to protect workers and others in the vicinity of the structure during the decontamination process.

Communications About the Job and Site Security -- Clear communication with all affected groups (e.g., building occupants, workers, building owners, and community members) is necessary to create a safe working environment. Site security measures should also be implemented to prevent unauthorized access to the containment areas. [Read about specific security measures and suggested notification.](#)

Suggested Work Area Decontamination Methods

Following the abatement activity and break down of the containment area, the entire area should be vacuumed with an industrial HEPA vacuum and wiped with wet rags to remove any dust from surfaces within the area. All wastes collected or created (e.g., used rags) should be placed in a container or wrapped in plastic, and transported to the disposal storage area. Then, conduct a visual inspection of the decontaminated area to determine if additional decontamination is warranted (i.e., if the area is still dusty). The HEPA vacuum should also be decontaminated or disposed of.

After the decontamination is considered complete, collect wipe samples from surfaces within the subject area. Collect a sufficient number of wipe samples within the subject area to ensure that the area was fully decontaminated. The number and location of samples should be determined in accordance with [40 CFR 761](#) Subpart O (bulk wastes and porous surfaces) or Subpart P (non-porous surfaces), with a minimum of three samples collected from each type of Bulk PCB Remediation Wastes. You should collect samples from horizontal surfaces where dust is most likely to accumulate.

The subject area is considered sufficiently decontaminated if conducted in accordance with 40 CFR 761.79. If the standard of 10µg/100 cm² is not met for all of the wipe samples, additional decontamination procedures must be performed within the entire subject area and additional wipe samples must be collected. These procedures will be repeated until the 10µg/100 cm² standard has been achieved.

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Abatement Step 3: Handling, Storing, and Disposing of Wastes

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After removal and breakdown of materials within the containment area, all materials to be disposed of should be contained (e.g., wrapped in poly sheeting or placed in a drum) and immediately transported to a designated storage area. Disposal methods are determined based on the regulatory material classification, as previously discussed in [Abatement Step 1](#). All applicable provisions for storing, packaging, transporting, manifesting, recordkeeping and disposing in the PCB regulations must be adhered to.

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- [How Do I Dispose of My PCB-Containing Caulk?](#)
- [How Do I Dispose of My Other PCB-Contaminated Building Materials?](#)
- [How Do I Dispose of My Cleanup Debris?](#)
- [Disposal Facilities](#)

How Do I Dispose of My PCB-Containing Caulk and Attached Building Materials??

The disposal of PCB-containing caulk and any attached PCB-containing building materials is regulated under [40 CFR 761.62](#). . (Note: If your abatement plan states that you intend to dispose of the PCB caulk and any contaminated building materials together and the PCB caulk becomes separated from the adjacent contaminated building materials during remediation, you may still dispose of all the materials as a PCB bulk product waste.) Under this provision, the removed caulk and building materials must be disposed of using one of the following four methods for this type of material (PCB Bulk Product Waste):

- **Performance-based disposal.** The performance-based option allows for disposal of PCB bulk product waste in a TSCA incinerator; a TSCA chemical waste landfill; a RCRA hazardous waste landfill; under a TSCA approved alternate disposal method; under the TSCA regulated decontamination procedures; or in a facility with a coordinated approval issued under TSCA. Disposal under this option does not require you to obtain approval from EPA.
- **Disposal in solid waste landfills.** PCB bulk product waste may be disposed of in non-hazardous waste landfills as permitted by states. Disposal under this option does not require you to obtain approval from EPA. However, EPA recommends that you check state regulations which may prohibit or limit disposal of PCB bulk product waste in solid waste landfills. EPA also recommends that you determine prior to shipment that the landfill is willing and able to accept the PCB waste. Anyone sending PCB bulk product waste to a non-hazardous waste landfill permitted by a state must send

written notice to the landfill prior to shipment of the waste stating that the waste contains PCBs at greater than 50 ppm (see 40 CFR 761.62(b)(4)(ii)). This guidance document does not replace or supersede any (sampling) requirements that the receiving facility may deem necessary to determine acceptance of the waste into its facility. Additionally, this guidance does not supersede state requirements which may be more stringent than those mandated by the federal government for management of this debris

- **Risk-based option.** The risk-based option allows for a site-specific evaluation of whether PCB bulk product waste may be disposed of in a manner other than under the performance based disposal option or the solid waste disposal landfill option. Disposal of PCB bulk product waste under this option requires you to obtain approval from EPA, and requires you to demonstrate that the disposal will not present an unreasonable risk of injury to health or the environment.
- **Disposal as daily landfill cover or road bed.** ([40 CFR 761.62\(d\)](#))

NOTES: Re-sampling of caulk waste is not necessary for a Performance-based disposal, disposal in a solid waste landfill or disposal as a daily landfill cover or road bed but may be necessary when implementing the Risk-based disposal option. However, sampling methods described in 761.62 were not designed for waste caulk material. Consult your [Regional PCB Coordinator](#) for alternative methods if you select this disposal option.

If PCB Caulk has been Removed, How Do I Dispose Remaining PCB-Contaminated Building Materials?

The disposal of masonry, wood, bricks, and other building materials contaminated with PCBs from which PCB caulk has been removed and is disposed of separately from the surrounding building material is regulated under [40 CFR 761.61](#). There are three options for management of these types of materials (PCB Remediation Wastes):

- **Self-implementing cleanup and disposal.** The self-implementing option links determining cleanup levels with the expected occupancy rates of the area or building where the contaminated materials are present. The disposal requirements for the self-implementing option vary based on the type of contaminated material and concentration of PCBs in the materials, among other things. Contact your PCB Regional coordinator if you elect to use this disposal option.
- **Performance-based disposal.** The performance-based option allows for disposal or decontamination of the contaminated materials in a TSCA chemical waste landfill; a TSCA incinerator; through a TSCA approved alternate disposal method; under the TSCA regulation's decontamination procedures; or in a facility with a coordinated approval issued under TSCA. Disposal under this option does not require you to obtain an approval from EPA.
- **Risk-based cleanup and disposal.** The risk-based option allows for a site-specific evaluation of whether the PCB-contaminated building materials may be cleaned up or disposed of in a manner other than the alternatives provided under the self-implementing or the performance based disposal options. Disposal of these materials under this option requires you to obtain approval from EPA and demonstrate that the disposal will not present an unreasonable risk of injury to health or the environment.

How Do I Dispose of My Cleanup Debris?

Wastes generated during the cleanup activities previously described in the section, "[Leave the Work Area Clean](#)" must also be properly disposed of. Non-liquid cleaning materials and PPE waste at any concentration, including rags, mops, gloves, Tyvec suits, and similar materials resulting from cleanup activities must be disposed of in an appropriate waste facility (state municipal solid waste, state non-municipal non-hazardous waste, federal hazardous waste landfill, or a federally approved PCB disposal facility -- see 761.61(a)(5)(v)). Waste water produced during the job from mopping, wet cleaning, or misting may be regulated for disposal. If you know the concentration of PCBs in waste water, follow the decontamination procedures for water at [40 CFR part 761.61\(a\)\(4\)\(iv\)](#). Otherwise, assume the waste water to be regulated and dispose of the water in a TSCA approved facility ([40 CFR part 761.61\(b\)\(1\)](#)).

Disposal Facilities

[See a listing of TSCA approved disposal facilities.](#)

To find a solid waste disposal facility that will accept PCB-containing caulk, please contact your [state environmental agency](#).

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Abatement Step 4: Prepare and Maintain Documentation

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The contractor should perform documentation of the field activities on a daily basis during the abatement project. Following completion of the remedial action, the contractor should prepare an abatement report. The following subsections describe the documentation that should be completed during the project:

- [Field Notes](#)
- [Photographs](#)
- [Transport and Treatment/Disposal Certifications](#)
- [Abatement Report](#)
- [Where Can I Get More Information about PCBs in Caulk](#)

- Introduction
- Facts About PCBs in Caulk
- Steps to Safe Renovation and Repair Activities
- How to Test for PCBs and Characterize Suspect Materials
- Steps to Safe PCB Abatement Activities
- Summary of Tools and Methods for Caulk Removal

Field Notes

A daily log of on-site activities should be maintained and may include such items as:

- Daily health and safety meetings
- Personnel and equipment on site
- Field procedures and observations
- Removal, abatement, containment, and decontamination progress
- Sample locations with selection criteria, samples collected, analyses performed, and sample handling
- Telephone or other instructions
- Health and safety issues
- Health and safety monitoring data, including dust monitoring outside containments
- Estimate of wastes generated and stored
- Waste transporter information

Photographs

Daily photographs should be taken of representative activities, such as removal and abatement work, containment structures, decontamination, sampling, and waste handling and storage. Copies of selected photographs with appropriate captions should be included in the abatement report.

Transport and Treatment/Disposal Certifications

Manifests and/or bills of lading for the transportation, treatment, and disposal of regulated waste materials and certifications of the treatment of the wastes, if necessary, must be obtained from the transporter and from the treatment/disposal facility. Copies of these forms must be included in the abatement report, and records must be maintained in accordance

with the requirements as specified in 40 CFR 761 Subpart K (PCB Waste Disposal Records and Reports).

Abatement Report

An abatement report should be prepared upon completion of all remedial activities and include the following information:

- Site description
- A description of field procedures
- Confirmation of sample locations and analytical results for all characterization and verification samples collected.
- A photographic record of the removal and abatement, containment structures, and decontamination
- Dust monitoring data
- Waste transport and treatment disposal information
- Copies of waste manifests and bills of lading

The abatement report and accompanying backup information must be kept on file for a period of three to five years from the date that the abatement activities were completed, as described below:

- Five years for Bulk PCB Remediation Wastes cleaned up and disposed of according to the self-implementing procedures of 40 CFR 761.61(a).
- Three years for PCB Bulk Product Wastes removed and disposed of in a solid waste landfill according to the provisions of 40 CFR 761.62(b).

Where can I Get More Information about PCBs in Caulk?

For more information on how to properly test for and address PCBs in caulk, contact the Regional PCB Coordinator for your state.

In addition, see EPA's PCBs in Caulk Web page.

Previous page: Abatement Step 3: Handling, Storing, and Disposing of Wastes

Next page: Summary of Tools and Methods for Caulk Removal



<http://www.epa.gov/pcbsincaulk/guide/guide-appendix.htm>
Last updated on Friday, November 30, 2012

Polychlorinated Biphenyls (PCBs)

You are here: [EPA Home](#) » [Wastes](#) » [Hazardous Waste](#) » [Polychlorinated Biphenyls \(PCBs\)](#) » [PCBs in Caulk in Older Buildings](#) » [Steps to Safe Renovation and Abatement of Buildings That Have PCB-Containing Caulk](#) » [Summary of Tools and Methods for Caulk Removal](#)

Summary of Tools and Methods for Caulk Removal

TOOLS/METHOD	SUITABILITY	ADVANTAGES/DISADVANTAGES	PROTECTIVE MEASURES TO CONSIDER
Mechanical Tools			
Utility knife	<ul style="list-style-type: none"> • Universally applicable tool, especially for cutting out elastic and soft caulk together with an electrical joint cutter> • Suitable for all smooth joint faces • Less suitable for working on projects with caulk of lengths exceeding 100 m • Less suitable for very hard caulk • Choice of different blades to suit the joint width and depth 	<p><i>Advantages:</i></p> <ul style="list-style-type: none"> • Short, sturdy blade that is easily exchangeable • Handy, low weight • No dust development in case of elastic caulk • Little dust when removing slightly brittle caulk and cleaning joint faces • Gentle treatment of joint faces <p><i>Disadvantages:</i></p> <ul style="list-style-type: none"> • Requires great exertion in case of hard caulk • Relative low output (linear meters of caulk/hour) • Relatively high labor costs 	<ul style="list-style-type: none"> • General personal <u>protective measures</u> • Construction of a Containment Area enclosure (if dust is generated) • <u>Work area decontamination</u>
Ripping chisel	<ul style="list-style-type: none"> • Suitable for breaking out or chiseling hard caulk, especially when working with joint in concave, angled planes • Less suitable for joints 	<p><i>Advantages:</i></p> <ul style="list-style-type: none"> • Removal of hard and brittle caulk: The cutting edge can be moved along the joint face with greater pressure than a utility knife • Low dust development in case of rough joint faces <p><i>Disadvantages:</i></p> <ul style="list-style-type: none"> • Quickly dulls when working with rough joint faces made of concrete or other hard materials 	<ul style="list-style-type: none"> • General personal <u>protective measures</u> • Construction of a Containment Area enclosure • Dust aspiration at the source when cleaning joint faces as described in

	<ul style="list-style-type: none"> with a width of less than 5 mm • Less suitable for working on projects with caulk of lengths exceeding 100 m 	<ul style="list-style-type: none"> • Possible damage to adjoining structural parts 	<u>Abatement Step 2.</u>
Putty knife/scrapper	<ul style="list-style-type: none"> • Suitable for reworking joint faces with shaving or scraping • Suitable for removing loose or crumbling caulk 	<p><i>Advantages:</i></p> <ul style="list-style-type: none"> • Suitable for rough joint faces <p><i>Disadvantages:</i></p> <ul style="list-style-type: none"> • Poor cutting action • Small particle debris at the joint faces • Longer joints and hard caulk 	<ul style="list-style-type: none"> • General personal <u>protective measures</u> • Construction of a Containment Area enclosure • Dust aspiration at the source when removing loose or crumbling caulk as described in <u>Abatement Step 2.</u>
Bush hammer	<ul style="list-style-type: none"> • Suitable for hammering away hard or well-attached caulk residue on hard, robust areas 	<p><i>Advantages:</i></p> <ul style="list-style-type: none"> • No heavy dust development <p><i>Disadvantages:</i></p> <ul style="list-style-type: none"> • Limited to hard <u>and</u> solid surfaces 	<ul style="list-style-type: none"> • General personal <u>protective measures</u> • Construction of a Containment Area enclosure • Dust aspiration at the source when removing loose or crumbling caulk as described in <u>Abatement Step 2.</u>
Hammer and chisel	<ul style="list-style-type: none"> • Suitable for very hard, brittle, or wide joints > 2 cm 	<p><i>Advantages</i></p> <ul style="list-style-type: none"> • For very hard caulk <p><i>Disadvantages</i></p> <ul style="list-style-type: none"> • Possible damage to structural parts 	<ul style="list-style-type: none"> • General personal <u>protective measures</u> • Construction of a Containment Area enclosure • Dust aspiration at the source when removing loose or crumbling caulk as described in <u>Abatement Step 2.</u>
Electromechanical Tools			
		<i>Advantages:</i>	

Electrical joint cutter with oscillating blade	<ul style="list-style-type: none"> • Universally applicable tool for cutting out hard and soft caulk, especially in combination with a utility knife; suitable for all material types of adjoining structures • Less suitable for removing caulk that is difficult to access • Not suitable for very hard caulk 	<ul style="list-style-type: none"> • Short, sturdy blade that is easily exchangeable • Handy, acceptable weight • Low dust volume • Typically low risk of damage to joint faces with careful work <p><i>Disadvantages:</i></p> <ul style="list-style-type: none"> • Moderate exertion required; • No integrated dust aspiration 	<ul style="list-style-type: none"> • General personal <u>protective measures</u> • Construction of a Containment Area enclosure • Maintain negative air pressure with induced draft fan equipped with High Efficiency Particulate Air (HEPA) filters • Dust aspiration at source when removing loose or crumbling caulk as described in <u>Abatement Step 2</u>.
Electrical scraper with exchangeable blades	<ul style="list-style-type: none"> • Universally applicable tool for soft to hard caulk, especially in combination with a utility knife; • Suitable for difficult-to-access joint areas in corners and along edges • Also suitable for reworking joint faces • Not suitable for very hard caulk 	<p><i>Advantages:</i></p> <ul style="list-style-type: none"> • Lightweight device, handy • Low exertion • Low dust volume <p><i>Disadvantages:</i></p> <ul style="list-style-type: none"> • No integrated dust aspiration 	<ul style="list-style-type: none"> • General personal <u>protective measures</u> • Construction of a Containment Area enclosure • Maintain negative air pressure with induced draft fan equipped with HEPA filters • Dust aspiration at source when cleaning joint faces as described in <u>Abatement Step 2</u>.
Needle hammer	<ul style="list-style-type: none"> • On level areas: for broad, shallow dummy joints and connection joints 	<p><i>Advantages:</i></p> <ul style="list-style-type: none"> • Removal of firmly attached, hard caulk <p><i>Disadvantages:</i></p> <ul style="list-style-type: none"> • Higher dust volume; possible damage to adjoining structures 	<ul style="list-style-type: none"> • General personal <u>protective measures</u> • Construction of a Containment Area enclosure • Maintain negative air pressure with induced draft fan equipped with HEPA filters • Dust aspiration at source when

			cleaning joint faces as described in Abatement Step 2 .
Jigsaw with exchangeable saw blades	<ul style="list-style-type: none"> • Tool with integrated dust aspiration. Use is limited to deep joints with free space in accordance with blade length • Only suitable for cutting out the caulk • Not suitable for reworking joint faces • Not suitable for difficult-to-access joint areas in corners and along edges 	<p><i>Advantages:</i></p> <ul style="list-style-type: none"> • Good cutting rate for semi-soft and hard caulk • Integrated dust aspiration <p><i>Disadvantages:</i></p> <ul style="list-style-type: none"> • Only suitable for joints in vertical planes with open joint backup 	<ul style="list-style-type: none"> • General personal protective measures • Construction of a Containment Area enclosure • Maintain negative air pressure with induced draft fan equipped with HEPA filters • Connection of the integrated dust aspiration device to an industrial vacuum with HEPA filters.
Diamond sanding device	<ul style="list-style-type: none"> • Electrical joint cutter with oscillating, diamond-coated cleaning blade and integrated dust aspiration • Only suitable for cleaning joint faces 	<p><i>Advantages:</i></p> <ul style="list-style-type: none"> • Low dust volume compared to angle grinder • Integrated dust aspiration <p><i>Disadvantages:</i></p> <ul style="list-style-type: none"> • Heat development and gaseous emission production not clarified 	<ul style="list-style-type: none"> • General personal protective measures • Construction of a Containment Area enclosure • Maintain negative air pressure with induced draft fan equipped with HEPA filters • Connection of the integrated dust aspiration device to an industrial vacuum with HEPA filters.
Rotary cutting tools	<ul style="list-style-type: none"> • Only suitable for cutting out the caulk • Not suitable for reworking joint faces • Suitable for difficult-to-access joint 	<p><i>Advantages:</i></p> <ul style="list-style-type: none"> • Lightweight device, handy • Low exertion • Typically low risk of damage to joint faces with careful work <p><i>Disadvantages:</i></p> <ul style="list-style-type: none"> • Higher dust volume • No integrated dust aspiration 	<ul style="list-style-type: none"> • General personal protective measures • Construction of a Containment Area enclosure • Maintain negative air pressure with

	areas along edges; not suitable for accessing corners		induced draft fan equipped with HEPA filters <ul style="list-style-type: none"> Dust aspiration at source when cleaning joint faces as described in <u>Abatement Step 2</u>.
Chemical-Physical Methods			
Dry ice (CO ₂) blasting	<ul style="list-style-type: none"> Suitable for gentle reworking of joint faces Suitable for large joint lengths 	<i>Advantages:</i> <ul style="list-style-type: none"> Gentle on the surrounding materials Good cleaning performance (Note: In some cases, the method cannot completely remove caulk) Good performance for large joint lengths <i>Disadvantages:</i> <ul style="list-style-type: none"> Expensive (especially in combination with high demands for protective measures) Complex requirements for protective measures 	<ul style="list-style-type: none"> Enclosure of the work area with airtight seal, negative pressure and controlled air exchange, dust aspiration at the source Full respirator with fresh air supply and protective suit Noise and ear protection (noise levels range from 85 to 120 dBA, depending on the device)

Previous page: [Steps to Safe PCB Abatement Activities](#)

MARSHALL Janelle * OPRD

From: Kelly Nobles <Kelly_Nobles@msn.com>
Sent: Friday, September 4, 2020 9:09 AM
To: PUBLICCOMMENT * OPRD
Subject: SHPO administration of private lands
Attachments: Nobles land use map.png

My name is Kelly Nobles 541-571-2588. Thank you for this opportunity to provide feedback from my experience with SHPO. I own 3 acres of land adjacent to 35UM1 in Umatilla between 4th & 5th street from L street to I street. Two years ago I hired someone to clear the sage brush of my undeveloped parcel. I received notice from an CTUIR office that he thinks the historical boundary was changed and that my land is now in the archeological site known as 35UM1. My family has lived here for 4 generations and we all know the USACE has a fence around the historical site and it is a no trespassing area. Apparently in the early 1980's SHPO decided to extend the boundary of 35UM1 without notifying the property owners or the city of Umatilla. On my title insurance when my family bought the property in 2010 there was no mention or indication this was in an archeological site. I received a court summons to appear in court, no citation or statue was stated. When the judge asked how I plead I explained I was not charged with anything just a notice to appear. The judge asked the DA why and he responded it is a new statue we are not sure how to handle it. Then the DA slid a charge across the desk to me. The judge instructed me not to say anything and set another court date. CTUIR did not appear at the first or the second court date. The DA asked for more time at the second court date and the judge set another date. CTUIR did not appear at the third court date. I stopped all activity on my property the day I was notified about UM351. I also invited CTUIR, SHPO and anyone else to entry my property at any time and offered to give them any artifacts that were found. I also offered through my attorney and the court to pay any expenses CTUIR may have incurred as well as hire WCRA Willamette Cultural Resource Associates which CTUIR requested of me. At the 3rd court date the DA explained it was difficult to get all the parties at CTUIR to sign my offer to settle. The Judge told the DA this is the last extension and set a 4th court date. At that 4th court date CTUIR did not appear but the DA did produce a signed agreement to settle and I paid CTUIR a few thousand dollars for the time they spend coming to my property to check for artifacts. In addition to my time and expense in court I paid WCRA and attorneys \$87,000 to research my SHPO permit. After 4 archeologists spent a week digging and documenting 67 test holes it was determined my property was not a significant site and I was issued a permit by SHPO to proceed with clearing my land. This process with SHPO, CTUIR and WCRA took over a year.

Umatilla City was not aware of the boundary change and was in the middle of a new water line project which ran between 5th and 6th street. When I asked SHPO why they did not need a permit since the boundary was moved to 6th street SHPO explained they did not know about the project and had the city stop work on the new water main. There was also a new 7 million dollar ODOT upgrade being done to both sides of 6th street when I asked if that had a SHPO permit it resulted in a meeting between ODOT and SHPO and within 2 weeks the boundary of UM351 was changed again. It was reduced so it did not include the city water project or the ODOT project it did however still included my parcel which I actually had paid WCRA to research and prove it was not a historical site.

It seems odd that historical site boundaries can be so easily manipulated through administrative decision and not a formal process. How is it possible SHPO controls sites without informing the city administration or the private property owner?

In closing I would like to mention I am going on 2 years now and still waiting for the SHPO permit to gravel my access to my property on L street. The portion of L street between 3rd and 4th was never vacated and never developed. The city vacated all my other access points to all 4 city blocks I own and they acknowledge this is my only access. I hired WCRA to ask SHPO to allow me to gravel this access. It is not on USACE land it is on city owned L street which has the main sewer line to the water treatment plant running down the middle of it. The entire stretch was dug up to install the main sewer line from the city to the treatment plant. I want to gravel 20' over the top of where the sewer line was installed in the middle of the street. In my early correspondence with SHPO I was told to go through WCRA which I am doing. I am still waiting for SHPO approval to gravel the portion of L street that is access to my property. I made the first request early this year. I understand and agree with the need to protect historical sites, I understand federal lands have additional requirements but this is private land that I have spent \$87,000 myself to prove it is not of historical significance and I am still waiting for permission to gravel access to my property across a street that was dug up for a main sewer line.

Please provide private landowners with knowledge that their property is under SHPO jurisdiction as well as a reasonable time line to permit them to use their property if proper research is completed.

Thank you for allowing me to explain my nightmare experience with you. I do have reams of emails timeline and documents if you are interested in that kind of detail.

Respectfully, Kelly Nobles 541-571-2588



**PROPERTY OWNERS WITHIN 100'
NOTICE AREA
FROM SUBJECT PROPERTY**

MAP	TAX LOT	OWNER
5N2817AB	800	JOHANNESSEN DANIEL & LAURA
5N2817AB	801	USA
5N2817AB	802	JOHANNESSEN DANIEL & LAURA
5N2817BA	3800	USA
5N2817BA	4200	USA
5N2817BA	4500	USA
5N2817BA	5600	USA
5N2817BD	100	KC NOBLES ENTERPRISES LLC
5N2817BD	190	KC NOBLES ENTERPRISES LLC
5N2817BD	300	KC NOBLES ENTERPRISES LLC
5N2817BD	400	KC NOBLES ENTERPRISES LLC
5N2817BD	13300	MRT EXPLORATION CO

NOBLES CONDITIONAL USE (CU-7-18)
KELLY NOBLES, APPLICANT
KC NOBLES ENTERPRISES LLC, OWNER
MAP #5N2817BD, TAX LOTS 100, 190, 300 & 400

Legend

— Streets Subject Properties City Limits Assessor's Maps

Tax Lots (5/7/18)



Feet

0 100 200 300 400



MAP DISCLAIMER: No warranty is made as to the accuracy, reliability or completeness of this data. Map should be used for reference purposes only.

Not survey grade or for legal use.
 Created by Brandon Seitz, on 7/3/2018

MARSHALL Janelle * OPRD

From: JOHNSON Ian * OPRD
Sent: Tuesday, September 8, 2020 11:32 AM
To: Kelly Nobles
Cc: PUBLICCOMMENT * OPRD; Collis Tracy * OPRD; OLGUIN Robert * OPRD
Subject: RE: Public comments extended through Aug. 31 for updates to state rules for national register program

Mr. Nobles,

Thank you for submitting your comments on the National Register rule. I have copied our public comment email box so that your comment will be part of the official public record. Comments will be provided to the Oregon Parks and Recreation Commission when they meet to consider revisions to the rule at a future meeting.

The agency extended the public comment period through September 14th. Please feel free to submit any further comments until this time. You can find out more about the rulemaking process on our website here:

<https://www.oregon.gov/oprd/PRP/pages/PRP-rulemaking.aspx>.

Ian Johnson



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division

State Historic Preservation Office

Desk: 503.986.0678 cell: 971.718.1137

Visit our [website](#), Like us on [Facebook](#), Visit our [Blog](#).

From: Kelly Nobles <c
Sent: Friday, September 4, 2020 8:57 AM
To: Collis Tracy * OPRD <Tracy.Collis@oregon.gov>
Subject: Re: Public comments extended through Aug. 31 for updates to state rules for national register program

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Respectfully, Kelly Nobles 541-571-2588

From: Collis Tracy * OPRD <Tracy.Collis@oregon.gov>

Sent: Wednesday, August 5, 2020 11:43 AM

Subject: Public comments extended through Aug. 31 for updates to state rules for national register program

Oregon Heritage is seeking comments on the draft state rule for the administration of the federal National Register of Historic Places program. The National Register recognizes properties of historic significance across the nation. Over 2,000 properties, including 133 historic districts, located across the state's 36 counties and representing many aspects of our state's rich history are now listed in the National Register.

We are asking that your organization consider commenting on the rule, or the program generally as part of our public process. Listing in the National Register sends a powerful message about what we value about our past as a state, and enables owners of listed properties to leverage tax incentives and grants to preserve these places. Below is a list of the issues that may be relevant to your organization and some ideas on what you might like to share. Please consider responding before the public comment period ends on August 31st. The attached press release includes details on how to comment.

News Release

Oregon Parks and Recreation Department

FOR IMMEDIATE RELEASE

August 4, 2020



Media Contact

Chris Havel

Associate Director

503-931-2590 or chris.havel@oregon.gov

Ian P. Johnson

Associate Deputy State Historic Preservation Officer

503-986-0678 or ian.johnson@oregon.gov

- Oregon Parks and Recreation Department (OPRD) is extending the date to accept public comments on proposed changes to rules governing how the state protects important historical places until 5 p.m. Aug. 31, 2020. The extension comes with a new opportunity on Aug. 18 for local and tribal governments to learn more about the proposed rules and comment on them.

- The state is proposing updates to the Oregon Administrative Rules that govern how the state administers the federal National Register of Historic Places Program, which lists buildings, districts and other sites important to local, state or national history. The Oregon State Historic Preservation Office (SHPO) — an office of OPRD — administers the local program, which is run by the National Park Service.
- In Oregon, 2,065 properties — including 133 historic districts located across the state’s 36 counties and representing many aspects of our rich history — are now listed in the National Register.
- In the last several years, several high-profile, controversial nominations exposed problems with the National Register process, including determining owner consent and public involvement. Proposed changes seek to establish a fair and transparent process in alignment with federal requirements.
- In addition to extending the comment period, OPRD will have an informational webinar at 10 a.m. Aug. 18 for government staff and leaders to learn more about the proposed rules and potential impact on communities, local governments and tribes. The webinar will be open to the public and end with an opportunity to provide public comment. Register to attend at oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx.
- “Local governments and Native American tribes are a critical partner in the national register program,” said Ian Johnson, associate deputy state historic preservation officer.
- The Oregon SHPO provides local governments participating in the federal Certified Local Government (CLG) Program grants to list properties in the federal National Register of Historic Places. Using SHPO grant funds, the City of Jacksonville listed the Britt Gardens and the City of Gresham listed the Roy E. and Hildur L. Amundesen House in the National Register.
- Local governments may comment on National Register nominations. Local governments participating in the CLG program may object to a nomination, ending the nomination process unless appealed. The revised rule includes updated procedures for hearing notifications, including specific provisions to notify CLGs, as well as a provision that allows the SHPO to coordinate outreach efforts with local governments. The revised rule also now includes provisions for comments from Oregon’s nine federally-recognized Native American tribes.
- OPRD will accept public comments on the proposed changes through 5 p.m. Aug. 31, 2020. Comments can be made online, in writing or via email
- Online: oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx
- In writing: Oregon Parks and Recreation Department, attn. Katie Gauthier, 725 Summer St NE, Suite C, Salem OR 97301
- Email: OPRD.publiccomment@oregon.gov
- Informational, online webinar to discuss potential impacts of proposed rules on local governments, communities and federally-recognized Native American tribes. The webinar is set for 10-11:30 a.m. Aug. 18. Register at oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx.
- After reviewing public comments, OPRD staff plan to present a final recommended rule for consideration to the Oregon State Parks and Recreation Commission.
- The full text of the proposed change is available online: oregon.gov/oprd/PRP/Pages/PRP-rulemaking.aspx.
- Properties listed in the National Register are:
 - Recognized as significant to the nation, state or community;
 - Considered in the planning of federal or federally assisted projects;
 - Eligible for federal and state tax benefits;
 - Eligible for historic preservation grants when funds are available;
 - Eligible for leniency in meeting certain building code requirements.
- National Register listing does not place any restrictions on a property at the federal level, unless property owners choose to participate in tax benefit or grant programs. State law requires local governments to review the demolition or relocation of all properties listed in the National Register at a public hearing, and allows local governments to add additional regulations following a formal public process. Learn more about the National Register of Historic Places program in Oregon at oregon.gov/oprd/OH/pages/national-register.aspx

MARSHALL Janelle * OPRD

From: Brian Turner <BTurner@savingplaces.org>
Sent: Wednesday, September 9, 2020 3:37 PM
To: PUBLICCOMMENT * OPRD
Cc: Peggy Moretti; Denyse MCGRIFF
Subject: National Trust & Restore Oregon comment on National Register rule revision
Attachments: NTHP and RO letter on Oregon NR Rules Revision.pdf

Greetings,

Please find attached a comment letter from the National Trust for Historic Preservation and Restore Oregon concerning proposed administrative rules for National Register Program.

Thank you for your consideration.

Brian Turner | SENIOR FIELD OFFICER AND ATTORNEY
P 415.692.8083

NATIONAL TRUST FOR HISTORIC PRESERVATION
PRESERVATION SERVICES & OUTREACH DEPARTMENT
San Francisco Field Office
www.SavingPlaces.org





**National Trust for
Historic Preservation**
Save the past. Enrich the future.



Oregon Parks and Recreation Commission
725 Summer Street NE, Suite C
Salem, OR 97301

**Re: Proposed administrative rules for National Register Program,
736-050-0220 to 736-050-0270**

Via Email to OPRD.publiccomment@oregon.gov

Commissioners:

Thank you for the opportunity to comment on the proposed revision to State Administrative Rules regarding the nomination process for the National Register of Historic Places (NR). The State has determined that the rule changes are necessary to align federal and state practices and procedures, and to address widely-reported abuses in the nomination process. The rules as proposed would successfully remedy these issues. Our comments recommend some minor technical improvements that will help to clarify several issues.

We also write, however, to raise objections to additional changes in the regulations that have recently been proposed by 1000 Friends of Oregon. These proposals would make NR listings more difficult and more politicized. They are out of step with best practice and should be rejected.

Interests of Restore Oregon

Restore Oregon is Oregon's only statewide non-profit organization dedicated to saving Oregon's historic places. Restore Oregon's mission is to preserve, reuse, and pass forward the places that reflect Oregon's diverse cultural heritage and make our communities vibrant, livable, and sustainable.

We promote historic preservation as a means to preserve Oregon's diverse cultural heritage and to help solve problems like affordable housing, rural economic development, and climate change. We advocate for effective policies and incentives, deliver education programs, and directly intervene to save endangered places that matter to their community.

Restore Oregon participated in the Rules Advisory Committee that reviewed and recommended changes to the National Register rules.

Interests of the National Trust for Historic Preservation

The National Trust is a private nonprofit organization chartered by Congress in 1949 to "facilitate public participation" in the preservation of our nation's

heritage, and to further the historic preservation policy of the United States. See 54 U.S.C. § 312102(a). Congress intended the National Trust “to mobilize and coordinate public interest, participation and resources in the preservation and interpretation of sites and buildings.” S. Rep. No. 1110, 81st Cong., 1st Sess. 4 (1949). With more than one million members and supporters around the country, the National Trust works to protect significant historic sites and to advocate for historic preservation as a fundamental value in programs and policies at all levels of government. In addition, the National Trust has been designated by Congress as a member of the Advisory Council on Historic Preservation (ACHP), which is responsible for working with federal agencies to implement compliance with Section 106 of the NHPA. 54 U.S.C. §§ 304101(8), 304108(a).

The National Trust has a strong interest in assuring the integrity of the NR nomination process in Oregon. Since 2015 our grants team has distributed \$305,000 in grants to preserve and protect the state’s heritage. Listing on the NR is a major factor we consider in making these grants. Other financial incentives that accrue to NR-listed properties include the availability of the Historic Tax Credit, which has supported the rehabilitation of 139 NR-listed properties in Oregon since its inception, generating millions of dollars of investment and income for building reuse.

The National Trust has engaged in several key issues of statewide importance in Oregon in response to efforts that would weaken protections for historic resources. As amicus curiae in *Lake Oswego Preservation Society v. City of Lake Oswego*, 360 Ore. 115 (2016), we argued successfully that Oregon’s owner consent rules were not designed to empower successors-in-interest of real property to raise retroactive challenges to prior historic designations. In 2018 we commented on the Eastmoreland Historic District controversy – one of the key abuses of process giving rise to the current rule revision. Our letter to the Keeper of the National Register urged the National Park Service not to honor the purported objections of thousands of identical trusts cloned and created for the sole purpose of artificially inflating the weight attributed to the owner objections to thwart the NR Historic District nomination.

Summary

Overall, we believe the proposed rule change is a critical and important update that will lead to a fair historic designation process in accordance with national best practices. The scope of the proposed rule change is properly limited to the provisions of the Oregon Administrative Code pertaining to the State Advisory Committee on Historic Preservation (Committee).¹ A well-qualified Committee acts as Oregon’s historic preservation “Review Board” pursuant to federal regulations under 36 C.F.R. § 60.3(o). Among other duties, the Committee is

¹ The specific provisions proposed for amendment are Or. Admin. R. 736-050-0220, -0230, -0240, -0250, -0260. A new Or. Admin. R. 736-050—0270 is proposed to be added.

entrusted to review and make recommendations on NR nominations, and to review appeals.

We are aware that 1000 Friends of Oregon has argued that “potentially adverse impacts” could result from the proposed revisions, with a particular focus on “housing diversity, sufficiency, and affordability.”² The group has also encouraged the State to refrain from encouraging, assisting, or approving any residential historic districts that may have previously had racially restrictive covenants attached to deeds in the early 20th Century. With due respect to 1000 Friends and their important mission to build livable communities in Oregon, we are concerned that their suggestions would have the effect of making the process of NR designation much more politicized, less objective, and less representative of Oregon’s history, as discussed in more detail below.

Following this, we describe below several minor technical corrections to improve the rules, and a recommendation to the Commission on remedial legislation to further disconnect the relationship between National Register listing and local historic preservation regulation in Oregon.

1. The Proposed Rules Advance an Accessible and Non-Politicized Process for National Register Nominations.

Since passage of the National Historic Preservation Act of 1966, states have developed robust procedures in accordance with National Park Service regulations to assure the integrity of the NR program.³ Oregon alone maintains 49 Certified Local Governments (CLGs), each with a localized historic preservation ordinance and a local preservation commission whose members have a “demonstrated interest, competence, or knowledge in historic preservation.” 36 C.F.R. § 61.6(e)(2).

The rules as proposed advance an important role for local preservation commissions in determining the validity of a CLG’s objection to an NR nomination. Proposed OAR 736-050-0250(10) states that, for a CLG to formally register its objection to a proposed NR listing during the State’s consideration, both the chief elected official *and* the Commission must provide their recommendation. This would bring the regulations into conformity with federal law, which provides that, in the event both of these entities object to an NR nomination, the SHPO “shall take no further action ... unless ... an appeal is filed” (54 U.S.C. § 302504(c)(2)).⁴

² Letter from Mary Kyle McCurdy, Deputy Director, to Oregon Parks and Recreation Commission, July 20, 2020.

³ NPS regulations at 36 CFR Part 60.

⁴ See also OPRC June 17, 2020 memo stating that “federal law explicitly states that both the chief elected official and the local landmarks commission must provide an

The letter from 1000 Friends makes no response to this rationale for ensuring consistency with federal law. Rather, it seeks to distract the Commission from the argument by focusing on a secondary staff rationale. Yet the State has ample authority and adequate reason to ensure that determinations of objection to NR nominations are squarely based on established NR criteria and not made by political determinations. Further, a process exists to appeal and seek review.

In addition, in arguing that only elected leaders should have the authority to object to NR nominations in CLG communities, 1000 Friends seek – unnecessarily -- to politicize historic designations and pit them against other valid policy goals. Increased density and NR designation need not, and should not, be mutually exclusive. NR designation in its best form does not encase our past in the proverbial glass case. Rather, it discloses and educates communities on the historic and cultural values inherent in the existing built environment, and can be utilized as a planning tool to aid and inform managed change that is compatible. Policymakers at the local and state level still retain authority to set reasonable rules to ensure that those changes are mindful of the historic and community character.⁵ But resorting to opposing historic designations as a matter of course in hopes of advancing a community's right to demolish and rebuild to maximize density ignores numerous successful examples of integrating compatible new development into older neighborhoods to create livable communities respectful of the past. A successful example is the [approved renovation of the Buck Prager Building and construction of two new compatible adjacent buildings](#) that create 148 units of affordable housing in Portland's Alphabet Historic District.⁶

2. National Register Listings and Institutionalized Racism

The National Trust and Restore Oregon take seriously the charge from 1000 Friends that, for the majority of Oregon's statewide history, elements of the built environment reflect a sad legacy of racial animus and policies that had the effect of perpetuating racism. We disagree strongly, however, that the fact of this

independent objection to halt the nomination process." Available at https://www.oregon.gov/oprd/PRP/Documents/PRP-RUL-Agenda_Item_9.pdf.

⁵ Oregon's commitment to protecting historic resources is made clear in its Statewide Planning Goal 5 (see OAR 660-015-0000(5)).

⁶ See also National Trust for Historic Preservation, *Older, Smaller, Better: Measuring how the character of buildings and blocks influences urban vitality* (May 2014) <https://forum.savingplaces.org/connect/community-home/librarydocuments/viewdocument?DocumentKey=83ebde9b-8a23-458c-a70f-c66b46b6f714>).

history should lead the State to actively oppose NR listings for places that have a connection to that legacy.

Imposing a litmus test for whether a site is related to a racially charged or otherwise difficult history would ultimately result in presenting a dishonest view of the state's history. It is a flawed view to assume NR listings are limited to places "honoring" the past. Rather, historic designation has a valuable educational purpose, serving as a medium to inform the public and future generations about often-complex layers of history, which can broaden public understanding through better research and documentation. For example, the designation of the Minidoka Internment Camp in Idaho as a National Historic Site is not for the purpose of honoring or endorsing the Japanese internment that occurred during the early 1940s. It is critical that we not sweep these dark chapters of our history under the rug, but instead that we and future generations *learn* from this history, and reinforce our commitment not to repeat it. Further, the NR nominations provide a critical opportunity to recognize histories that have previously been overlooked, including the contributions of marginalized people and groups that can be seen, experienced and understood.

In the case of historic districts that once employed the use of racially restrictive covenants, NR nomination forms are a teaching tool. Long held unconstitutional and unenforceable,⁷ these covenants and other efforts, including redlining, contributed to perpetuating racism. But NR designation does not need to carry the message that these practices are anything to celebrate. On the contrary – it makes these histories more apparent and in public view.

We strongly urge the Commission to reject the suggestion by 1000 Friends to oppose NR designations. Rather, the Commission should increase the daylight on Oregon's complicated history by encouraging nominations to include more information on how the nominated property can reveal critical social justice and equity issues.

3. Proposed Technical Edits

We recommend the following minor adjustments of language to ensure consistency with the most up-to-date changes in federal law:

OAR 736-050-0220: Citations to the NHPA

Commission's proposed change: "National Historic Preservation Act of 1966, as amended, (16 USC 470 et seq) ..."

⁷ *Shelley v. Kraemer*, 334 U.S. 1 (1948); Fair Housing Act of 1968, 42 U.S.C. § 3604.

Recommendation: “National Historic Preservation Act of 1966, as amended (54 U.S.C. § 300101 et seq.).” A similar revision is needed in the definition of “Act” in OAR 736-050-0230(1).

Rationale: In 2014, the NHPA was recodified, which changes the citations of the provisions to which the State intends to refer. Note that Title 54 is correctly cited in proposed revisions to 736-050-0250.

OAR 736-050-0230(8) “Determination of eligibility”

Commission’s proposed change: “... means a finding by the NPS that a property either does or does not meet the criteria for evaluation.”

Recommendation: “... means a documented finding by the Keeper of the National Register that a property either does or does not meet the criteria for evaluation after considering the views of the State Historic Preservation Office.”

Rationale: The citation should more specifically refer to the formal process established in the National Park Service regulations that provide the Department of the Interior the authority to issue determinations of eligibility (See 36 C.F.R. § 63.2).

OAR 736-050-0230(11) “Local landmarks commission”

Commission’s proposed change: “Local landmarks commission” means an advisory or quasi-judicial body responsible for carrying out responsibilities under the Act on behalf of a CLG. [note: this is a new definition].

Recommendation: “Local historic preservation commission:” means an advisory or quasi-judicial body responsible for carrying out responsibilities under the Act on behalf of a CLG. Members must have a demonstrated interest, competence, or knowledge in historic preservation.

Rationale: The term “landmark” could be misleading or misunderstood. We propose to substitute with the terminology used in the NHPA (See, e.g., 54 U.S.C. § 302504). Also, further detail is necessary to ensure consistency with requirements for Oregon Certified Local Governments (See 36 C.F.R. § 61.6(e)(2)). Note that if this change is made changes should also be made to the sections describing the role of the local historic preservation commission in objecting to an NR nomination (See proposed OAR 736-050-0250(10)(a)(C)).

OAR 736-050-0250(7): Citation to NHPA Section 304

Recommendation: supplement reference to Section 304 of the NHPA concerning access to information by explicitly citing 54 U.S.C. § 307103.

Rationale: The 2016 NHPA Amendments recodified this provision and it might not be clear to the average reader where Section 304 is currently codified in federal law.

4. The Commission Should Use its Authority to Advance Proposed Regulatory Changes to Alleviate the Consequences of Oregon's Imperfect Statutory Structure.

In Oregon we recognize that some objection to NR districts is not a result of whether the site meets the long-established criterion for listing in the CFR. Rather, many objections are born from a fear of the imposition of local regulations. The State's Administrative Rules require local jurisdictions to have minimum protections for resources listed on the NR, "***regardless of whether the resources are designated in the local plan or land use regulations.***" (See [OAR 660-023-0200\(8\)](#)).

Under federal law, National Register districts can be defeated if more than 50% of the owners object to the nomination.⁸ But for local historic designations in Oregon, a 1995 state law imposes a much higher bar, requiring 100% owner approval. (See ORS 197.772). For this reason, changes to the NR designation process are a pressing matter of statewide importance.

Past state legislative efforts have sought, but failed, to address this inconsistency.⁹ Yet, given the Commission's charge, we believe it has an important opportunity to provide a recommendation to disconnect the NR from local land use regulations. We support an effort to do so, consistent with the following conditions:

- a. Oregon's owner consent law should also be modified to be consistent with federal law requiring over 50% of owners to file notarized objections in order to defeat a NR nomination.
- b. A method for assuring that the process of transition to a more localized process does not result in a gap in protections for NR-designated resources not currently listed on a local register.

⁸ 54 U.S.C. § 302105(a)-(b). A pending rule change to the National Register regulations proposes allowing NR nominations to be defeated by the owner(s) of "a majority of the *land area*" within a historic district, (See 84 Fed. Reg. 6,996, 6,998 (Mar. 1, 2019)), rather than according equal weight to each property owner, as the statute requires. Yet even this controversial proposed change would not be consistent with Oregon's extremely high bar of requiring 100% consent.

⁹ See, e.g., Senate Bill 927 (2019), the "Public Participation in Preservation Act."

The Commission has an opportunity to use its authority to assist in advancing legislation that would further de-politicize the NR nomination process. We hope to work together to advance sensible policy solutions.

Conclusion

We commend the Commission for its efforts to ensure a fair and effective NR nomination process. Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian R. Turner".

Brian R. Turner
Senior Field Officer and Attorney
National Trust for Historic Preservation

A handwritten signature in black ink, appearing to read "Denyse McGriff".

Denyse McGriff
Advisor
National Trust for Historic Preservation

A handwritten signature in purple ink, appearing to read "Peggy Moretti".

Peggy Moretti
Executive Director
Restore Oregon

MARSHALL Janelle * OPRD

From: Spencer-Hartle, Brandon <Brandon.Spencer@portlandoregon.gov>
Sent: Friday, September 11, 2020 9:49 AM
To: PUBLICCOMMENT * OPRD
Cc: Cowan, Stacy
Subject: City of Portland Comments
Attachments: City of Portland Comments on National Register Rule.pdf

Hello Katie,
Please find attached comments from the City of Portland regarding the proposed National Register administrative rules.

Thank you,
Brandon

Brandon Spencer-Hartle | City Planner

He/him
City of Portland Bureau of Planning & Sustainability
(503) 823-4641

The City of Portland is committed to providing meaningful access. For accommodations, modifications, translation, interpretation or other services, please contact at 503-823-7700 or use City TTY 503-823-6868.



Oregon Parks and Recreation Department
Attn. Katie Gauthier
725 Summer St NE, Suite C
Salem OR 97301

September 11, 2020

Re: National Register Rulemaking

Dear Katie,

Thank you for inviting the City of Portland to comment on proposed revisions to the State Administrative Rules pertaining to administration of the federal National Register of Historic Places program in Oregon. Across the city of Portland, more than 600 resources have been listed in the National Register since the late 1960s. Many of these landmarks and districts are irreplaceable reminders of the city's past and useable assets for the city's future. And while the National Register of Historic Places has been integrated with the City's local historic resource program since 1996, weaknesses in the existing system have resulted in over-representation of certain types of historic resources, limited opportunities for public engagement in the listing process, and administrative uncertainties that fall on City staff to resolve.

The City of Portland is generally supportive of the proposed rules, and offers the following specific comments:

1. The new provision in 736-050-0250(8)(c) that the Oregon SHPO provide mailed notice to property owners resolves an outstanding concern and is appreciated.
2. The new provision in 736-050-0250(14) that the Oregon SHPO provide notice of and access to as-amended nominations resolves an outstanding concern and is appreciated.
3. The provision in 736-050-0250(18)(c) that the Oregon SHPO may request the National Park Service amend existing National Register nominations without review by the State Advisory Committee aligns with current practice and is appreciated. To ensure affected property owners are aware of proposed amendments, we request the noticing provisions 736-050-0250(8)(c) also apply to these cases.
4. The new provisions in 736-050-0250(12) address the counting of owners and owner objections. The City supports increased clarity on the State's administration of owner counting and objections, but requests an additional provision to 736-050-0250(12) that mirrors the objection timeline in 736-

The Bureau of Planning and Sustainability is committed to providing meaningful access. For accommodations, modifications, translation, interpretation or other services, please contact at 503-823-7700 or use City TTY 503-823-6868, or Oregon Relay Service 711.

Traducción o interpretación	Chuyển Ngữ hoặc Phiên Dịch	翻译或传译	Письменный или устный перевод	Traducere sau Interpretare
الترجمة التحريرية أو الشفهية	Письмовий або усний переклад	翻訳または通訳	Turjumida ama Fasiraadda	ການແປພາສາ ຫຼື ການອະທິບາຍ

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050-0250(10) when any owner submits a formal objection to a proposed listing in the National Register that would affect their property. Allowing an objecting owner to pause the nomination timeline for an additional four months would provide additional opportunities for local government, community members, and property owners to engage in dialogue regarding the merits of the proposed listing.

5. The Portland Historic Landmarks Commission, in their role advising City staff and decision-makers, have requested additional clarity be added to the provision 736-050-0250 (10)(d) to the scope of the objections allowed under this subsection. Specifically, the Historic Landmarks Commission requests that objections only be considered in the nomination of new listings in the National Register.
6. Provisions described under 736-050-250 (10)(a) describe the process under which a CLG may object to a nomination. The City of Portland generally believes that the ultimate authority for such an objection must rest with the chief elected official rather than having both the elected official and the appointed volunteer Historic Landmarks Commission object. However, in requesting that authority, the City also recognizes that the same criteria should be applied by the chief elected official as is applied by the Historic Landmarks Commission. The City therefore asks for the language in (B) and (C) be combined to read: "Either the chief elected official acting in their official capacity representing the majority opinion of the local government's legislative body, or the local landmarks commission recommending by majority opinion of the commission may object to a historic resource being nominated to the National Register, and may object to a nomination form being substantially revised. The objecting body must include a statement as to whether the property meets the National Register criteria described in OAR 736-050-0250(4). The local landmarks commission or chief elected official may find that the historic resource is eligible for listing in the National Register but not recommend that it be nominated to the National Register."
7. While outside of the scope of this rule-making effort, the City of Portland and its Historic Landmarks Commission requests the State Historic Preservation Office and National Park Service comprehensively review National Register criteria and bulletins to advance equity within the National Register program. While National Register listing does not, in and of itself, convey local land use regulations, Oregon law requires city and county governments to apply demolition protections to National Register listings. Prioritizing the listing of underrepresented histories in the National Register and applying additional scrutiny to nominations of resources that represent histories that have been comparatively overrepresented in the Register would improve the successfulness of Oregon's unique land use connection to the National Register by ensuring environmental, racial, and social justice is embedded into the nomination and listing process.

In 2019, the City of Portland participated in development of a legislative proposal to amend ORS 197.772 to increase local government authority to designate and protect of historic resources. Among other related concepts, the legislative proposal included decoupling automatic land use protections from National Register listing. While ORS 197.772 was not amended in the 2019 session, the potential



for future revisions to ORS 197.772 would allow these proposed rules to be most successfully implemented by the Oregon Parks and Recreation Department and local governments across the state. Following the adoption of the new rules, the City of Portland would welcome involvement in any future effort to revise or repeal ORS 197.772.

Thank you for your consideration,



Adena Long
Director, Portland Parks & Recreation



Rebecca Esau
Director, Bureau of Development Services



Andrea Durbin
Director, Bureau of Planning and Sustainability



Kristen Minor
Chair, Portland Historic Landmarks Commission



MARSHALL Janelle * OPRD

From: Constance Beaumont <CONSTANCEBEAU@msn.com>
Sent: Friday, September 11, 2020 4:35 PM
To: PUBLICCOMMENT * OPRD
Cc: GAUTHIER Katie * OPRD
Subject: Comments on SHPO's National Register regulations
Attachments: Beaumont comments-SHPO NR regs (9-11-20).pdf

Attached are my comments on the State Historic Preservation Office's proposed regulations for National Register regulations.

I'd be grateful if you could please confirm your receipt of the attached comments.

Thank you.

Constance Beaumont

Constance E. Beaumont
4125 S.E. Pine Street
Portland, Oregon 97214
constancebeau@msn.com

Oregon Parks and Recreation Commission
725 Summer Street NE, Suite C
Salem, Oregon 97301

Re: Proposed administrative rules for National Register Program, 736-050-0220 to 736-050-0270

Dear Commissioners:

While currently a resident of Portland, Oregon, I have been actively involved in historic preservation and land use issues around the country for over three decades. This involvement included work as Director for State and Local Policy at the National Trust for Historic Preservation, Education and Outreach Manager for the Oregon Transportation and Growth Management Program, and editor of a national newsletter on urban conservation.

At the outset, I wish to thank the staff of the Oregon State Historic Preservation Office (SHPO) for their efforts to improve the National Register (NR) process through the proposed regulations.

My comments on those regulations:

- **Definition of “owner:”** The regulations should make the definition of “owner” crystal clear in order to prohibit the unethical use of fake trusts, such as the 5,000 trusts created by only 5 property owners in Eastmoreland for the sole purpose of killing that neighborhood’s NR nomination. It’s been recommended by others that the SHPO retain an Oregon trust attorney to help clarify the definition. Given the complexities involved in ownership (e.g., trusts, settlors, etc.), this recommendation makes sense. In any case, the final rule should clearly prohibit the nefarious and corrupt use of sham trusts. In short, stuffing the ballot box should be outlawed.
- **Role of Certified Local Governments.** I support the proposed language in section 736-050-0250 (10) (A) and (B) that would help to reduce the politicization of NR nominations. This language would prevent a local government executive from vetoing a proposed nomination *unless the local landmarks commission agrees that the nomination should not go forward*. This approach seems consistent with Section 54 USC § 302504 of Federal law, which states in part: “If **both** the commission and the chief local elected official recommend that a property not be nominated to the National Register, the SHPO shall take no further action...”

Another reason for the proposed language: Unlike many (arguably most) local government officials, local landmarks commissioners typically have the specialized knowledge and expertise needed to evaluate the merits (or lack thereof) of properties nominated for the NR. Moreover, the landmarks commissioners are generally less vulnerable to the kinds of political pressures often exerted by developers and big political donors on elected officials.¹

- **Response to argument that historic districts perpetuate racism:** I strongly disagree with the comments submitted by others that the National Register program and historic districts perpetuate racism. Yes, many neighborhoods (and by no means only historic ones) – not just in Oregon but around the country as well – were established in the early 1900s with restrictive covenants that included racial restrictions. While some of these neighborhoods went on to become historic districts, most did not. In any case, such covenants have no place in our society and were, appropriately, ruled unenforceable 72 years ago by the U.S. Supreme Court. It is critical today that communities of all vintages, regardless of historic status, continue efforts to rectify unjust policies and practices.

That said, it makes no sense to equate early 20th-century tolerance of long-prohibited covenants with a contemporary desire to preserve historically significant buildings and neighborhoods (i.e., inanimate objects). These places are valued today because they were well-designed,² architecturally distinctive, and/or culturally important.

African-Americans and other minorities have led efforts in a number of cities not only to heighten public awareness of their cultural history through historic designations, but also to protect communities of color from such forces as urban renewal, highways, demolition and displacement. A few examples: the Manchester neighborhood in Pittsburgh³, the Mount Auburn neighborhood in Cincinnati⁴, and the African American Historic Resources Multiple Property Document in Portland⁵.

The “historic districts = racism” argument is particularly objectionable given today’s climate crisis, which calls for us to minimize the waste and destruction of natural resources, including those embodied in older buildings. Yes, we need to do more (much more) to redress inequities of the past, but it’s not necessary to trash beautiful and irreplaceable buildings – and the many old trees that often surround them – to achieve this goal. (And doing so does *nothing* to advance it.) If we were to accept the racism argument, we should not protect significant natural or environmental resources because early leaders of the environmental movement (e.g., John Muir, founder of the Sierra Club, or Teddy Roosevelt, a champion of wildlife refuges) expressed racist views.

Equally nonsensical: the argument that listing historic residential neighborhoods (which encompass approximately 3% of the land in Portland) on the NR thwarts infill development and expansion of the affordable housing supply. Much of what is touted today (at least in Portland) as “infill” isn’t infill at all; it’s the demolition and replacement of older, smaller, and, typically, more affordable homes with outsized, auto-centric, pedestrian-hostile, twice-the-price McMansions. *True infill* puts new development on vacant or underused land. The rehabilitation, adaptive reuse, and/or internal conversion of existing buildings is a more environmentally responsible approach. Consider the recently-approved plan to renovate Portland’s historic Mann House in Portland’s Laurelhurst neighborhood. This property is slated to be converted into 88 units of affordable housing, including units for households with incomes below 30% of the area median income.

Oregon’s Goal 5 seeks “to protect natural resources and conserve scenic **and historic areas** and open spaces.” “Local governments **shall adopt** programs that will protect natural resources and conserve scenic, **historic**, and open space resources for present and future generations,” states Goal 5. The proposed regulations should advance this goal.

Thank you for your consideration of these views.

END NOTES

¹ Another commenter has argued that the local elected body *alone* (without the concurrence of the landmarks commission) should make the final decision on whether to proceed with a NR nomination because only the elected body is charged with balancing *all public interests*, as reflected in such things as the local comprehensive land use plan. In response to this argument, I would point out that **Oregon's Goal 5 rules** – as revised by the Oregon Land Conservation and Development Commission in January 2017– **give local governments an opportunity to balance the effects of NR listings** (which trigger the review of demolition proposals) **with other public policies, including and especially those specified in local comprehensive plans**. Specifically, Goal 5's section 660-023-0200 (8) (a) states:

“...a local government: (a) Must protect National Register Resources...by review of demolition or relocation that includes, at minimum, a public hearing process that results in approval, approval with conditions, **or denial and considers the following factors**: condition, historic integrity, age, historic significance, value to the community, economic consequences, design or construction rarity, and **consistency with and consideration of other policy objectives in the acknowledged comprehensive plan**. Local jurisdictions may exclude accessory structures and non-contributing resources within a National Register nomination...” [See Division 23, Procedures & Requirements for Complying with Goal 5, 660-023-0200 (8) (a) at <https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=3073>)

² See, for example, Frederick Law Olmsted's impact on the City Beautiful movement at <https://mhdh.library.columbia.edu/exhibits/show/riverside-park/frederick-law-olmsted>

³ See <https://alleghenycity.org/william-rimmel-award/2011-stanley-lowel/>

⁴ See <http://livable.org/livability-resources/229-carl-b-westmoreland>

⁵ See July 8, 2020 post by Oregon Black Pioneers (at <https://oregonblackpioneers.org/2020/07/08/nps-approves-mpd-for-african-american-historic-sites-of-portland/>) and “Good News for Black Homes and Heritage” article (at <https://www.southeastexaminer.com/wp-content/uploads/2020/08/SE-Examiner-September-2020.pdf>, p. 18)

MARSHALL Janelle * OPRD

From: JOHNSON Ian * OPRD
Sent: Friday, September 11, 2020 5:16 PM
To: Hess, Sean C; PUBLICCOMMENT * OPRD
Cc: GAUTHIER Katie * OPRD; Giliberti, Joseph A; Ivie, Melissa M; Nelson, Darcy G; Denton, David B; Springer, Roland K; PUBLICCOMMENT * OPRD
Subject: RE: Comments re: National Register rulemaking (OAR 736-050) from Bureau of Reclamation

Sean,

Thank you for providing these detailed comments. I appreciate it.

I have copied our public comment email box to make this email part of our official public record.

Thanks.

Ian



Ian P. Johnson | Associate Deputy State Historic Preservation Officer

Oregon Parks and Recreation Department, Heritage Division

State Historic Preservation Office

Desk: 503.986.0678 cell: 971.718.1137

Visit our [website](#), Like us on [Facebook](#), Visit our [Blog](#).

From: Hess, Sean C <SHess@usbr.gov>
Sent: Friday, September 11, 2020 10:18 AM
To: PUBLICCOMMENT * OPRD <OPRD.Publiccomment@oregon.gov>
Cc: JOHNSON Ian * OPRD <Ian.Johnson@oregon.gov>; GAUTHIER Katie * OPRD <Katie.Gauthier@oregon.gov>; Giliberti, Joseph A <jgiliberti@usbr.gov>; Ivie, Melissa M <mivie@usbr.gov>; Nelson, Darcy G <dgnelson@usbr.gov>; Denton, David B <DDenton@usbr.gov>; Springer, Roland K <rspringer@usbr.gov>
Subject: Comments re: National Register rulemaking (OAR 736-050) from Bureau of Reclamation

To whom it may concern,

These comments on the proposed revisions to the Oregon Administrative Rules (OAR) regarding the State process for handling nominations to the National Register of Historic Places (NRHP) are provided on behalf of the Bureau of Reclamation (Reclamation). These comments represent the collective concerns of the Columbia-Pacific Northwest Regional Archaeologist, the California-Great Basin Regional Cultural Resources Officer, and Reclamation's Federal Preservation Officer (FPO).

We would like to thank the State of Oregon for including Reclamation in the review process for these revised rules. We especially appreciate that the State reached out to irrigation districts

and other water users for input on these important regulations. In general, we see these proposed revisions as a positive development.

In the spirit of developing the best possible administrative procedures for the citizens of Oregon, Reclamation provides the following comments:

- 1) Citations to the U.S. Code for the National Historic Preservation Act (NHPA) in 736-050-0220 and throughout the document – The initial paragraph in this section makes reference to Title 16 for the NHPA. All references to the portion of the US Code containing NHPA should be revised to Title 54 to ensure that people can easily locate the Federal laws and regulations that are closely related to these State regulations. For example, the following sentence should be revised as follows:

The National Historic Preservation Act of 1966, as amended, (~~16 U.S.C. 470~~ 54 U.S.C. 300101 *et seq.*) (Act), specifies basic requirements for approval of state historic preservation programs ...

- 2) Retain language referring to the Keeper of the National Register in 736-050-0220 and throughout the document – In the current regulations, the State rules make appropriate reference to the Keeper of the National Register. In the revised version, the word “Keeper” is typically replaced with “National Park Service” or “NPS.” While Reclamation acknowledges that the Keeper of the National Register is a NPS employee, we are concerned that replacement of “Keeper” with “NPS” may have the potential to result in confusion when users of the State regulations are trying to determine who they need to contact about National Register nominations. This change suggests that they can simply contact a convenient NPS office for a determination, which is not the case. As laid out in 36 CFR 60, the Keeper has a unique role and authority in the determination process. The citizens of Oregon will better understand the nomination and listing process if references to the Keeper are retained throughout the document.
- 3) Definition of “historic resource” in 736-050-0230 (9) and “historic property” in 736-050-0230 (10) – Reclamation is concerned that the State’s proposed definitions of these terms will create confusion, especially when there are similar or identical Federal terms with different meanings. Reclamation is also concerned about the implications regarding the State’s role in making determinations of eligibility under the proposed definition of “historic resources.”

One of the stated purposes of the proposed revisions is to “align the federal and state processes,” but the creation of unique State definitions for these widely used terms (especially “historic property”) would result in less alignment, not more. The State is trying to find a way to denote the difference between a property that has been listed on

the National Register of Historic Places (i.e., a “historic property” as used here) and a property that has been determined eligible but not listed (i.e., a “historic resource.”) The existing Federal definition of “historic property” includes both listed properties and properties that are determined eligible. The State’s plan to delimit “historic property” to just listed properties will result in unneeded confusion. In terms of compliance with Section 106, which occasions much of the work of the State Advisory Board, this distinction is moot. Reclamation recommends that the State adopt the Federal definition of “historic property” as provided in 36 CFR 800.16(l)(1). If the State wishes to capture the distinction between a historic property (in the Federal sense) that has been listed on the National Register versus one that has been determined eligible, it would result in better alignment between Federal and State processes if the State referred to “listed historic properties” and “eligible historic properties.”

Reclamation has additional concerns about “historic resource.” The proposed definition says that a “historic resource” is a property “that the NPS or SHPO finds is potentially eligible for listing in the National Register, but is not listed in the National Register.” While Reclamation acknowledges the authority of the Keeper to determine that a property is eligible for the National Register (as described in 36 CFR 63), we do not see a similar authority in the Federal regulations for the SHPO. That is, the Keeper is the sole and unique authority for ultimately determining if a property is eligible for the National Register. Federal agencies and SHPOs are involved in this evaluation process, and they may agree that a property is eligible for the purposes of moving forward with the Section 106 process as per 36 CFR 800.4(c)(2). That said, this agreement between the Federal agency and SHPO about the eligibility of a property may be overturned by the Keeper because of the Keeper’s unique authorities. If the State wishes to retain the term “historic resource” despite our concerns summarized above, Reclamation recommends that it be reworded as follows:

(9) "Historic resource" means a building, district, object, site, or structure, as defined in 36 CFR 60.3(a), (d), (j), (l), and (p), or that that the ~~NPS or SHPO finds is potentially eligible~~ Keeper finds is eligible for listing in the National Register as per 36 CFR 63, but is not listed in the National Register.

- 4) Identity of Proponents Making Nominations to the NRHP for properties on Federal land in 736-050-0250 (3) – This provision makes it possible for anyone to nominate property to the National Register, regardless of ownership. As is made clear in 36 CFR 60.9 and 36 CFR 60.11(g), the relevant FPO retains primacy in the National Register nomination process for properties on Federal land within their jurisdiction. Under the Federal regulations, anyone can prepare a nomination, but the FPO has considerable discretion about advancing the process for properties within their jurisdiction. The draft State regulations have the potential of putting Federal agencies in the position of having

state-declared historic properties on their lands without their feedback. The draft rules should include language requiring that the State will not move forward with nominations on Federal land without Federal agency approval.

Again, Reclamation would like to thank the State for the chance to comment on these revisions.

Should you have any questions about these comments, please contact me at shess@usbr.gov or (208) 576-2581.

Sincerely,

Sean

Sean C. Hess, Ph.D.
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MARSHALL Janelle * OPRD

From: Mary Dettmer <maryd.pdx@gmail.com>
Sent: Sunday, September 13, 2020 10:02 AM
To: PUBLICCOMMENT * OPRD
Subject: Proposed Rules Revision for National Register Programs

Dear Commissioners:

I am a resident of the Eastmoreland neighborhood in Portland, Oregon and a member of the Eastmoreland Neighborhood Association. Thank you for the opportunity to comment on the proposed rules.

(1) OPRD should give the locally elected government body the final decision-making authority over a proposed nomination to the National Register of Historic Places. The local landmarks commission should only be advisory to the elected body. The locally elected body is the entity charged with balancing *all* public interests, such as housing affordability or housing diversity, impacted by a federal listing (due to Oregon's unique linking of National Register historic status to local land use regulations).

(2) Through legislative and/or administrative rule changes, SHPO should seek to disconnect the *honorary* (as intended) federal national historic register program from state statutory and administrative rule provisions. Oregon is the only jurisdiction in the country with this link which often results in statewide impacts adverse to other public policy interests. The ill advised coupling of the federal and local programs has led to instances where a few determined parties can do an end-run around the democratic process and enact land use changes that normally are the domain of elected officials, public process, and affirmative consent.

(3) Several large neighborhoods in Oregon on the National Register, and others that have recently attempted to be listed, were established with restrictive covenants to insure "social and architectural uniformity" and to prevent non-white people from buying or occupying property in those neighborhoods. Intentionally or unintentionally, this same racial bias may infect current or future historic-district nominations. In light of this history and to prevent its repetition, OPRD should amend 736-050-0250 and 736-050-0260 to require consideration of diversity and inclusion in a historic-district nomination as part of the National Register criteria. If we have learned anything from what has happened in our country and in our city over the past 6 months, its that the time for silence and passivity with respect to racism, discrimination, and bigotry of all kinds has passed.

(4) One of the best summaries of what is wrong with Oregon's current historic registration process and ideas for how it can be improved can be found in "True Historic Preservation Would Respect the Homes of Poor People, Too", by Michael Anderson, Portland for Everyone. Please include this article and link below in my public comments.

<https://openhousing.net/true-historic-preservation-would-respect-the-homes-of-poor-people-too-216f392584b9>

Sincerely,

Mary Dettmer

MARSHALL Janelle * OPRD

From: Beth Warner <beth.warner48@comcast.net>
Sent: Sunday, September 13, 2020 3:56 PM
To: PUBLICCOMMENT * OPRD
Subject: Testimony on RAC
Attachments: RAC Public Testimony 9.13.2020.docx

Please accept my attached comments for consideration of the RAC.

Thank you,

Beth Warner



This email has been checked for viruses by Avast antivirus software.
www.avast.com

My name is Beth Warner, and I am a 42-year resident of Eastmoreland, a neighborhood in Portland, Oregon. I thank Oregon Parks and Recreation for the opportunity to provide testimony for the proposed rules for listing on the National Register of Historic Places.

I would specifically like to thank SHPO and the Rules Advisory Committee for the time they have spent on forming new rules with the intent to eliminate discrepancies between federal and state laws governing the National Register program and clarifying the processes to be used in administering nominations to the National Register.

Eastmoreland has spent nearly four years in trying to obtain listing on the National Register of Historic Places. The process has been frustrating, onerous and fraught with controversy. I sincerely hope this process will eliminate the holes in the system and allow Eastmoreland to proceed to a successful end and that future nominations can proceed smoothly.

I would like to specifically address several sections that I feel need clarification and rewriting. I attended the three RAC meetings in Salem, and I know how diligently the committee worked to clarify the ambiguities in the nomination process, first and foremost the definition of OWNER. This can be found under **Rule 736-050-0230 15(a) Includes "owner or owners" as defined in 36 CFR 60.3(k)**

(k) Owner or owners. The term owner or owners means those individuals, partnerships, corporations or public agencies holding fee simple title to property. Owner or owners does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature.

New Rule 736-050-0230 Definitions

15(a) (A) The owner of the fee simple absolute or fee simple defeasible estate title to a property as shown in the property tax records of the county where the property is located, including, but not limited to, trusts, limited liability corporations and any other legal entity that can hold fee simple absolute or fee simple defeasible title to real property within the State of Oregon.

(c) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner.

There was probably more discussion surrounding this trust issue than any other issue to come before the RAC. It was almost unanimously felt that the rules MUST prohibit the use of sham or illusory trusts as we have seen in Eastmoreland. Originally, 5,000 sham or illusory trusts were formed; there are now 2,000 such trusts as one family has left the neighborhood with their 1,000 trusts and two families have reversed their property ownership from 1,000 trusts each to single ownership.

The questions must be asked: Are there single deeds for each of the 2,000 trusts conveying ownership? Who is/are the trustees? What type of trusts are they, revocable or irrevocable? The trust itself cannot own the property. Isn't it the trustee or settlor who owns the property? In law, fraud is an intentional deception to secure unfair or unlawful gain. The trust didn't create the fraud; the settlor or trustee created the fraud. In Oregon under UTC 406 "A trust is void to the extent the creation of the trust was induced by fraud, duress or undue influence."

The RAC felt that there needed to be some way to write the rule to read "one owner, one vote." By clarifying the definition of owner as the trustee and not the trust, wouldn't that take care of this flawed

Rule? And, no matter how many properties you own or what part of a property you own, you get one vote. This would be in compliance with NPS rules and must be stated.

Who owns the property? The trust or the trustee? If the same individual is the trustee for all trusts, shouldn't that person only get one vote? If my husband and I have the Warner Family Trust and both my husband and I are trustees, shouldn't we each get a vote? If I have the RCW Trust 1 through 1,000 and I am the trustee, wouldn't I just get one vote? A trust itself can't act; it is the trustee or the settlor who acts on behalf of the trust.

This rule and definition of owner MUST be clarified or there will continue to be misuse of the process in the future leading to further lawsuits.

I thought at one time during the RAC proceedings it was discussed about bringing in a Trust attorney to help with the definition. Did this happen? If not perhaps it should since there seems to still be a great deal of confusion surrounding the trust/trustee issue.

736-050-0250 8(e)

Identify owners using county property tax records obtained within 90 calendar days prior to the beginning of the public comment period.

A definite date should be added to this rule. It can be amended to read "Identify owners using county property tax records obtained on a date certain that is within 90 calendar days prior to the beginning of the public comment period.

Without a definite date of established property ownership records, the property owner list is in constant flux as was the case in Eastmoreland. There are steps included in the rules as to how to change ownership records through notarized statements. This allows for changes in ownership during the nomination process.

736-050-0270 (4)

OAR 736-050-0250(15)(d) and 736-050-0250(15)(e)(B) are not applicable to National Register forms submitted before the effective date of this Division.

I thank the RAC for their consideration of the Eastmoreland nomination in making this rule. Eastmoreland should not be penalized in their National Register designation efforts due to inconsistencies and lack of clarity re the rules on the part of SHPO during the process.

However, there is no mention as to how the nomination will proceed. The current nomination form can be resubmitted, but what about the volumes of documents that have been submitted over the course of Eastmoreland's four-year nomination history?

Of concern to me is who has the authority to review and make decisions based on all of the documents submitted to NPS and SHPO by opponents and proponents during the course of the nomination? SHPO has said they do not have the authority to review the documents submitted AFTER they submit to NPS. NPS returned Eastmoreland's nomination in June of 2019 due to the overwhelming volume of documents they received by both opponents and proponents. Where are these documents? When SHPO discounted trusts being counted as property owners in Eastmoreland's last submission, hundreds of proponents decoupled from their trust ownership and listed themselves as individual property

owners thus increasing the number of property owners in Eastmoreland and lowering the percentage of property owners who objected to the nomination. These notarized statements were sent to both NPS and to SHPO. Who has them, and have they been included in the counting process? Someone must take accountability for the nomination going forward.

I would hope that SHPO will establish the process of the Eastmoreland nomination quickly, expeditiously and definitively. Without clarity and absoluteness, there will continue to be fraud and lawsuits going forward.

Thank you.

Respectively submitted,

Beth Warner
7815 SE Reed College Place
Portland, OR 97202

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Monday, September 14, 2020 7:57 AM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	John
Last Name	Liu
Email	johnyaoliu@gmail.com
Public Comment	<p>September 14, 2020 Dear Commissioners: My name is John Liu. I was the at large community member of the RAC. I was co-leader of the Laurelhurst Historic District nomination effort from 2016-2019 which ultimately led to the listing of the Laurelhurst National Register Historic District. I am also a (former, i.e. recovering) attorney and have examined the relevant Federal statute and rules under which the National Register program operates. I would like to offer my comments on the proposed rules, in light of my personal experience with the formation of one of Oregon's newest historic districts. I will start with brief technical comments on the proposed rules, which I support. Then I will address the larger context and practical ramifications.</p> <p>1. Technical Comments on Proposed Rules I support the proposed rules. Having participated in all sessions of the RAC, I believe the RAC and SHPO staff reached reasonable, workable, and fair positions and that staff effectively captured those in proposed rule language. I would like to highlight a few specific provisions that are particularly important and, I feel, deserving of your support.</p> <p>A) 736-050-0230 – "owner" Definition The major change here is section (16) which defines "owner". The primary issue addressed here is the so-called "1000 Trusts" legal tactic that was recently used to derail an historic district nomination and, if unchecked, can block any future district nomination. Five homeowners in Eastmoreland each transferred their property to 1,000 revocable "objection trusts" with each trust holding a 1/1000 interest and themselves as the trustee of every trust, and then submitted 1,000 objections – one for each trust. By doing so, they created 5,000 objections from thin air and effectively achieved a "veto" on the nomination, regardless of the desires of all other neighbors. Many commentators pointed out that this contravenes Oregon trust and property law, as well as the intent of the National Register process. Nevertheless, SHPO claimed to be unable to invalidate these objections. Having blocked the nomination, these homeowners then revoked the trusts, reverting their properties to their original ownership. This deeply unfair result left an unfortunate precedent that may be used to block any future historic district nomination. Laurelhurst's own nomination was nearly derailed in the same manner. Our neighborhood voted overwhelmingly to pursue this nomination. Hundreds of volunteers helped with fundraising and research. Only about 14 persons ultimately objected to SHPO, less than a 0.5% objection rate. Yet a single property owner almost blocked the entire effort by threatening to use the "1000 Trusts" maneuver. Subsection (C) is intended to foreclose this 1000 Trusts maneuver. It conforms to existing trust and property law and adopts language already in Oregon law, e.g. ORS 195.300(18). This change was broadly supported by the RAC.</p> <p>B) 736-050-0250 – CLG Objection Section (10) permits a CLG to object to a nomination if both the chief elected official and the local landmarks commission concur in the objection. The RAC and SHPO staff explored variations on the CLG objection provision, ranging from eliminating it entirely to granting the chief elected official the sole right to object, before settling on the proposed language. I believe and staff made the right decision, because Federal statute 54 USC sec 302504 requires exactly this process for CLG objection. Oregon's process for administering the federal National Register program must conform to Federal law. 54 USC sec 302504 is reproduced below. Proposed 736-050-</p>

0250(10) is substantially similar. "§302504. Participation of certified local governments in National Register nominations (a) NOTICE.—Before a property within the jurisdiction of a certified local government may be considered by a 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. (b) REPORT.—The local historic preservation commission, after reasonable opportunity for public comment, shall prepare a report as to whether the property, in the Commission's opinion, meets the criteria of the National Register. Within 60 days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and the recommendation of the local official to the State Historic Preservation Officer. (c) RECOMMENDATION.— (1) PROPERTY NOMINATED TO NATIONAL REGISTER.— Except as provided in paragraph (2), after receipt of the report and recommendation, or if no report and recommendation are received within 60 days, the State shall make the nomination pursuant to section 302104 of this title. The State may expedite the process with the concurrence of the certified local government. (2) PROPERTY NOT NOMINATED TO NATIONAL REGISTER.—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 30 days of the receipt of the recommendation by the State Historic Preservation Officer, an appeal is filed with the State. If an appeal is filed, the State shall follow the procedures for making a nomination pursuant to section 302104 of this title. Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary." Giving chief elected officials sole discretion to object will, in addition to creating conflict between Oregon rules and the Federal statute, unduly politicize the National Register process. In most CLGs the chief elected official appoints the local landmarks commission and already has ample influence over the commission's selection and charge. C) 736-050-0250 – Two Year Time Limit Section (15) (d) provides that if a nominated resource is not listed by two years after first return by the National Park Service, SHPO may terminate the nomination. I fear this provision invites legal delaying tactics designed to "run out the clock" and feel that a longer period such as 5 years would be better. My other concern is that nominations in progress should not be unfairly cut off by a time limit imposed after the nomination started. 736-050-0270 (4) adequately addresses that concern. 2. Context and Practical Ramifications There has been, before your Commission, an effort to weaponize the language of race and equity to politicize the National Register program and paint historic preservation as racist, anti-equity, anti-environment, and other labels of convenience. I ask you to consider what a National Register historic district listing actually means in Oregon. A) Land Use Effects. In Oregon, if a district is today listed in the National Register, that listing will not prohibit any use, including multifamily occupancy, of any structure. Nor does it prevent solar panels, window replacement, or other alterations. The only effects of a listing on land use in the district are: 1) The local government must hold a public hearing to review proposed demolition of a structure that is a historic resource. After this hearing, commonly called "demolition review", the local government may then approve the demolition. OAR 660-023-0200 (8) (a) 2) The local government may, but is not required to, enact additional restrictions on alteration of structures (commonly called "design review"). OAR 660-023-0200 (8) (b). Demolition review applies only to historic resources. In most National Register historic districts, only about 65% to 85% of structures will have demolition review. The cited rule was approved by this Commission in 2017 and became effective February 2017. For all National Register districts since created or to be created in the future, a historic resource merely gets a demolition review hearing before it is demolished. No public hearing or approval is required to use the structure for multi-family dwellings, to update it for energy efficiency, or make other uses or alterations, other than normal city permits. The claim that National Register historic district designation will promote racism, prevent redevelopment, or stymie energy efficiency, is thus incorrect. For example, if Eastmoreland were to someday be listed as a National Register historic district, every historic house could still be demolished with the city of Portland's approval, hundreds of non-historic houses could be demolished without approval, and every house could be altered to multiple dwellings with solar panels and new windows with only standard city permits. As for the century-old racial deed covenants that

were all too common in Oregon and nationally, listing will not revive those, but the nomination's research will help expose this history. B) Community Effects. In Laurelhurst the Historic District nomination effort from 2016 to 2019 energized our community. Hundreds of neighbors met, gained a new appreciation for their neighborhood, and learned to organize and work together. It was a common cause – before submitting the nomination, our neighborhood voted by 83.4% (about 1,570 “yes” votes to about 240 “no” votes, about 60 undecided) to do so. Neighbors both white and of color joined in this effort, donating money and time, and testifying in support at hearings. This testimony <https://youtu.be/7MeHOWiYRQs> that was provided by video to the SACHP, is an example. Those new connections and energy drove a large increase in community involvement and volunteerism that goes beyond historic preservation. We have able to raise more donations for our neighborhood school and playground, organize more volunteers to maintain Laurelhurst Park, hold more neighborhood events, and strengthen our community's emergency preparedness program. We helped a developer obtain public funding for a large affordable housing conversion of Laurelhurst's historic “Mann Old People's House”, and we are continuing to advocate for this project as it progresses through the city permit process. We formally supported code changes to permit use and conversion of existing houses to multiple-dwellings without demolition. When Covid shelter-in-place started, our new volunteers organized a “neighbor to neighbor” program to provide grocery shopping and other services to elderly and medically vulnerable households. <https://www.laurelhurstpdx.org/covid-19> We published a history of the racially exclusionary covenants that were common throughout Portland, Oregon, and other states, based on the research documented in our nomination. <https://www.laurelhurstpdx.org/history> We will soon publish a community-developed statement on racial discrimination in policing. These are difficult topics; the personal and community connections built in our nomination effort helped us to tackle them collaboratively without rancor. When people are proud of their community, they get involved to help and make things better. One of the greatest benefits of community-driven historic preservation is the engagement and involvement it brings. For this to work, our National Register process must be fair and non-political. The proposed rule will help accomplish that. Thank you for considering my input. I urge approval of the proposed rule.

Submission ID: 6fcc369c-83fc-4329-b9d7-bda62706e7c0

Record ID: 152

MARSHALL Janelle * OPRD

From: Terry Brandt <tlbrandt@att.net>
Sent: Monday, September 14, 2020 1:31 PM
To: PUBLICCOMMENT * OPRD; GAUTHIER Katie * OPRD
Subject: Response to Proposed Administrative Rules for National Registry Program, OAR 736-050-0220 to 0270
Attachments: SHPO LETTER-Response to Draft Rule+.docx

Thank you for the opportunity to provide my written comments regarding this matter.

Terry Brandt
Private Email
C: (503) 702-1159

Terry L Brandt
6819 SE 29th Ave.
Portland, OR 97202

Oregon Parks and Recreation Commission
725 Summer St., NE, Suite C
Salem, OR 97301

Re: Proposed Administrative Rules for National Registry Program, OAR 736-050-0220 to 0270

Dear Commissioners:

I agree with the oral and written testimony submitted by 1000 Friends of Oregon with regard to the above referenced matter. In particular, I share the same concern that special interest groups will use the “historic district” tool as a means to circumvent local and state planning mandates meant to prevent unlawful segregation in our communities. Additionally noteworthy is the fact that the most recent additions to Portland’s historic districts including Laurelhurst, Irvington and the currently proposed Eastmoreland neighborhoods share a common demographic—they are all among the highest percentage of all white and wealthy neighborhoods in the city.

I also agree with the written testimony of Eastmoreland resident, Ralph Bodenner submitted 8/11/20, which I have also included throughout my own testimony. Specifically, he asserts that unlike most other states, Oregon uniquely links National Register historic status to a set of land use regulations determined by local governments. This practice has led to unintended consequences, where a few determined parties can do an end-run around the democratic process and enact land use changes that normally are the domain of elected officials, public process, and affirmative consent.

To his point and by way of example, a “majority” of homeowners in the Eastmoreland neighborhood have objected to and do not support the formation of a historic district, but it is moving forward nonetheless.

- First, prior to the Eastmoreland Neighborhood Association’s (ENA) initial submission of its request for designation to the SHPO, a duly formed committee of five (including myself and the ENA’s then President) was formed in October 2016 to develop a Ballot to obtain neighborhood votes either “In Support” or “Opposed” to the formation of a historic district. According to the initial 10/4/16 committee meeting minutes all agreed that the results of the votes would dictate if the ENA would submit or not. This was necessary to avoid the perception/concern by the neighborhood that the ENA Board would not consider a vote to be binding and have any weight to potentially stop the HD process from moving forward. Despite this understanding, the ENA deliberately and surreptitiously submitted its request in November 2016 prior to the March 2017 neighborhood vote. Results of the vote were released indicating that a majority of neighbors were against the historic district. But the ENA Board chose to ignore the results over the loud protests of homeowners and continued toward designation anyway¹. Examples such as this support the fact that neighborhood associations like the ENA are seen as entrenched, overly powerful voices for selected homeowners, who tend to be older, white and opposed to housing density, homeless shelters and other development helpful to a growing city’s health.
- Second, it was only through both the large financial (\$40,000) and volunteer labor contributions from neighbors opposed to the historic district, that the onerous requirement of 50%+1 notarized objections against the nomination was obtained. Again, a majority of neighbors objected to the formation of the historic district. However, the designation process has continued and was then put on hold pending the outcome of the SHPO’s current rulemaking process. Also note, these objections did not include the 5,000 Trusts that were later added by several homeowners who were incensed at how unfair the overall process had been handled by a small group lead by our own neighborhood association to circumvent the democratic process.

¹ Video of 3/16/17 ENA Board Meeting...https://youtu.be/_uZpKhmrPXk

Terry L Brandt
6819 SE 29th Ave.
Portland, OR 97202

On a positive note, I'm pleased to see the recent draft rule changes would give certified local governments (CLG's) power to consider the land use impacts of an historic district nomination before it can proceed to the federal level, where the NPS regulations explicitly do not consider any local municipal regulatory effect of the nomination.

As we have seen with the Eastmoreland historic district nomination, the existing rules allow a small group of powerful interests to advance a land use agenda divorced from democratic accountability or inclusiveness. Such interests can imaginatively insist that a property owner is in favor of land use regulations attached to historic district designation if they do not submit an onerous and expensive notarized objection within a relatively short time frame.

At this time, the National Park Service (NPS) historic designation approval is considered voluntary and honorary. To encourage more nominations NPS has set a low-bar standard of automatic approval unless those opponents to a nomination obtain 50%+1 notarized votes against. In addition, the SHPO is obligated to follow these rules. While Oregon law ties state historic protection to the National Register, that does not mean it must result in binding local and state restrictions, as these are not required under federal law for being on the National Register. Therefore, these SHPO rules for national designation should similarly reflect the voluntary, not binding, nature of a National Register designation. Further, a local municipality like City of Portland (COP) with its recently approved Residential Infill Project (RIP) code update is mandated to follow the state's Land Conservation & Development Commission (LCDC) requirements regarding planning for future urban infill housing density. However, this may be jeopardized by the SHPO's own rules, which can result in imposing different standards under the guise of neighborhood historic status. The SHPO should not be in conflict with either COP or LCDC. By doing so, the SHPO continues to enable special interest groups to do end runs around proper urban planning thereby defeating the goals of both LCDC and local municipalities.

The best rule change would be to require affirmative consent for an historic district nomination and/or rethink the requirement for a nomination to be honorary v. binding. No other democratic decision-making process I can think of in this country just assumes everyone wants a change in law or regulation to happen. At present, historic district nomination disenfranchises property owners, which has the effect of concentrating power with the people who already have it. In Oregon, this amounts to giving up local democratic control over land use decisions. But the state does not appear to intend to address this incredible loophole directly, since it is the federal government's process that throws affirmative consent out the window. Since the State's goal is to bring local rules in line with the federal governments process, the second-best solution would be to allow local governments to inject democracy into the proceedings.

As co-founder's of Neighborhood Choice, my wife and I raised neighborhood funds to match the financial clout of the ENA and the so-called neighborhood group "HEART" who have both worked in tandem to push the historic district approval. Contrary to allegations by historic district proponents, I would like to confirm that 100 percent of these funds came from our Eastmoreland neighbors and not from any special interest groups, homebuilder's, 1,000 Friends, etc. Finally, unless both local and state legislative changes are made to eliminate the significant impact future historic designations have beyond being simply "honorary" and undemocratic, I am concerned that yet another lawsuit will be filed to stop this process.

Thank you for the opportunity to participate in these rulemaking proceedings.

Sincerely,

Terry L Brandt

Eastmoreland Homeowner

MARSHALL Janelle * OPRD

From: Steve Dotterer <kradot@hevanet.com>
Sent: Monday, September 14, 2020 2:39 PM
To: PUBLICCOMMENT * OPRD
Cc: JOHNSON Ian * OPRD
Subject: Comment in support of the proposed rule changes for National Register Nominations

To the Oregon Parks Commission, Heritage Commission and SHPO staff-

I am writing to urge the Commission to adopt the proposed rules for nomination of properties to the National Register of Historic Places. As noted in the announcement of these proposed rule changes, there has been recent controversy over whether nominations could be advanced to the Keeper at the National Park Services. The proposed rule changes should help to reduce that controversy by establishing clear and objective standards for determining ownership. This will allow the SHPO staff and the commission to focus on the substantive elements—whether the description is complete and whether the nominated resource actually meets the criteria for the National Register. These clear standards will make it easier for a larger public to propose and consider additions to the National Register.

I also believe that the change to allow participation by local governments that are Certified Local Governments (CLG) is a valuable change. It potentially adds an additional step to the review process. However, it does help to involve the broader local community in designating properties for the National Register. This is a good thing. It should encourage more local governments to take the step of becoming a CLG, which means that they will need to make more effort to inventory and protect their historic and cultural resources.

I also urge the Commission to go beyond the proposed amendments of the rules for listing in the National Register. There are three areas for future work by the commission and the SHPO staff in order to improve the inventory, designation and protection of historic resources

First, the rules for the National Register are stated in a complicated manner. As a result, it has required either highly skilled professional consultants or volunteers to undertake the nomination process. As Oregon seeks to create a broader story of its history and culture, it is important that we make it easier for a broader spectrum of Oregonians to consider nominations to our recognized history. SHPO staff and the commission should prepare guidance in language that allows ordinary Oregonians to do at least some of the work around nominations.

Second, the commission and staff should also propose incentives that might be applied to preserving our history and culture. Many states have more extensive programs of financial and other support for preserving, rehabilitating and reusing historic resources and sites. The commission and staff should consider such programs for Oregon. Designation without some support for preservation and reuse ultimately means that much of our history and culture will disappear. We need more active programs to support our story.

Finally, the commission and SHPO staff should provide guidance and at least technical support for the updating the Historic Resources Inventory of CLGs. Many of them are out of date and do not reflect the broader definition of architectural and cultural significance that has emerged in the last thirty years. The state provided significant guidance for those original inventories—the guidance should be updated for the 21st century.

Thanks for the opportunity to comment on the proposed rules for nominations to the National Register of Historic Resources. I urge the commission to adopt these rules.

Steve Dotterer

1810 SE Pine Street
Portland Oregon 97214

MARSHALL Janelle * OPRD

From: David Brownhill <davidbrownhill.atty@gmail.com>
Sent: Monday, September 14, 2020 2:54 PM
To: PUBLICCOMMENT * OPRD
Subject: SHPO Rule Making - OAR 736-050-0220 et seq.
Attachments: RM Letter.pdf

Please add the attached letter to the public record. Thank you.

Best Regards,

David B. Brownhill
Attorney and LL.M. in Taxation
8555 SW Apple Way, Suite 300
Portland, OR 97225
Tel. 503-891-0977
Email: davidbrownhill.atty@gmail.com

September 14, 2020

Oregon Parks and Recreation Commission
Via Email to OPRD.publiccomment@oregon.gov

Commissioners:

I write to provide comments on the proposed revisions to the State Administrative Rules 736-050-0220 through 736-050-2270 regarding national historic district nominations.

1. Nagging sense of pointless regarding efficacy the of the proposed rule changes.

As an attorney, I have a nagging sense of pointless regarding the efficacy of the proposed rule changes. The process for listing an Oregon neighborhood as a national historic district ("NHD") is governed by federal law under the auspices of the National Park Service (the "NPS"). The Oregon State Historic Preservation Office ("SHPO") is delegated authority as NPS's agent to compile and submit NHD nominations to the Keeper of the National Register at the NPS. In so doing, SHPO must comply with federal statutes, rules, and guidance.

In reviewing the proposed rule changes, it appears that SHPO is going rogue and making up its own rules to retroactively whitewash its mishandling of the hopelessly flawed and now four-year-old, stale Eastmoreland NHD nomination (the "Nomination"). In any event, the proposed rule changes are invalid or DOA to the extent they deviate in any way from federal statutes, rules, and guidance. To complicate matters, NPS is in the process of revising its rules, which creates a moving target for SHPO.

2. The proposed rule changes make the NHD listing process even more undemocratic.

The process for listing an Oregon neighborhood as an NHD is inherently undemocratic. Any single person or group may nominate an Oregon neighborhood for NHD listing. Consent is assumed, unless the majority of all homeowners quickly sign and file notarized objection statements. Moreover, the NHD listing of an Oregon neighborhood triggers restrictions on what homeowners may do with their houses. All of this raises serious procedural and substantive due process issues, dictating, at the very least, revision of the proposed rules so as to provide a more stringent review process with a fair and neutral arbiter.

Remarkably, the proposed rules make the process even more undemocratic. For example, the proposed rule changes (a) sanctify SHPO using the county property tax records to compile the homeowners' list, and (b) make it more difficult for homeowners to sign and file notarized objection statements.

If SHPO is truly interested in making the process more democratic, it should begin by revising the proposed rules so that (a) SHPO is required to use the official land recordation records to compile the homeowners' list, and (b) the signing and filing of notarized objection statements is made easier and more convenient. This is especially crucial when consent is assumed and an NHD listing triggers restrictions on what homeowners may do with their houses.

A job worth doing is worth doing well. SHPO's most critical job is to calculate whether a majority of all homeowners have objected. This requires SHPO to accurately and precisely count both the number of objections in the numerator and the total number of all homeowners in the denominator. To that end, SHPO should use the official land recordation records, as they are more accurate and precise than the quick-and-dirty, county property tax records. At the very least, using the official land recordation records will better ensure that former homeowners, dead people, divorced people, and agents of homeowners are not inaccurately included in SHPO's homeowners count. In my estate planning law practice, I always use the official land recordation records to determine who owns real property. Using the county property tax records would be malpractice per se.

Like any voting, the signing and filing of notarized objection statements should be as easy and convenient as possible. To that end, (a) using SHPO's notarized objection form should be optional instead of mandatory, (b) an acknowledgment notary should be the default format and also included on SHPO's form, (c) signed objection statements should be given the benefit of the doubt, and (d) the objectors' fundamental right to privacy must be protected.

3. The Nomination is replete with flaws and unworthy of redemption.

The NHD nomination for Eastmoreland (the "Nomination") is replete with flaws and unworthy of redemption. Using the rulemaking process to retroactively change the rules, so as to redeem the hopelessly flawed and now four-year-old, stale Nomination, is arbitrary and capricious.

3.1 Veiled, some would say blatant, racism underlies the Nomination.

In April 2016, the board of directors of the Eastmoreland Neighborhood Association (the "ENA") unilaterally decided to pursue the Nomination as part of its ongoing crusade to save Eastmoreland from the perceived perils of urban density. To that end, ENA board members publicly declared:

"Our feeling is that the density should be where it belongs. You're talking about lower income people or younger people who want to rent or need to rent and they need to be where there's good transit, and there is not good transit here. This is a little oasis because it's down here, and it's just not appropriate." *Can A Stranger Designate Your House as Historic? In Oregon, They Can*, compiled by Randy Gragg with OPB October 23, 2016, updated October 24, 2016.

"We have reached now for a tool...the historic preservation district, that's an imprecise tool, it was designed for something else...but it is, as we have over a five year period learned, our only option to slow down...it doesn't prevent demolition in some ways...but if you look at neighborhoods that become historic districts, they don't have our problems." *Id.*

"The board's worked hard for about three years to try to get the city to deal with this through coding, zoning, and through the comprehensive plan. While we had considered historic district designation in the past, we had thought the other mechanisms were more appropriate to work through the city. But when they were not fruitful, we then moved to considering historic district designation." *Id.*

After reading and re-reading these words, I was stunned and embarrassed for my neighborhood. Triple checking to make sure I wasn't missing something, I called a civil rights attorney friend and asked him if he thought the words were "veiled" racism. He chuckled at my naivete and said, "that's not veiled, that's blatant racism."

Digging deeper, I discovered that the words harken back to Section 35 of Oregon's Bill of Rights (repealed in 1926) prohibiting "Negroes and Mulattoes" from coming, residing, or being in the state, owning property, and making contracts, and to Eastmoreland's early deed restrictions (outlawed in 1948) prohibiting "Chinese, Japanese and Negroes" from owning property. All of this ultimately makes me wonder why anyone would need the United Daughters of the Confederacy when they can simply use SHPO to help erect monuments or encase neighborhoods commemorating Oregon's racist past.

3.2 The survey is tainted and unreliable.

In May 2016, the ENA board officially hired AECOM as its consultant to prepare and submit the Nomination. To that end, AECOM conducted a survey of Eastmoreland during the summer of 2016. Volunteers performed the survey fieldwork. Virtually all of the volunteers supported the Nomination. A significant number of the volunteers lacked expertise sufficient to gauge whether a house was "contributing" or "non-contributing." During AECOM's brief training of the volunteers before the survey fieldwork, AECOM staff suggested that 80% of the houses should be "contributing."

The volunteers' survey fieldwork was done from the street or sidewalk during the summer, and was rushed. Extensive summer foliage obstructed the view of many houses from the street or sidewalk. During AECOM's brief training of the volunteers, some of the volunteers who were concerned about the summer foliage asked AECOM staff why the survey fieldwork could not be delayed until late fall. AECOM staff told them that it was impractical because the ENA board did not want to delay the Nomination.

Rushed, and primed to meet AECOM's suggested 80% target, volunteers misclassified a significant number of houses as "contributing." At minimum, a new survey is necessary. Unlike the current one, the new survey should be conducted during late fall or winter by unbiased, qualified individuals who are not primed to achieve a pre-set target.

3.3 NHD boundary was gerrymandered to benefit certain ENA board members.

On November 1, 2016, the Nomination was submitted to SHPO. The Nomination excludes the Berkeley Addition (i.e., the southeast quadrant of Eastmoreland) from the proposed NHD. An AECOM staff person publicly stated that the Berkeley Addition was removed because its contributing concentration was less than 50% (actually 42%). Notably, however, nearby SE Cooper Street was retained, even though its contributing concentration was only 40% (6 of its 15 houses were contributing, with 2 of the 6 contributing houses being built in 1957).

Historical context is illuminating. From 2013 through early 2016, the ENA board lobbied the City of Portland to downzone Eastmoreland from R5 to R7. At various times, the City signaled a willingness to downzone as much as 75% of the neighborhood. The City, however, was unwilling to downzone the remaining 25%, including SE Cooper Street. Despite the City's signals, the ENA board steadfastly and quixotically pressed the City to downzone 100% of the neighborhood, including SE Cooper Street. Ultimately, the City rejected the ENA board's all-or-nothing R7 bid, sparking the ENA board's decision to pursue the Nomination.

Certain influential ENA board members own a "non-contributing" house on SE Cooper Street. They served as the primary conduit between the City and the ENA board during the failed R7 bid, recommended AECOM as the Nomination's consultant, helped coordinate the volunteers during the survey fieldwork, served as the primary liaison between the ENA board and AECOM during the preparation and submission of the Nomination, and helped orchestrate the ENA board's public messaging regarding the Nomination. While their house on SE Cooper Street fell outside the City's proposed R7 area, it is included in the proposed NHD.

3.4 SHPO erred by using county property tax records.

Shortly after receiving the Nomination, SHPO compiled the homeowners' list using the then current county property tax records. Predictably, the county property tax records proved to be imprecise and inaccurate. They inflated the number of homeowners by including former homeowners, dead people, divorced people, and agents of homeowners, making it all but impossible for SHPO to precisely and accurately calculate whether a majority of all homeowners had objected.

As SHPO began receiving an ever-increasing number of notarized objection statements in early 2017 (it ended receiving at least 1,059 as of June 28, 2017), it began to dawn on SHPO that it was going to need to use the more precise and accurate official land recordation records to calculate whether a majority of all homeowners had objected. SHPO alerted NHD supporters of this fact, but elected not to do so. Instead, SHPO stubbornly stuck to its ill-advised use of the county property tax records in its thrice-rejected submission of the Nomination, first in 2017, second in 2018, and third in 2019. And now in 2020, SHPO wants to retroactively change the rules so as to sanctify its ill-advised use of the county property tax records.

3.5 SHPO targeted the objectors by publicizing their names and addresses.

Beginning on or about December 15, 2016, SHPO began publicizing on its website for all to see an alphabetical list of the objectors' names and addresses ("SHPO's List"). SHPO's List violated the objectors' fundamental right to privacy and undoubtedly suppressed the objectors' count. Predictably, SHPO's List had a chilling effect on numerous homeowners who would have otherwise signed notarized objection statements. Moreover, SHPO's list paved the way for the NHD supporters to target at least 475 of the 1,059 objectors via a mass mailing and an aggressive door-to-door canvassing campaign to pressure them to rescind their objections by signing SHPO's rescission form. The NHD supporters' efforts produced over 60 rescissions.

SHPO's rescission form popped up on its website after it began receiving the ever-increasing number of notarized objection statements in early 2017. This was a curious development, as the applicable federal statutes and regulations do not contemplate rescissions during the pendency of an NHD nomination.

While there are a lot of things about the NHD listing process that violate my sense of fairness, SHPO's targeting of the objectors by publicizing their names and addresses in alphabetical order is number one on my list. This clear violation of the objectors' privacy and the sanctity of their votes is astounding. The NHD supporters' use of SHPO's List to mount its aggressive rescission campaign is disgraceful, but not surprising.

And now in 2020, SHPO wants to retroactively change the rules so as to sanctify SHPO's List. SHPO can't retroactively cure the voter-suppression damage done by SHPO's List.

3.6 PHLC and SACHP were not fair and neutral arbiters.

On February 13, 2017, the Portland Historic Landmarks Commission ("PHLC") met to consider several matters, including the Nomination. The PHLC supported the Nomination under the applicable criteria, but nonetheless advised holding it over to resolve concerns about (a) the accuracy and integrity of the survey, and (b) the extent of the period of significance, in particular the inclusion of the post-World War II Infill (1946-1961).

This was not an opportunity to be heard at a meaningful time and in a meaningful manner by a fair and neutral arbiter. The PHLC possesses advisory authority only and consists of seven volunteer members engaged or interested in historic preservation. AECOM's Kirk Ranzetta chaired the PHLC on February 13, 2017, but was recused while one of his AECOM colleagues presented the Nomination to the other PHLC members. The PHLC members advised AECOM on how to improve the Nomination.

On February 17, 2017, the State Advisory Committee on Historic Preservation ("SACHP") met to consider several matters, including the Nomination. The SACHP rubber-stamped the Nomination, with one SACHP member publicly admitting that they had not even bothered to read the PHLC's letter, which recited concerns about the survey and the period of significance.

This was not an opportunity to be heard at a meaningful time and in a meaningful manner by a fair and neutral arbiter. The SACHP possesses advisory authority only and consists of nine volunteer members engaged or interested in historic preservation. AECOM's Kirk Ranzetta presented the Nomination to SACHP. The SACHP members advised AECOM on how to improve the Nomination.

I attended both meetings. As an attorney, I couldn't help but wonder how helpful it would be if the judge and the jury advised me how to improve my pleadings or arguments in the middle of a case.

3.7 Majority of homeowners opposed the Nomination in 2017.

After much delay, the ENA board finally mailed its previously promised "poll" to the homeowners (in reality the poll was a fair and democratic election with ballots asking every homeowner to vote for or against the Nomination). Chaired by a prominent ENA board member, the polling committee decided not to include pro and con statements with the ballot. Throughout early 2017, the ENA board relentlessly campaigned for the Nomination via multiple mass mailings and email blasts to the homeowners. This campaign, however, came up just short of achieving the ENA board's desired result. On March 9, 2017, the ENA board publicly announced that two-thirds of the homeowners had participated in the vote, with 702 voting against, and 666 voting for, the Nomination. Disavowing their own poll and overriding the homeowners' fair-and-democratic majority vote against the Nomination, the then 19-person ENA board overwhelmingly voted on March 16, 2017 to proceed with the Nomination. A couple of my Laurelhurst friends, who are never at a loss for words, came to the meeting. They were rendered speechless by the ENA board's cavalier disregard of the expressed will of a fair-and-democratic majority.

Per the poll, the total number of homeowners as of November 1, 2016, was 2,067. Coincidentally, the NHD supporters later came up with the same number. As of June 28, 2017, at least 1,059 homeowners had filed notarized objections statements with SHPO. Assuming these numbers are correct, the number of objections as of June 28, 2017, exceeded the 50% threshold required to defeat the Nomination in 2017.

Thank you for your attention to this matter.

Sincerely,

/s/David B. Brownhill
503-891-0977
davidbrownhill.atty@gmail.com

MARSHALL Janelle * OPRD

From: Folawn, Colin J. <CFolawn@SCHWABE.com>
Sent: Monday, September 14, 2020 1:15 PM
To: PUBLICCOMMENT * OPRD
Cc: JOHNSON Ian * OPRD; 'julie_ernstein@nps.gov'; 'paul_lusignan@nps.gov'
Subject: Public comment regarding proposed OARs (Folawn)
Attachments: OPRD Folawn testimony to SHPO.pdf

To Whom It May Concern:

My comments regarding the proposed Oregon Administrative Rules regarding historic district nominations are attached. Please confirm receipt.

Best,

Colin Folawn
503.796.7462

NOTICE: This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies.

Colin Folawn
6813 SE Reed College Place
Portland, Oregon 97202

September 14, 2020

Oregon Parks and Recreation Commission
725 Summer Street NE, Suite C
Salem, OR 97301

To Whom It May Concern:

I write to provide comments on certain proposed changes to the Oregon Administrative Rules regarding historic district nominations.

1. Rely upon property records, not tax records.

Professionals who attempt to determine property ownership look to recorded deeds, not property tax records. The proposed requirement that the SHPO “must assume that the property tax records provided by the county assessor are accurate when counting owners” has no place in the OARs, especially when this requires the listing of owners “regardless of whether the owner can be contacted using the information included on the property owner list provided by the county assessor’s office.”

With these proposals, the SHPO would be increasing the denominator for any historic district nomination—using potentially inaccurate or out-of-date information—and potentially without a way of providing those individuals with the required notice.

Reviewing actual property records takes work, but it is work worth doing, considering the significant ramifications of an historic district nomination. The proposed additions as OAR 736-050-0250(12)(a)(B) and (C), as well as other references to property tax records being a sufficient source for determining owners, should be struck.

2. A nomination form should not be confidential and kept from the public.

Unfortunately, the publicizing of historic district objections enables the inappropriate targeting of neighbors, including the elderly, in coercive efforts to convince them to change their position one way or another. The proposed changes to the OARs do not address this issue.

Yet, under the guise of introducing some flexible concept of confidentiality, the proposals hurt the nomination process, potentially obfuscating the nomination itself. The proposed rules permit

the SHPO to “keep all or qualifying portions of a National Register nomination form confidential and conditionally exempt from public disclosure.” Worse yet, they state that “[a]ll notarized statements and accompanying documentation are public records,” which arguably would require individuals to convert private documents into public records. *See* § 4 *infra*.

It goes without saying that objections are matters of public record,¹ but the SHPO should not be permitted to make confidential a proposed historic district nomination, as doing so would place yet another hurdle for those who oppose such a nomination.

The proposed OAR 736-050-0250(6) seeks to fix a non-existent problem. In doing so, it worsens the nomination process, and it should be struck.

3. Objections should not be made more difficult.

Considering the ease with which an area can be nominated as an historic district, the OARs should make it easy—not more difficult—to object. There is no reason to require a property owner to “identify ... the name they were ... listed in the county property tax records....”

When typing my name, I write “Colin Folawn.” I do not write “Colin J. Folawn” or “Colin Jeffrey Folawn.” And due to the relative novelty of my last name, I have seen it misspelled by others countless times. As I write this, I have no idea how the property tax records state my name. There is no good reason—as a requirement of submitting a valid, notarized objection—for an owner to conduct independent research to determine this. The proposed OAR 736-050-0250(12)(H)(c)(D) should be struck.

4. Trust instruments are private; trust certifications are not.

Instruments used to create trusts are private documents. They contain detailed information that is intended to be private until the appropriate time according to one’s estate plan. The SHPO should not require trust instruments to be provided. Instead, the SHPO should accept a certification of trust, which is what banks do.

There is no good reason to require such estate planning documents to be turned into public records, which would be required under proposed OAR 736-050-0250(12)(k). The proposed OAR 736-050-0250(12)(g) should be struck. Otherwise, this requirement will have a chilling effect on objections to a nomination.

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¹ The proposed OARs also seek to create a rule for the withdrawal of an objection. If an objection is like a vote, as some have said, then it should not be withdrawn. I am aware of no precedent for the notion that an objection can be withdrawn before a nomination is submitted to the National Parks Service. The proposed OAR 736-050-0250(12)(H)(b)(B) and (C) should be struck. Instead, the SHPO—and all participants in a nomination process—should simply follow applicable law.

5. Rejected and stale nominations should not be exempt from appropriate scrutiny.

There is no good reason to exempt old, rejected historic district nominations from the proposed OAR 736-050-0250(15)(d) and OAR 736-050-0250(15)(e)(B), which provide the SHPO with an important safety valve.² Consider this analogy:

Two people are playing a card game. They have wagered considerable sums of money on the outcome.

As the game is played, each player senses that the outcome will be close.

When the final card is played, the players begin counting their respective scores. The first player grins and proclaims, “as I expected, I beat you this time. As you’ll see, I have 120 points.”

The second player surveys the first player’s cards and chides, “no, you don’t. You have 90 points. And I have 105, so I win.”

The first player says, “actually, you forgot to count my three aces.”

The second player responds, “I counted them. If you didn’t have the aces, you would only have 87 points.”

The first player protests, “Wait, 87 points? Aces are worth 11 points, not one point each.”

The second player declares, “Wrong; they are only worth one point.”

The first player replies, “No, they’re not.”

The second player exclaims, “Yes, they are. One point for each ace!”

The two players decide to ask their mutual friend to consider the dispute, count the points, and announce the winner.

The friend laughs and says, “I don’t know how much aces are worth in your game. I always come to an agreement with my opponent *before* we start playing a game.”

The two players nod their heads but then press their friend to think about the game mechanics, the nature of scoring, and their respective stakes in winning and losing—as well as notions of fundamental fairness—and then decide how much aces should have been worth in the game that was just played.

The friend sighs, “I can’t do that. If I were to do all that and conclude that aces should count for 11 points, then one of you will rightly claim that I changed the rules—after the game was played—and that they would have pursued a different strategy. The same

² This is especially true for nominations that have been pending during the period of a public rulemaking process.

would be true in the other direction, were I to conclude that aces are only worth one point. In either case, the outcome would be fundamentally unfair.”

The friend continues, “look, it makes no sense to decide or change the rules of a game after it’s been played. Just go play the game again. Start over. And this time, get the rule on aces in place *before* you start shuffling the cards.”

It is apparent that the proposed OAR 736-050-0250(15)(d) and OAR 736-050-0250(15)(e)(B) are intended to (1) ensure that any nomination that is so fundamentally flawed—either substantively or procedurally—must receive additional scrutiny, and potentially and (2) empower the SHPO to terminate such a nomination, if appropriate. There is no good reason for exempting pending nominations from proposed rules that serve as a safeguard to protect against rejected and stale nominations.

The proposed OAR 736-050-0270(4) should be struck and not included in the new rules.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Colin Folawn', with a stylized, cursive script and a long horizontal flourish extending to the right.

Colin Folawn

MARSHALL Janelle * OPRD

From: Joanne Carlson <jncarlson@ipns.com>
Sent: Monday, September 14, 2020 1:14 PM
To: PUBLICCOMMENT * OPRD
Subject: RAC Public Testimony
Attachments: RAC Public Testimony.docx

Please find my RAC testimony attached. Thank you.
Joanne Carlson

Public Testimony Re: Update to State Rules for National Register Program

By Joanne Carlson

Attn: Oregon Parks and Recreation Commission, State Historic Preservation Office

I appreciate the opportunity to comment on the draft of the revised state rules for National Register Historic Places program in Oregon. The Rules Advisory Committee (RAC), the Oregon Parks and Recreation Department (OPRD) and the Oregon State Historic Preservation Office (SHPO) have taken the important opportunity to clarify and improve rules that frame the process for listing historic resources on the National Register in the state of Oregon.

The controversies resulting from legal challenges to the loopholes and attacks on rules lacking clarity do need to be rectified for future nominations as well as to provide a clear path for those in progress. Having been involved with the Eastmoreland nomination for four years I understand what a challenging time it has been for SHPO and of course for the sponsor. It is essential to make sure that the rules align with the federal standards for the process as well as Oregon law. It is not time to open this process to the private agendas of advocacy groups who appear determined to undermine preservation of Oregon's already limited protection of historic resources.

You have heard many times about the creation of 5,000 trusts, now reduced to 2,000, by 5 individuals and their associates to jam the nomination of the Eastmoreland historic district. This was a last ditch effort to override the objection process when they recognized they were on the losing side. SHPO engaged the Oregon DOJ to clarify the validity of counting these trusts but their opinion failed to clarify the issue. Thus, based on their understanding of legal advice (that was subsequently found inconsistent with Oregon law), SHPO recognized the 5,000 trusts as objections on April 25, 2018 and proceeded accordingly.

SHPO forwarded the nomination to the National Park Service (NPS) with the hope that they would deal with it. The NPS returned the Eastmoreland nomination to SHPO on June 29, 2018 based solely on the failure to properly count objections and the inclusion of the 5000 trusts for which the individuals involved refused to provide documentation demonstrating legitimacy. The NPS considered testimony submitted by Brian Sheets, an attorney representing proponents of the Eastmoreland nomination. Mr. Sheets argued that Oregon Law defines the owner of a revocable trust as the settlor and the owner of an irrevocable trust as a grantor. Mr. Sheets further argued that, under these circumstances, the SHPO was required by National Register program regulations to conduct further research into the validity of the trusts and the legitimacy of the objections. Mr. Sheets included a legal opinion by Alan Brickley, an Oregon title attorney specializing in trusts, who concluded that the "trusts" conveying 0.1% interest in the various properties at issue were without legal effect because they appeared to be illusory or "sham" trusts. Mr. Brickley also explained that the public policy for compliance with the recording statute is to provide "complete and accurate notice of interest in real property" and that obfuscating the public record "is in violation of the public benefit."

There are approximately 1300 homes and 2,600 property owners within the Eastmoreland nomination district. When five opponents in four homes created the 5,000 objections, it set in motion a fundamental violation of the purpose of the owners' rights to object or advance a nomination. While Oregon law and perhaps common sense should have been exercised, the existing Rules were not specific. When the owners who filed "trust" documents with Multnomah County were asked by SHPO and the DOJ to provide legal proof of the 5,000 trusts they claimed that providing the documents would be a violation of their privacy. As stated above the group simply ignored a similar request from the NPS.

Hearing the challenge to the decision in the Marion County Court of Appeals, the judge agreed in frustration that the Rules are unclear and ruled that no trusts should be recognized.

The acceptance of the objection trusts undermined the National Register program in Oregon and, if exercised, had the potential to disrupt the National Register program across the United States.

In 2019, the US DOI's proposed changes to the Code of Federal Regulations (CFR), looked specifically at 36 CFR 60, which would make changes to rules regarding Historic Districts. Some of these changes were prompted by the issues surrounding the Eastmoreland nomination. Preservation organizations from all over the country sent testimony including the American Cultural Resource Association (ACRA), the Advisory Council on Historic Preservation (ACHP), the National Trust for Historic Preservation (NTHP) and the Oregon State Historic Preservation Office (ORSHPO). All made comments about the Eastmoreland nomination and the need to fix the trust issue. Amongst the CFR recommendations was to strengthen 36CFR 60.6 (g) to direct SHPOs to require production of legal documents to confirm ownership and validate notarized statements of objection and that refusal to provide such information may result in owner and/or submitted objections not being counted.

As we all learned, Multnomah County at least, does not investigate the legality of ownership documents such as trusts but simply records them as provided. While county records are the logical and first source for counting owners and objectors the rules need to be crystal clear that they are not always the final answer. If you know where to look, the proposed rules address this issue. However, I remain concerned that while the rules do empower SHPO to go beyond taking county records at face value, the definition of "owner" as it relates to trusts remains open to interpretation and therefore abuse.

I do not see a clear explanation in the new rule making that the trust issue is resolved. Please provide the help for SHPO to figure this out. The solution may be an attorney specialized in land title and trust related issues. If someone at SHPO, RAC, DOJ, OPRD of the Oregon State Parks and Recreation Commission sees a clear answer to protect the HD process from sham trusts in the rule making document please put it in simple terms and let's get on with it and approve these fixes to the rules.

Thanks for considering my testimony.

Joanne Carlson
7605 SE Reed College Pl.
Portland, Oregon 97202

MARSHALL Janelle * OPRD

From: Mary Kyle McCurdy <mkm@friends.org>
Sent: Monday, September 14, 2020 3:51 PM
To: PUBLICCOMMENT * OPRD
Cc: JOHNSON Ian * OPRD; MCCURDY Mary Kyle; PUBLICCOMMENT * OPRD
Subject: Testimony on proposed administrative rules 736-050-0220 to 736-050-0270
Attachments: OPRC test. 9.14.20 FINAL.2.pdf

Attached please find testimony of 1000 Friends of Oregon on proposed administrative rules for the National Register Program, 736-050-0220 to 736-050-0270.

Thank you for your consideration.

Mary Kyle McCurdy

Mary Kyle McCurdy

Deputy Director

Pronouns: she/her

[1000 Friends of Oregon](#)

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Sent via email: OPRD.publiccomment@oregon.gov

September 14, 2020

Oregon Parks and Recreation Commission
725 Summer Street NE, Suite C
Salem, OR 97301

Re: Proposed administrative rules for National Register Program, 736-050-0220 to 736-050-0270

Dear Commissioners:

On behalf 1000 Friends of Oregon, we submit this written testimony, which supplements our testimony of July 20, 2020 and May 19, 2020 on the administrative rules proposed by the State Historic Preservation Office (SHPO). In our July testimony, we recommended that the Oregon Parks & Recreation Commission:

“Undertake a process to ensure that the state does not encourage, assist, or approve designating any primarily residential neighborhood, on a state or federal list, that was born out of intentional racial discrimination.”

Additional testimony, studies, and current events have only emphasized that for both legal and equity reasons, the Commission should undertake this overdue evaluation. We recommend that you delay this rulemaking until the results of this evaluation can be reflected in SHPO’s rules.

Oregon’s land use Goal 5 calls for conserving historic resources, but that has never meant not evaluating what, why, and how potentially historic resources are evaluated and recognized. And, Goal 5 operates within the context of 19 statewide Goals that are to be balanced equally with one another to create and sustain an environmentally, socially, and economically livable, equitable, and prosperous Oregon for all. So, for example, Goal 5 must be balanced with Goal 3, Agricultural Land protection, and Goal 10, Housing.

Preservation, protection, and memorialization of significant people, communities, places, events, cultural influences and trends, and more from our past is an important part of understanding who we are today. It can be a force to ensure that all the large and small diversities and complexities that have contributed over hundreds, even thousands, of years are appropriately recognized and not obliterated by a dominant culture. That past includes people, places, and events to learn about, celebrate, respect, and continue. But it also includes things

we should understand so we do not repeat them, but rather insure they do not continue into the future. Therefore, what we preserve, why, and how, are among the most critical issues.

The State Historic Preservation Office (SHPO) recognizes that racism has played a significant part in the development of Oregon's communities, and has pledged a commitment to changing to reflect that: "Heritage organizations and historic places have a responsibility to dismantle racism and inequity. Oregon Heritage is committed to this effort."¹

It is time to fully live up to that commitment by, among other things, evaluating the Oregon historic designation process. Statements made by SHPO in a public forum on this proposed rule illustrate that living up to this commitment is a work in progress, as it is for all. As described by SHPO, it is possible for areas and neighborhoods that today reflect a history of racial and economic exclusivity from past intentional discrimination through legal financial, real estate, and zoning practices to at least be nominated and, if approved, be accompanied by restrictions on development, redevelopment, and modernization that can act in ways to continue these exclusionary housing patterns. At the moment, SHPO seems to have no basis on which to even evaluate this, much less recommend a different way of recognizing any actual historical components that does not also continue the impacts of that institutionalized racism.

As explained by SHPO during a public forum held to explain these rules and obtain input:

"The racist nature of a neighborhood certainly could be the basis for listing a property, a historic district, in the National Register. It would still be subject to all the same criteria. You would have to demonstrate that it particularly demonstrates those physical qualities that would demonstrate that you mentioned, like the elegant houses, but there might be other physical things that would demonstrate that. And you could say 'This neighborhood is eligible because it is a product of redlining and segregation and all these other housing places that allowed this particular place to be created in this way.' ... I have not seen that argument come through yet....But from my knowledge of working with the National Register program you could make that argument as well."²

We appreciate the honesty of SHPO in explaining this, but it illustrates starkly the need for the OPRC to undertake an evaluation of the historic designation process, rationale, criteria, and various ways to recognize history, to ensure it does not further racial and other discrimination.

The need for SHPO to undertake this evaluation is reinforced by, among other things, current National Register listings and nominations of several neighborhoods covering thousands of homes. Certain neighborhoods, statewide, that were established in the early 1900s had racially restrictive covenants to prevent, most commonly, "Chinese, Japanese, and Negroes" from

¹ <https://www.oregon.gov/oprd/OH/Documents/AddressingRacismHeritagePlan.pdf>

² Ian Johnson, Associate Deputy State Historic Preservation Officer, comments made at SHPO informational meeting on these proposed rules; August 18, 2020, <https://www.youtube.com/watch?v=2mcQYmRBubI>

owning property in them.³ The applications submitted for historic designation describe how these restrictive covenants insured the long-lasting “architectural uniformity” of these neighborhoods,⁴ but neglect to mention or underplay that these covenants also acted – intentionally – to ensure racial “uniformity.” Lack of examining this history, including its impact on *people*, then and today, does not seem to be a full historic analysis.

Contrary to some testimony, OPRC undertaking this evaluation and even altering its approaches to historic preservation would *not* have the impact of failing to recognize the history of a place. However, an important element that seems to be lost in all this discussion, but should be part of a comprehensive evaluation, is **how** that history is recognized.

An abundance of studies, academic research, and even historic nominations at the national, state, and local levels have documented that some uses of historic designation, and how that history is recognized, perpetuate racism and conflict with other important public policies.

For example, as described in *The New Exclusionary Zoning*, a comprehensive academic review of urban exclusionary zoning published in 2014 in the *Stanford Law and Policy Review*:⁵

"The advent of historic preservation in the 1960s is also part of this trend. Historic preservation districts effectively remove parts of the city from the stock of developable land and impose additional approvals for development within them. This makes development more expensive or prevents it outright, both of which raise housing prices in high-demand areas."

This can negatively impact lower income neighborhoods through gentrification and displacement in those areas, as recognized in, among other places, a report by the White House under President Barack Obama:⁶

³ See National Register nominations of Portland’s Irvington historic district and Eastmoreland proposed historic district.

⁴ For example, from the Irvington Historic District application, approved in 2010 and encompassing over 2000 homes (emphasis added) : “An early example of a streetcar suburb, Irvington is significant as one of the earliest real estate developments in Oregon to use privately imposed and enforced restrictive covenants as a means of controlling unwanted land uses and guiding residential development. These restrictions included street setbacks, establishment of baseline house values, use restrictions, and **race-based exclusions**. *** First platted in 1887 and opened for sale in 1891, Irvington’s developers sought to impose restrictive deed covenants upon lots within the neighborhood to bring a **modicum of social and architectural uniformity** as well as predictability to the overall development process. Irvington’s extensive use of these restrictions was replicated in other subsequent residential developments in Portland such as Laurelhurst and Alameda Park. These explicit rules reveal how trends in restrictive covenants had **palpable and long-lasting impacts upon the architectural character** of streetcar suburbs in the late-nineteenth and early-twentieth centuries....” See also news articles on the use of racially restrictive covenants in many neighborhoods:

https://www.oregonlive.com/news/erry2018/05/fcd13cb4387071/racist_restrictions_now_illegal.html

⁵ https://journals.law.stanford.edu/sites/default/files/stanford-law-policy-review/print/2014/01/mangin_25_stan._l._poly_rev_91.pdf

⁶ https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Housing_Development_Toolkit%20f.2.pdf ; The White House, September 2016.

"When new housing development is ... precluded in neighborhoods with political capital to implement even stricter local barriers, the new housing that does get built tends to be disproportionately concentrated in low-income communities of color, causing displacement and concerns of gentrification in those neighborhoods. Rising rents region-wide can exacerbate that displacement."

This was also documented in an article in the *Environmental Law Journal* of Lewis & Clark Law School, which among other things examined possible new ways to evaluate potential historic resources while balancing that with other public policy considerations:⁷

"Historic preservation laws increasingly are used not as a means of saving cherished landmarks, but as an all-purpose tool for halting new construction—regardless of the architectural or cultural merits of the buildings preserved. Whereas once cities battled to preserve Penn Station and Grand Central, today skirmishes erupt over "historic" parking lots.

How and what history is protected can also impact other important public policies, when decisions are made without balancing all public interests. For example, as described in an opinion editorial by a member of the *New York Times* editorial board, prompted by "[t]he madness of prohibiting solar panels on the rooftops of historic buildings."⁸

"But historic preservation comes at a cost: It obstructs change for the better. **** Homes in Washington's historic districts are modern on the inside. Cable lines run between houses, cars are parked on the streets, and the government has set aside the deed restrictions that in some neighborhoods once barred ownership by blacks, Jews and other minorities. What is being preserved are the facades of the houses — and the scale of development.

⁷ Kazam, Alexander, *From Independence Hall to the Strip Mall: Applying Cost-Benefit Analysis to Historic Preservations*. *Environmental Law Journal*, Lewis & Clark Law School, Articles Vol. 47, Issue 2, p. 429 (2017). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3024945 Kazam's article cites other urban scholars and economists who have made similar observations, including Harvard professor Edward Glaeser, who described the "trend of pervasive landmarking as a new 'NIMBYism that 'hides under the cover of preservationism, perverting the worthy cause of preserving the most beautiful reminders of our past into an attempt to freeze vast neighborhoods filled with undistinguished architecture'." Kazam citing Edward Glaeser, *Triumph of the City: How Our Greatest Invention Makes Us Richer, Smarter, Greener, Healthier, and Happier* 148 (2011) (internal footnotes omitted). Kazam also describes other legitimate public policy concerns that are completely ignored by many current historic preservation practices, but do not have to be: "[L]ocal preservation boards are generally not required to apply cost-benefit analysis (CBA) to their decisions. Despite the enormous stakes involved, especially in cities with the most valuable real estate, these municipal agencies tend to focus on the benefits of saving old buildings, without considering costs such as effects on affordable housing, the environment, and economic development."

⁸ Appelbaum, Binyamin, <https://www.nytimes.com/2020/01/26/opinion/historic-preservation-solar-panels.html?auth=login-email&login=email> (internal citations omitted).

“Those limits on renovation and construction are directly connected to the fact that people live in tents under the highway at the edge of my neighborhood. Our cities ... have become ‘suffocatingly stable’ in the center and ‘alarmingly unstable at the periphery.’ The necessary corrective is not to demolish existing buildings, but to allow most existing buildings to be changed over time, and to allow new buildings to grow up alongside.”

Oregon has experienced similar conflicts with other public policies due to historic preservation, such as with energy efficient home improvements, including rooftop solar panels and energy efficient windows, with water conservation measures that impact irrigation infrastructure, and housing infill and redevelopment.

Today we see legitimate concern for displacement and gentrification that is occurring in the neighborhoods into which Blacks were traditionally redlined, but one cannot critique that and not also recognize that change is needed on the flip side of the same coin – opening up the exclusive neighborhoods that also reflect past racist covenants, zoning, and financing practices to more and diverse housing.

That these are two sides of the same coin was described in the nomination to the National Register for the “African American Resources in Portland, Oregon, from 1865 to 1973.”⁹

“The concentration of African American settlement in the Lower Albina district was far from coincidental. Two major forces, both controlled by the White power structure, ensured that Albina became the center of African American residence in early twentieth-century Portland. The first was the racially restrictive real estate covenant, which became a common practice nationwide beginning in the early 1900s. Such covenants were legal clauses written into deeds of home ownership that specifically forbade sale to or occupancy by African Americans and other people of color. These covenants were widely utilized in Portland neighborhoods, particularly in the newly developed suburbs of the early twentieth century. A Laurelhurst warranty deed, created by the neighborhood’s developers in 1913, reads: “. . . nor shall said premises or any building thereon . . . be in any manner used or occupied by Chinese, Japanese or negroes, except that persons of said races may be employed as servants by residents.”

Effective redlining requires both sides of that coin. Financing and real state practices overtly redlined Black people and other people of color into defined, small, less-desirable neighborhoods, and often made them renters, not homeowners, while exclusionary zoning of other neighborhoods was implemented in Oregon – as was typical around the country – and continued for decades through today.¹⁰

⁹https://www.oregon.gov/oprd/OH/Documents/2020Feb_OR_MultnomahCounty_AfricanAmericanResourcesinPortlandMPD.pdf, p. 18.

¹⁰ See, HOLC “Redlining” Maps; National Reinvestment Coalition, *The Persistent Structure Of Segregation And Economic Inequality*. <https://ncrc.org/holc/>

The impact can be seen today in the residential economic and racial segregation that continues, including in Portland and other Oregon cities. Because home ownership is the primary means by which most Americans, or at least White Americans, have built wealth and passed it down to subsequent generations, the repercussions of this discrimination are illustrated by the stark polarization of wealth between those of color and Whites.¹¹

That the impact of early racist zoning, deed restrictions and financing and later exclusive residential zoning is reflected in the economic and racial segregation of today, across the United States, is widely recognized. For example, Portland has produced a report titled *Historical Context of Racist Planning: A History of how Planning Segregated Portland*,¹² in which it concluded:

“Portland, like many U.S. cities, has a longstanding history of racist housing and land use practices that created and reinforced racial segregation and inequities. Exclusionary zoning, racially restrictive covenants, and redlining are early examples of this, with their effects still visible today. These discriminatory practices have all played a role in shaping the city’s urban form—and in exacerbating inequities along lines of race and class.

“Historically exclusive neighborhoods that do not allow for more housing options to absorb a growing and changing population can increase gentrification pressures in other neighborhoods as housing demand spills over and increases housing costs. Current single-family zoning patterns uphold and reinforce past harmful practices of redlining, racial covenants, and other intentional racial segregation while prolonging the barriers to homeownership for people of color.”

This is not just a Portland story, as discriminatory residential development and ownership laws and practices occurred at the state and local level since Oregon was admitted into the Union.¹³

Historic preservation is about celebrating *community* assets, to protect historic and cultural resources that reflect upon and benefit the public. Historic protection, when honed and focused, has been used to, for example, protect against economic displacement in lower income neighborhoods in other states— *not* by using it as a shield against change, but rather by ensuring that historic and cultural assets are preserved for all.

¹¹ For example, in 2019, neither the average income Black household nor Latinx household could afford to purchase a home anywhere in Portland Portland Housing Bureau, *2019 State of Housing in Portland Report*; based on spending no more than 30% of their monthly income on housing, not including taxes, insurance, or utilities.

<https://www.portland.gov/sites/default/files/2020-04/phb-soh-2019-web-part-02.pdf>
¹² <https://www.portland.gov/sites/default/files/2019-12/portlandracistplanninghistoryreport.pdf>

¹³ See, e.g., Gregory Nokes, *Breaking Chains - Slavery on Trial in the Oregon Territory*; and various histories of the Ku Klux Klan in Oregon, e.g. <https://www.portlandmercury.com/feature/2017/11/15/19472650/echoes-of-the-klan>

These descriptions and history are not to come to definitive conclusions about Oregon's historic designation processes or potential solutions, but to illustrate that it is time to undertake that evaluation.

Thank you for consideration of our comments.

Sincerely,

A handwritten signature in black ink that reads "Mary Kyle McCurdy". The script is cursive and fluid, with the first name "Mary" and last name "McCurdy" being more prominent than the middle name "Kyle".

Deputy Director

MARSHALL Janelle * OPRD

From: Thomas M. Christ <tchrist@sussmanshank.com>
Sent: Monday, September 14, 2020 4:00 PM
To: PUBLICCOMMENT * OPRD
Cc: PUBLICCOMMENT * OPRD; MCCURDY Mary Kyle
Subject: Comments on Draft Rules for Historic District Nominations
Attachments: Letter to Oregon Parks & Rec re Draft Historic District Rules (Racism and Historic District Nominations) (03556077x7AC43).pdf; Letter to Oregon Parks & Rec re Draft Historic District Rules (Stale and Defective Nominations) (03556074x7AC43).pdf

I have attached two letters with comments on the draft rules. Please include both of them in the record. Thank you.

Tom Christ

Tom Christ
7106 S.E. 31st Ave.
Portland, OR 97202

September 14, 2020

Oregon Parks and Recreation Commission
725 Summer Street NE, Suite C
Salem, OR 97301

Via Email to OPRD.publiccomment@oregon.gov

Re: Racism and the Proposed Rules for Historic Districts

Dear Commissioners:

Thank you for the opportunity to comment on the draft rules for designating historic districts in Oregon. In a separate letter, I explain why one of the draft rules should be rejected. In this letter, I recommend that you refer the rules as a whole back to your staff to draft new provisions that will prevent historic designation from being used to perpetuate segregation in housing.

To illustrate my point, I'll refer often to the nomination of Eastmoreland, a neighborhood of about 1,500 homes in southeast Portland, because the flaws in that nomination are what led to this rule-making, and because I happen to live in Eastmoreland and thus am familiar with the neighborhood and the nomination.

Two things you should know about Eastmoreland residents: we are disproportionately wealthy, compared to Portland as a whole; and we are remarkably un-diverse. According to the Demographic Statistical Atlas, which relies on census data, there are no Black families living here. We don't fare much better when it comes to other people of color. According to the Atlas again, Eastmoreland is 91.2% white – the second whitest neighborhood in the city.

This didn't happen by accident. Eastmoreland was designed to be a whites-only enclave. The developers sold lots with deeds that prohibited re-conveyance to nonwhites. When courts struck down those covenants as unconstitutional, the developers fell back on the zoning laws as an indirect means to the same end. At the time, most people of color couldn't afford anything but an apartment or small house on a small lot, so single-family zoning, combined with minimum-lot-size restrictions, would keep them out of Eastmoreland.

“Red-lining” by realtors and lenders played a role, too. But those pernicious practices ended eventually. Single-family zoning persists and still has an exclusionary effect. It’s the main reason that Eastmoreland is so very white. People of color, by and large, still lag behind in wealth and income, and are less able to afford a big house on a big lot in neighborhoods like mine where that’s the only housing option.

The simple fact is: A neighborhood can’t be diverse without a diversity of housing within it. It’s the housing stock that mostly determines who lives there – who wants to, and who can afford to. In places where the housing is all of one kind, the residents tend to be, too. And when the housing is all big houses on big lots, as in Eastmoreland, the people tend to be all of one color, as they are in Eastmoreland.¹

Fortunately, state and local government have finally noticed the connection between zoning policies and segregation in housing and taken steps to fix the problem. The 2019 legislature passed House Bill 2001, which, in effect eliminate single-family zoning by requiring all residential districts to allow smaller and more affordable dwellings, including, with some limitations, duplexes, triplexes, cluster cottages, townhomes, and accessory dwelling units. And this summer the City of Portland passed the Residential Infill Project, which likewise opens residential neighborhoods to these types of dwellings. These badly needed reforms will diversify housing across the state and thus reduce lingering segregation.

Which brings us back to the proposed Eastmoreland historic district. The district’s proponents are strongly opposed to HB 2001 and the RIP, and they view the proposed district as a way to circumvent those laws. You see, even when the zoning allows you to build smaller and more affordable dwellings in a neighborhood, you can’t *actually* build them if you can’t demolish or alter the structures already there, and in an historic district that’s exactly what you can’t do. Or at least can’t do easily. In an historic district, you can’t change the exterior of a structure without going through a slow, costly, and uncertain design-review process that might dissuade you from even trying. That’s what the historic district proponents are hoping, anyway. They view historic designation as a way to block the new dwellings the new laws will allow.

I’m not making assumptions here. The district proponents have been upfront about their intentions. It was not to preserve houses that might be “historic” because of who designed them or who once lived there. It was and is to prevent any change in the

¹ For more on how land-use rules, including single-family zoning and lot-size restrictions, have contributed to segregation in housing, read *The Color of Law*, by Richard Rothstein (Liveright 2017), which just finished several weeks on the New York Times top-ten bestseller list. Or watch the videos, inspired by the book, entitled “Segregated by Design” and “Zoning Matters: How Land-Use Policies Shape Our Lives,” which are available on the website of Southeast Uplift, a city-run umbrella organization for southeast Portland neighborhoods. See <https://www.seuplift.org/single-family-zones-learning-discussion-series/>. For a Portland-specific history, read a recent report by the city’s Bureau of Planning and Sustainability. The title says it all: “Historical Context of Racist Planning: A History of How Planning Segregated Portland.” See <https://www.portland.gov/bps/history-racist-planning-portland>.

neighborhood's housing stock, even though that can slow or stifle a corresponding change in the neighborhood's demographics, as explained above.²

I hasten to add that I don't think proponents of the historic district are racists. I've said that many times, privately and publicly, and I'll repeat it here. But even the best-laid plans can have unintended consequences. And there is no question that, whatever the goal, historic designation for Eastmoreland will stymie that the diversification of its housing that is necessary for the diversification of its residents.

The same goes, of course, for Laurelhurst, another Portland neighborhood that is likewise disproportionately wealthy and white because of the same history of restrictive covenants, redlining, and exclusionary zoning, and that recently became an historic district. And the same will go for some of the other mostly wealthy and white neighborhoods that likewise opposed HB 2001 and the RIP and, word has it, are now studying the historic-district playbook. Creating an historic district has become the new

² In an article in the Fall 2015 edition of the Eastmoreland Neighborhood Association newsletter, Rod Merrick, then chair of the association's land-use committee, now president of the association, explained how the association's board of directors was unhappy with the RIP, then in the planning stage, and with the city's rejection of the association's proposal to increase the neighborhood's minimum-lot size in an effort to block smaller dwellings. He then announced the board's plan B: "the ENA Board has authorized the Land Use Committee to lay the ground work for application for Eastmoreland as an historic district." See http://historicdistrict.eastmorelandpdx.org/wp-content/uploads/2016/08/Fall_15lo-res_2.pdf, p. 6. In a later article in the same newsletter, Merrick said that "The Residential Infill Project * * * is before [the] City Council for a vote," and that "[s]upporters say it will make more housing more affordable * * *." But, he continued, "the only serious protection [city policies] will provide is for properties in National Historic Districts," and "[t]hat alone is sufficient reason to fight for historic district status." http://www.eastmorelandpdx.org/wp-content/uploads/2017/04/ENA-Fall16_lores.pdf, p. 6.

After the historic district application was submitted, a member of the board who shall remain nameless spoke candidly to a reporter covering the story:

"Our feeling is that the density should be where it belongs. You're talking about lower income people or younger people who want to rent or need to rent and they need to be where there's good transit, and there is not good transit here. This is a little oasis because it's down here, and it's just not appropriate."

"We have reached now for a tool * * * the historic preservation district, that's an imprecise tool, it was designed for something else * * * but if you look at neighborhoods that become historic districts, they don't have our problems."

"The board's worked hard for about three years to try to get the city to deal with this through coding, zoning, and through the comprehensive plan. While we had considered historic district designation in the past, we had thought the other mechanisms were more appropriate to work through the city. But when they were not fruitful, we then moved to considering historic district designation."

Can A Stranger Designate Your House as Historic? In Oregon, They Can, compiled by Randy Gragg with Oregon Public Broadcasting, October 23, 2016, updated October 24, 2016. And just to correct any mis-impressions from that quote, Eastmoreland has excellent transit, with a MAX Orange line station at the west edge of the neighborhood.

tool of choice for groups that want to block housing reforms – at least in their backyards, so to speak – and aren't able to achieve that goal through the normal political process.

This is a misuse of the historic-district process to frustrate reforms enacted by our elected representatives to desegregate housing. This Commission shouldn't put up with it, and it should take this occasion to say so. The Commission should send the proposed rules back to its staff for further review and for consideration of new rules that take into account the history of discrimination in neighborhoods proposed for historic designation, and thus ensure that designation will not have the indirect effect of perpetuating the discrimination.

That sort of review is necessary to eliminate the vestiges of “systemic racism” in housing, meaning racism that results not because everyone, or anyone, is motivated by ill-will for people of color, but because of how the system is set up. And it's consistent with a recent directive by Governor Brown. On July 31, 2020, the governor announced the creation of a Racial Justice Council that “will examine and begin to dismantle the racist policies that have created grave disparities in virtually every part of our society, including * * * access to housing[.]” See <https://www.oregon.gov/newsroom/Pages/NewsDetail.aspx?newsid=37069> This agency should follow the Governor's lead and examine the draft rules for their potential to perpetuate racial disparities in housing.

The fact that the federal rules for National Register listings are so undemocratic is all the more reason for this Commission to ensure that its own rules don't enable all-white neighborhoods to remain so through historic designation. Under the federal rules, you don't need the support of a majority of affected owners to create an historic district. In fact, you don't need the support of *any* of them. All you need is to avoid objections from a majority. And objecting isn't easy. You can't just go on-line and click on a button, or show up at a meeting and raise your hand. You have to mail your objection to an agency in Salem. And you have to notarized it. So you need to buy a stamp and hire a notary. Imagine the outrage if rules like that were imposed on the the upcoming election – if incumbents would get second terms automatically unless a majority of voters, not just a majority of those who cast a vote, but a majority of those *entitled* to cast one, voted against the incumbents. And if, on top of that, your vote didn't count unless you got it notarized and affixed a stamp. The unfairness of the historic district process at the federal level demands policing at the state level.³

³ As it happens, we had a vote on the Eastmoreland nomination, early in the process, but after full and fair debate. Every affected owner got a ballot with a straight-up-or-down question: Do you support the district, yes or no? The turnout was huge for any election – nearly 70 percent. And there were more no's than yes's. But that wasn't the outcome that the district proponents wanted, so they decided to ignore the vote and proceed with the nomination anyway. See <https://www.koin.com/news/eastmoreland-proceeds-with-historic-district-application/> . The owners then sent SHPO letters of objection and support for the district. The number of objections was well over, or just over, or just under fifty percent of the eligible owners, depending on which count you accept (the uncertainty is why NPS kept sending back the nomination). But, even if you accept the lowest number, the objections far outnumbered the letters of support. So, by all tallies, more Eastmoreland residents oppose the district than support it. But, as explained above, the federal rules aren't democratic.

* * * * *

The Black Lives Matters Movement that exploded across the nation this summer has awaked most people to the fact that our society is still plagued by systemic racism. And nowhere is it more apparent than in our housing. Our cities are segregated by race to an extent we would not ever tolerate in our schools and workplaces. A state agency should not, at this fraught time, if ever, adopt rules that would allow segregated neighborhoods to be celebrated as “historic” and, through that designation, resist having to make the changes in housing that are necessary for them to finally diversify.

The Commission should refer these rules back to staff.

Thank you again for your attention.

Sincerely,

Tom Christ

Tom Christ
7106 S.E. 31st Ave.
Portland, OR 97202

September 14, 2020

Oregon Parks and Recreation Commission
725 Summer Street NE, Suite C
Salem, OR 97301

Via Email to OPRD.publiccomment@oregon.gov

Re: Historic District Rules for Stale and Defective Nominations

Dear Commissioners:

This is the second of two letters commenting on the draft rules for designating historic districts in Oregon. In the other letter, I explain why you should refer the rules as a whole back to your staff to draft new provisions that prevent historic designation from being used to perpetuate segregation in housing by race. In this letter, I discuss one of the draft rules that tries to exempt another rule from applying to one particular nomination to which it should apply.

As you probably know, this rule-making arose out of a failed historic-district nomination – actually a thrice-failed nomination. In November 2016, the proponents of an historic district in Eastmoreland, a neighborhood in southeast Portland, submitted a nomination to the State Historic Preservation Officer. On May 15, 2017, SHPO sent the nomination to the National Park Service, saying it was unsure whether a majority of affected property owners had objected to listing the district on the National Register of Historic Places. A month later, NPS sent the nomination back. Almost a year later, on April 25, 2018, SHPO resubmitted the nomination to NPS, this time with a recommendation not to list Eastmoreland. Once again, NPS sent the nomination back. Fast forward another year: on May 24, 2019, SHPO again sends the nomination to NPS, but reverses its recommendation from don't list to do-list. Two months later, on July 18, 2019, NPS, once again, sends the nomination back. Rather than risk a fourth send-back in as many years, NPS decided instead to initiate the rule-making that led to the draft rules now before you.

I know that others have written to you about problems with various rules. I want to focus on one problem in particular: an unwarranted and unjustifiable exemption for

one particular nomination from two rules that allow for termination of nominations that are defective or have become stale.

OAR 736-050-250(15) provides in paragraph (a) that if SHPO submits a nomination that is defective for some reason, NPS can correct the nomination itself or return it to SHPO for correction (or simply deny listing). It then provides, in paragraph (15)(d), that if the flaw in a returned nomination is not corrected within two years, SHPO can terminate the nomination:

“If a historic resource is not listed in the National Register within two years from the date the NPS first returns the National Register nomination for correction the SHPO must decide whether to resubmit the National Register nomination form to the Committee or the NPS as described in this rule or end the National Register nomination process. * * *”

The rule also provides, in subparagraph (15)(e)(B), that SHPO can’t continue with the nomination unless it concludes that doing so “is in the public interest.”

It makes good sense to put an end to historic district nominations after a period of time, especially if they have problems that are uncorrectable within two years. After all, historic designation puts restrictions on property owners within the district; they are limited in what they can do with their property. But the property owners in a proposed district don’t always stay the same over time. Some sell and move. Others die. Still others lose ownership in a divorce. Meanwhile, new people buy homes in the proposed district. The owners in the district today are not necessarily the same as the owners in the district in, say, 2016 when the Eastmoreland nomination was submitted.

Take the street I live on in Eastmoreland. It has 12 homes, and three of them, one-fourth of the total, have turned over since 2016. I’m guessing the same percentage applies to most other streets in Eastmoreland. If so, there are as many as 500 hundred new arrivals who have not had the opportunity to object to or otherwise oppose the historic district that might later be imposed upon them against their will.¹ For their sake, SHPO should be allowed, in its good judgment, to end the nomination. And OAR 736-050-270(15)(d) and (e)(B) give it the authority to do just that. Except that OAR 736-050-270(4) says that “OAR 736-050-0260(15)(d) and 736-050-0260(15)(e)(B) are not applicable to National Register forms submitted before the effective date of this Division.”

The rules themselves don’t explain why the provisions in OAR 736-050-0260(15) for terminating stale and uncorrected nominations should not apply to pending nominations. It appears that the exemption in OAR 736-050-270(4) is a special

¹ In early 2017, nearly 1,400 affected property owners – 70 percent of the total – participated in a yes-or-not vote on this proposed district, which, by the way, resulted in more no’s than yes’s. See <https://www.koin.com/news/eastmoreland-proceeds-with-historic-district-application/>. One-third of that amount is 462. And, again, that doesn’t account for the 30 percent of owners who, for whatever reason, chose not to vote.

accommodation to the proponents of the Eastmoreland nomination, as that seems to be the only nomination that might be affected. But if any nomination *should be* subject to all of the new rules it's that one, since that star-crossed nomination, with all its problems, is what led to this very rule-making. Exempting the Eastmoreland nomination from *any* of the new rules would be like the FAA announcing new rules for aircraft inspections in light of the Boeing 737 crashes and then exempting 737s from some of the new rules. If the new historic-district rules, including OAR 736-050-270(15)(d) and (e)(B), are advisable for nominations generally, then they are advisable for the Eastmoreland nomination too. There shouldn't be an Eastmoreland carve-out. It stale and defective nominations shouldn't proceed more than two years after rejection by NPS – and they shouldn't – then this one shouldn't proceed, because it's as stale and as problem-filled as they come.

As explained above, it's unfair to new property owners to continue processing stale nominations. Worse than that, it's unlawful. The Constitution prohibits the deprivation of property rights without due process of law, and due process requires, at a minimum, notice and an opportunity to be heard. See *Carr v. SAIF Corp.*, 65 Or. App. 110, 118, 670 P.2d 1037, 1042 (1983). The people who bought property in Eastmoreland after spring 2017, when the time for objecting to the proposed district had closed, have not had their opportunity be heard. Telling them that they can't object now would be like telling people who moved to Oregon after 2017 that they can't vote in the upcoming election.

Fairness and due process aside, the proposed exemption for pending nominations is contrary to the general rule in Oregon that newly enacted laws apply retroactively if they are "procedural" and prospectively if "substantive," and that a new law is substantive only if it impairs existing rights. See *Strizver v. Wilsey*, 210 Or. App. 33, 38, 150 P.3d 10 (2006); *Portland Gen. Elec. Co. v. Mead*, 235 Or. App. 673, 681-82, 234 P.3d 1048, 1053 (2010). The rules at issue here are clearly procedural, not substantive; the people who want an historic district in Eastmoreland have no right to one. They only have a procedure for creating a district. These new rules, governing that procedure, should apply retroactively, not prospectively, and thus should apply to their nomination.

And, indeed, the new rules *do* apply to that nomination – except, inexplicably, for the rules allowing SHPO to terminate nominations that are stale or uncorrectable. There is no reason why proponents of the Eastmoreland nomination should get to cherry-pick the rules they want and discard the rest. Nor is there a reason why SHPO should be denied the power to terminate the Eastmoreland nomination for flaws that the rules themselves now identify. For example, the new rules say that all objections and letters of support are public records, available for inspection. OAR 736-050-250(12)(k). And yet, midway through the Eastmoreland nomination, SHPO treated the objections and letters as confidential and stopped disclosing them. That is an uncorrected and (now) uncorrectable mistake in the nomination – one of many – for which SHPO should, in its good judgment, be allowed to terminate the nomination.

For all these reasons, the Commission should reject OAR 736-050-270(4) and its exemption for one, defective, already-stale historic-district nomination. SHPO should be empowered to terminate that nomination because it is stale, because it proved uncorrectable more than two years after first return by NPS, or because termination is in the public interest, just as it is empowered to terminate any other nomination for those same reasons.

Thank you again for your attention.

Sincerely,

Tom Christ

MARSHALL Janelle * OPRD

From: Beth Warner <beth.warner48@comcast.net>
Sent: Monday, September 14, 2020 4:04 PM
To: PUBLICCOMMENT * OPRD
Subject: Public Testimony

I would like to submit the attached photos as public testimony to the RAC.

This flyer was stapled to telephone poles in Eastmoreland on July 4th and 5th by an opponent to the Historic District. It demonstrates, once again, the attempts by opponents to use racism as a factor in deterring Eastmoreland's nomination to the National Register of Historic Places.

Respectfully submitted,

Beth Warner

MARSHALL Janelle * OPRD

From: Beth Warner <beth.warner48@comcast.net>
Sent: Monday, September 14, 2020 4:05 PM
To: PUBLICCOMMENT * OPRD
Subject: Fwd:

Attachments from email.

Begin forwarded message:

From: Beth Warner <beth.warner48@comcast.net>
Date: September 14, 2020 at 4:02:19 PM PDT
To: Beth Warner <beth.warner48@comcast.net>



MARSHALL Janelle * OPRD

From: Bert Sperling <bert@bestplaces.net>
Sent: Monday, September 14, 2020 4:54 PM
To: PUBLICCOMMENT * OPRD
Subject: PUBLICCOMMENT * OPRD
Attachments: Comments for HD-SHPO.pdf

Katie,
Please see the attached pdf with my comments.

Best,
Bert Sperling



Bert Sperling - cell 503-939-1510

Bert Sperling
7910 SE 30th Ave.
Portland, OR 97202

Oregon Parks and Recreation Commission
725 Summer Street NE, Suite C
Salem, OR 97301

September 14th, 2020

Re: Comments regarding Eastmoreland Historic District Rules and Process

Dear OPRD Commissioners:

I'm a current resident of the Eastmoreland neighborhood in Portland, Oregon, since 1995.

In my comments about the proposed Historic District, I want to share my perspective about how the process in Eastmoreland has progressed to this point in the Fall of 2020. Many good comments have been submitted regarding the intricacies and interpretation of the rules and I would have little new to add to the discussion.

However, little has been written about the human dynamics involved in Eastmoreland's historic district application and this story should be documented.

As you read how the historic district process in Eastmoreland has been misused, you will see that it does not reflect the wishes of its residents and should not be accepted.

A few words pertaining to my work on livability and quality of life...

I wrote a computer application way back around 1985 which helped people find their best places to live. This was hailed as one of the first examples of an "expert system", which is a type of artificial intelligence. Money magazine asked me to create and generate their annual Best Places flagship rankings, and I later wrote three bestselling books ranking U.S. cities and towns. I've been the subject of features in publications such as the New York Times ("The Guy Who Picks the Best Places to Live") and the Wall Street Journal, and worked on hundreds of livability studies and projects for states and cities, corporations, the media and academia. I'm an associate of Dr. Richard Florida's Creative Class Group. Lately I've focused on our web site, BestPlaces.net, which has over 3 million visitors monthly and is a leading resource for a wide array of information for all U.S. metros, states, counties, cities and zip codes.

Here in our neighborhood, I was a board member for the Eastmoreland Neighborhood Association (ENA) for about ten years, attending at least a hundred meetings and contributing hundreds of hours. My wife, Gretchen, served as President of the ENA from 2005 to 2008.

The combination of my professional work and my experience as part of the ENA allows me to provide a unique perspective on the how the Eastmoreland historic district application has progressed and how it has affected the neighborhood.

Why is Eastmoreland so deeply divided?

For the last ten years, the Eastmoreland neighborhood association has been hijacked by a few residents who have used the authority, position and resources of an official neighborhood organization to pursue their own agenda. This has led to opposition by a large number of residents.

I left the neighborhood association because I could no longer support the goals, and in particular, the ways the association was working to push their goals while limiting disclosure and discussion.

Using the assets of neighborhood association, such as its email list, newsletter, social media, mainstream media, recognition by the city and state, the Eastmoreland Neighborhood Association has controlled the narrative surrounding the historic district process and divided the neighborhood.

The worst aspect of this entire process is that the welcoming and cozy culture of our neighborhood association has been perverted into a vicious, us-versus-them, for-us-or-against-us mindset which has infected our little community.

How a neighborhood can be corrupted

The historic district process has been a series of actions that shock, sadden and anger. I would not have believed my own neighbors to be capable of the activities I've witnessed. Eastmoreland is a privileged community, one of the most wealthy and well educated in the city of Portland.

As I describe some of the actions committed on behalf of an Eastmoreland historic district, you'll say to yourself, surely this is an exaggeration. Civilized respectable people don't behave in this manner, especially to their neighbors. And I would agree with you, had I not seen what we are capable of.

For years, I wondered what could lead my neighbors to participate in this harsh and unkind behavior. Here is one explanation.

Last year, I heard an interview with Lawrence Lessig (attorney, Harvard professor, and candidate for President) who has written a series of essays and a book about corruption. And he could have been talking specifically about the actions of my good, smart neighbors.

"It's a very interesting, and terrifying, psychological truth that the more convinced you are of your goodness, the more license you will give yourself to behave badly.

"One dimension is this feeling or license to behave badly because you've behaved well. The other dimension is that to the extent you're talking about smart people, they are best able to avoid the consequence of the facts.

"In studies of how facts may influence people's views on say, global warming or GMOs, they didn't find that dumb people are persuaded overwhelmingly and smart people aren't. To the contrary. They find that ordinary intelligence leaves you open to the facts, but super-intelligence leaves you really empowered to defend yourself against the facts.

"So you can rationalize almost anything that's thrown at you if you're a smart enough person. But if you're not that smart, you hear the facts and are kind of made amenable to it.

"Put those two things together - smart and moral license - and what you find is that certain people (who live in the zip code that I'm in right now), ought to spend a lot of time reflecting on just how likely they are to be misleading themselves about what's right and what's wrong. And also just how likely it is that their certainty about what think they should do or other people should do might be affected by one of these two kinds of psychological weaknesses.

"And the consequence of that is not to do nothing, but to constantly criticize, be self-critical, in ways that leave yourself open to changing your mind. That's the hardest thing for people to do, especially for people in the world I live in." (transcription of interview on The Ezra Klein Show, Vox Media, 5.27.2019)

Scenes from Eastmoreland's push for its historic district

Getting the go-ahead

It was decided early that a historic district was the only way to prevent any demolitions in the neighborhood. An informal meeting was called to inform any interested neighbors about a historic district and all that it would entail. About 100 neighbors attended (Eastmoreland has about 4300 residents). At the end of the meeting, the ENA president asked "Who wants to save Eastmoreland?" Hands shot up, no tally was taken, and this was declared to be the vote they needed to pursue a historic district.

It's our money

Early in the process, the ENA entered into an agreement for a consulting group to manage the project, in the amount of \$75,000. When this came to light, some neighbors confronted the ENA board about this expenditure. The response I heard at the meeting was, "It's our money. We can spend it the way we want to."

The definitive poll – no is yes

Neighbors asked for a vote of Eastmoreland residents to see if it was actually favored by a majority. After months of careful design and deliberation, the ENA mailed a question to every household, asking if they were in favor of a historic district. The responses were carefully tallied, and the majority of respondents opposed the historic district.

Of the 2066 households, 1387 responded (67.1%). 666 (48.0%) were "for" the historic district, 702 (50.6%) were "against", and 19 (1.4%) "didn't know."

This seems like a definitive, if close, result. A narrow majority indicated they were against the historic district, and a 67% response rate is statistically very healthy for polling purposes.

But in a mind-numbing distortion of any legitimate interpretation of polling and voting science, the ENA declared that this showed that most residents were not against the historic district. The board contended that those who did not respond should be considered to be "not against" the historic district, and therefore "for" the historic district. (my mind has difficulty even expressing this twisted logic)

So according to the ENA, the majority of the respondents were "not against" the historic district and therefore they have a mandate to proceed with it.

Here's their math - 666 "for" + 19 "didn't know" + 679 (didn't respond) = 1364 "not against" (66.0%)

Despite a promise to abide by the results of their carefully conducted poll, the ENA simply concocted a result that met their needs.

The infamous "push poll"

Early in the historic district process, there was a telephone poll received by some Eastmoreland residents. Our home did not receive one of these calls, and I know of only a few that did. I would guess that maybe 200 or 250 neighbors got one of these calls.

I've attached the text of this telephone poll at the end of my comments.

This was immediately labelled by the ENA as “push poll”, and evidence that anti-HD forces are financed by shadowy developers waiting to prey on the neighborhood and are seeking to influence opinion by deceit.

A true “push poll” is a set of questions which do not collect opinions or information but instead have the purpose of planting doubt or confusion. A legitimate poll will make relatively few calls, only enough to gain some insights from a sample of the population. A push poll will make a huge number of calls, because the purpose is to influence as many people as possible.

As the questions of the Eastmoreland telephone poll show, this poll was not biased towards influencing the respondent, and the low number of calls is also evidence against this being a “push poll.”

Presentations and information

The Eastmoreland Neighborhood Association has been very careful to release as little information as possible about the proposed historic district. There have been only two public presentations and these were tightly controlled, with any questions vetted in advance.

Perhaps for fear of negative reaction, the ENA has not had any public meetings concerning the historic district for years, despite an influx of new residents which have little knowledge of how a historic district will impact them.

Private committee meetings

At the ENA, most of the work in discussing and formulating policy occurs in committee meetings. For example, the Tree Committee may meet several times during the month to discuss the care and maintenance of the neighborhood’s tree. Recommendations are drafted to refer to the board at the monthly meeting for approval and action.

Some neighbors wanted to attend Land Use committee and other meetings to advocate for their views and discuss what should be ENA policy and position. The ENA has declared that its committee meetings are private and closed to the public, because “no motions are passed at the meetings” and “they are held in a private home.”

The reality is that no discussion of issues or formulation of policy occurs at the board meeting when only five or ten minutes is available for each committee. The committee presents its recommendations which it drafted during its meetings, and then it’s up to the board to accept and pass them with a vote. Denying access to the committee meetings is an effective way to conduct ENA business in secret and curtail any input from residents at large.

Rescission of objections

This was a shameless tactic that was employed. Privacy should be enforced for those who file an objection, and the entire concept of rescission should be examined.

Any objections to a historic district become a matter of public record, with the objector's name and address. Unfortunately, this provided proponents of the historic district with targets for a campaign of pressure and intimidation. Elderly neighbors were particularly vulnerable to calls and visits, urging them to rescind their objection. The first contact might be friendly and informative, but got increasingly aggressive and confrontational upon resistance.

Public shaming, humiliation and anger

In some cases, elderly neighbors sold their modest homes to developers with the goal of tearing down the house and building several homes for a profit. I know of cases where the residents resisted, because they did not want to see their much-loved home demolished and they were being pressured by residents. After six months or more on the market, they had to sell to a developer to get the funds they needed for the rest of their retirement. They said their final days in Eastmoreland were spent in tears as their neighbors called them names, shunned them and left hostile messages on their doorstep.

Public attacks

Advocates of the historic district originated, encouraged or participated in public attacks on residents opposed to it. Addresses of anti-historic district advocates were distributed. There was a campaign of dog feces thrown on one family's roof. A pro-district group published the names, addresses and phone numbers of the employers of certain anti-district advocates, and urged people to call the employers, asking them if they knew what their workers were doing and how this reflected poorly on their business.

Threats of violence

One person who was strongly anti-historic district was told to stop or his home with his young family, would be burned. Message received, he immediately stopped speaking out against the historic district.

In another case, a mother and her young daughter were in front of their home when a car sped up and a man stepped out, thrust out his middle finger, and with the other hand, pulled his thumb across his throat. This was one of the families whose address was published as opposing the historic district.

The present (September, 2020)

The ENA continues to 'stack the deck', steadfastly refusing to work with any neighbor whose opinions or ideas differ from theirs. Using its social media, newsletter, and email list, they present their choices for board membership and attack those who may not aligned with their views.

Despite numerous attempts to gain just one board seat (out of 21), there has not been anyone on the board in the last eight years with any significant opposing views. Dissent is not tolerated by the leaders of the ENA.

One resident of Eastmoreland is internationally acclaimed for his academic and civic work on voting and elections, leading an organization to improve access and ensure integrity in elections. Based on what he has written, it would not be a stretch to say he is aghast at the behavior of the ENA (likening it to a banana republic dictatorship) and its continual refusal to take any steps which might heal the rift that exists over the proposed historic district.

But really this rift is what the ENA has been nurturing all along. It serves the ENA well to foster threats which can be used to frighten our neighbors and turn them into an angry and compliant mob. The City wants to tear down our homes to build apartments. The State is inept and indifferent to our health. Developers are ready with their bulldozers. The grass is being killed because the City won't water it. The ENA needs your donations to keep you safe.

Every day I see echoes of our sordid national politics right here in our special little place, because it's clear that these tactics scale nicely.

It's clear that the Eastmoreland Neighborhood Association has subverted the historic district process to its own ends. This is why a significant portion of the neighborhood is resisting their efforts. The requirements and rules for a historic district have some peculiarities which can be manipulated and misused by bad actors, and that is what we have here. Regardless of the individual facts, rules and regulations creating and governing a historic district, Eastmoreland's historic district should not be approved as a result of its discredited process.

Bert Sperling
Portland, OR

Transcript of what the ENA labeled a “push poll”

1. What is your top concern in the Eastmoreland neighborhood?
2. Do you trust the current city of Portland planning process to address the neighborhood concerns about demolition and infill?
3. Are you aware that the Eastmoreland Neighborhood Association is proposing to designate the majority of the Eastmoreland neighborhood as an official historic district?
4. An historic district is a group of buildings or properties that have been designated as historically or architecturally significant. Historic districts may require certain criteria or may require adherence to certain historic rehabilitation standards. Would you favor or oppose designating the majority of the Eastmoreland neighborhood as an official historic district?
5. Do you strongly favor that right now or just so much and briefly tell me why?

Caller: “Next I am going to ask you a variety of questions regarding this proposal. For each one, I will give you some information and ask whether, with that information, you favor or oppose.”

6. If you knew that designating the majority of the neighborhood as an official historic district would protect historic homes from being demolished and new modern construction being built in its place, would you favor or oppose designating the majority of the Eastmoreland neighborhood as an official historic district?
7. If you knew the Eastmoreland Neighborhood Association has spent over \$50,000 to designate the majority of the neighborhood as an official historic district before allowing impacted residents to vote on this proposal, would you favor or oppose this proposal?
8. If you knew passage of the proposed historic district would force a property owner to seek approval from the City of Portland above and beyond what is normally required for permits if they want to make changes to the outside of their home, would you favor or oppose the proposal?
9. If you knew that homeowners in the Irvington Historic District in Northeast Portland have reported paying hundreds or thousands of dollars for additional fees and lengthy reviews for some types of remodeling projects, would you favor or oppose designating the majority of the Eastmoreland neighborhood as an official historic district?
10. If you knew that it is nearly impossible to reverse the historic district once it has been designated, would you favor or oppose the proposal?

11. If you knew that designating the majority of the neighborhood as an official historic district would prevent the developers from buying property, tearing down historic homes, and dividing the lots into smaller properties to build massive houses, would you favor or oppose the proposal?

12. If you knew that an Eastmoreland historic district could deter younger families from moving into the neighborhood because of potentially difficult home remodeling restrictions and high costs, would you favor or oppose the proposal?

13. If you knew the only way to stop the historic district beforehand is to have 50% plus 1 of individual property owners submit a notarized objection, would you favor or oppose designating the Eastmoreland neighborhood as an historic district?

14. If you knew that historic district restrictions could prevent homeowners from installing energy efficient windows and solar panels on their home, would you favor or oppose the proposal?

15. If you knew that repairs caused by potential disasters such as a fire, or a tree falling on your home could be subject to tedious and costly historic district regulations, would you favor or oppose designating the majority of the Eastmoreland neighborhood as an official historic district?

16. On a scale of 1 to 4, with 1 representing no trust, and 4 representing a lot of trust, tell me how much trust you would place in the group or individual as they spoke out on this issue:

1. A fourth generation Eastmoreland homeowner who grew up in the neighborhood
2. The Eastmoreland Neighborhood Association
3. A local architect with an Eastmoreland residence
4. A local realtor with experience selling homes in other historic districts

Please answer Yes or No to the next two questions:

17. I value my rights as a property owner. If I want to remodel the outside of my home I should not have to spend additional time and money to get special government approval to do so, so I oppose designating the majority of the Eastmoreland neighborhood as an official historic district.

18. We need to preserve our heritage, the land and the trees in our historic neighborhood. I believe that designating the Eastmoreland neighborhood as an official historic district is the best way to do this.

19. After learning more about this issue, do you favor or oppose designating the majority of the Eastmoreland neighborhood as an official historic district. Are you strongly against, strongly or somewhat in favor?

20. Are you between the ages of 25-34, 35-44, 45-59, or over 60?

21. How long have you lived in the Eastmoreland neighborhood?
22. Do you plan to make changes or remodel the exterior of your home over the next five years?

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Monday, September 14, 2020 4:56 PM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	Bert
Last Name	Sperling
Email	bert@bestplaces.net
Public Comment	<p>(Katie, I've also sent an email with a pdf. I'm sure the formatting will be better with that.) Bert Sperling 7910 SE 30th Ave. Portland, OR 97202 Oregon Parks and Recreation Commission 725 Summer Street NE, Suite C Salem, OR 97301 September 14th, 2020 Re: Comments regarding Eastmoreland Historic District Rules and Process Dear OPRD Commissioners: I'm a current resident of the Eastmoreland neighborhood in Portland, Oregon, since 1995. In my comments about the proposed Historic District, I want to share my perspective about how the process in Eastmoreland has progressed to this point in the Fall of 2020. Many good comments have been submitted regarding the intricacies and interpretation of the rules and I would have little new to add to the discussion. However, little has been written about the human dynamics involved in Eastmoreland's historic district application and this story should be documented. As you read how the historic district process in Eastmoreland has been misused, you will see that it does not reflect the wishes of its residents and should not be accepted. A few words pertaining to my work on livability and quality of life... I wrote a computer application way back around 1985 which helped people find their best places to live. This was hailed as one of the first examples of an "expert system", which is a type of artificial intelligence. Money magazine asked me to create and generate their annual Best Places flagship rankings, and I later wrote three bestselling books ranking U.S. cities and towns. I've been the subject of features in publications such as the New York Times ("The Guy Who Picks the Best Places to Live") and the Wall Street Journal, and worked on hundreds of livability studies and projects for states and cities, corporations, the media and academia. I'm an associate of Dr. Richard Florida's Creative Class Group. Lately I've focused on our web site, BestPlaces.net, which has over 3 million visitors monthly and is a leading resource for a wide array of information for all U.S. metros, states, counties, cities and zip codes. Here in our neighborhood, I was a board member for the Eastmoreland Neighborhood Association (ENA) for about ten years, attending at least a hundred meetings and contributing hundreds of hours. My wife, Gretchen, served as President of the ENA from 2005 to 2008. The combination of my professional work and my experience as part of the ENA allows me to provide a unique perspective on the how the Eastmoreland historic district application has progressed and how it has affected the neighborhood. Why is Eastmoreland so deeply divided? For the last ten years, the Eastmoreland neighborhood association has been hijacked by a few residents who have used the authority, position and resources of an official neighborhood organization to pursue their own agenda. This has led to opposition by a large number of residents. I left the neighborhood association because I could no longer support the goals, and in particular, the ways the association was working to push their goals while limiting disclosure and discussion. Using the assets of neighborhood association, such as its email list, newsletter, social media, mainstream media, recognition by the city and state, the Eastmoreland Neighborhood Association has controlled the narrative surrounding the historic district process and divided the neighborhood. The worst aspect of this entire process is that the welcoming and cozy culture of our neighborhood association has been perverted into a vicious, us-versus-them, for-us-or-against-us mindset which has infected our little</p>

community. How a neighborhood can be corrupted The historic district process has been a series of actions that shock, sadden and anger. I would not have believed my own neighbors to be capable of the activities I've witnessed. Eastmoreland is a privileged community, one of the most wealthy and well educated in the city of Portland. As I describe some of the actions committed on behalf of an Eastmoreland historic district, you'll say to yourself, surely this is an exaggeration. Civilized respectable people don't behave in this manner, especially to their neighbors. And I would agree with you, had I not seen what we are capable of. For years, I wondered what could lead my neighbors to participate in this harsh and unkind behavior. Here is one explanation. Last year, I heard an interview with Lawrence Lessig (attorney, Harvard professor, and candidate for President) who has written a series of essays and a book about corruption. And he could have been talking specifically about the actions of my good, smart neighbors. "It's a very interesting, and terrifying, psychological truth that the more convinced you are of your goodness, the more license you will give yourself to behave badly. "One dimension is this feeling or license to behave badly because you've behaved well. The other dimension is that to the extent you're talking about smart people, they are best able to avoid the consequence of the facts. "In studies of how facts may influence people's views on say, global warming or GMOs, they didn't find that dumb people are persuaded overwhelmingly and smart people aren't. To the contrary. They find that ordinary intelligence leaves you open to the facts, but super-intelligence leaves you really empowered to defend yourself against the facts. "So you can rationalize almost anything that's thrown at you if you're a smart enough person. But if you're not that smart, you hear the facts and are kind of made amenable to it. "Put those two things together - smart and moral license - and what you find is that certain people (who live in the zip code that I'm in right now), ought to spend a lot of time reflecting on just how likely they are to be misleading themselves about what's right and what's wrong. And also just how likely it is that their certainty about what think they should do or other people should do might be affected by one of these two kinds of psychological weaknesses. "And the consequence of that is not to do nothing, but to constantly criticize, be self-critical, in ways that leave yourself open to changing your mind. That's the hardest thing for people to do, especially for people in the world I live in."

(transcription of interview on The Ezra Klein Show, Vox Media, 5.27.2019) Scenes from Eastmoreland's push for its historic district Getting the go-ahead It was decided early that a historic district was the only way to prevent any demolitions in the neighborhood. An informal meeting was called to inform any interested neighbors about a historic district and all that it would entail. About 100 neighbors attended (Eastmoreland has about 4300 residents). At the end of the meeting, the ENA president asked "Who wants to save Eastmoreland?" Hands shot up, no tally was taken, and this was declared to be the vote they needed to pursue a historic district. It's our money Early in the process, the ENA entered into an agreement for a consulting group to manage the project, in the amount of \$75,000. When this came to light, some neighbors confronted the ENA board about this expenditure. The response I heard at the meeting was, "It's our money. We can spend it the way we want to." The definitive poll – no is yes Neighbors asked for a vote of Eastmoreland residents to see if it was actually favored by a majority. After months of careful design and deliberation, the ENA mailed a question to every household, asking if they were in favor of a historic district. The responses were carefully tallied, and the majority of respondents opposed the historic district. Of the 2066 households, 1387 responded (67.1%). 666 (48.0%) were "for" the historic district, 702 (50.6%) were "against", and 19 (1.4%) "didn't know." This seems like a definitive, if close, result. A narrow majority indicated they were against the historic district, and a 67% response rate is statistically very healthy for polling purposes. But in a mind-numbing distortion of any legitimate interpretation of polling and voting science, the ENA declared that this showed that most residents were not against the historic district. The board contended that those who did not respond should be considered to be "not against" the historic district, and therefore "for" the historic district. (my mind has difficulty even expressing this twisted logic) So according to the ENA, the majority of the respondents were "not against" the historic district and therefore they have a mandate to proceed with it. Here's their math - 666 "for" + 19 "didn't know" + 679 (didn't respond) = 1364 "not against" (66.0%) Despite a promise to abide by the results of their carefully conducted poll, the ENA simply concocted a result that met their needs. The infamous "push poll" Early in the historic

district process, there was a telephone poll received by some Eastmoreland residents. Our home did not receive one of these calls, and I know of only a few that did. I would guess that maybe 200 or 250 neighbors got one of these calls. I've attached the text of this telephone poll at the end of my comments. This was immediately labelled by the ENA as "push poll", and evidence that anti-HD forces are financed by shadowy developers waiting to prey on the neighborhood and are seeking to influence opinion by deceit. A true "push poll" is a set of questions which do not collect opinions or information but instead have the purpose of planting doubt or confusion. A legitimate poll will make relatively few calls, only enough to gain some insights from a sample of the population. A push poll will make a huge number of calls, because the purpose is to influence as many people as possible. As the questions of the Eastmoreland telephone poll show, this poll was not biased towards influencing the respondent, and the low number of calls is also evidence against this being a "push poll." Presentations and information The Eastmoreland Neighborhood Association has been very careful to release as little information as possible about the proposed historic district. There have been only two public presentations and these were tightly controlled, with any questions vetted in advance. Perhaps for fear of negative reaction, the ENA has not had any public meetings concerning the historic district for years, despite an influx of new residents which have little knowledge of how a historic district will impact them. Private committee meetings At the ENA, most of the work in discussing and formulating policy occurs in committee meetings. For example, the Tree Committee may meet several times during the month to discuss the care and maintenance of the neighborhood's tree. Recommendations are drafted to refer to the board at the monthly meeting for approval and action. Some neighbors wanted to attend Land Use committee and other meetings to advocate for their views and discuss what should be ENA policy and position. The ENA has declared that its committee meetings are private and closed to the public, because "no motions are passed at the meetings" and "they are held in a private home." The reality is that no discussion of issues or formulation of policy occurs at the board meeting when only five or ten minutes is available for each committee. The committee presents its recommendations which it drafted during its meetings, and then it's up to the board to accept and pass them with a vote. Denying access to the committee meetings is an effective way to conduct ENA business in secret and curtail any input from residents at large. Rescission of objections This was a shameless tactic that was employed. Privacy should be enforced for those who file an objection, and the entire concept of rescission should be examined. Any objections to a historic district become a matter of public record, with the objector's name and address. Unfortunately, this provided proponents of the historic district with targets for a campaign of pressure and intimidation. Elderly neighbors were particularly vulnerable to calls and visits, urging them to rescind their objection. The first contact might be friendly and informative, but got increasingly aggressive and confrontational upon resistance. Public shaming, humiliation and anger In some cases, elderly neighbors sold their modest homes to developers with the goal of tearing down the house and building several homes for a profit. I know of cases where the residents resisted, because they did not want to see their much-loved home demolished and they were being pressured by residents. After six months or more on the market, they had to sell to a developer to get the funds they needed for the rest of their retirement. They said their final days in Eastmoreland were spent in tears as their neighbors called them names, shunned them and left hostile messages on their doorstep. Public attacks Advocates of the historic district originated, encouraged or participated in public attacks on residents opposed to it. Addresses of anti-historic district advocates were distributed. There was a campaign of dog feces thrown on one family's roof. A pro-district group published the names, addresses and phone numbers of the employers of certain anti-district advocates, and urged people to call the employers, asking them if they knew what their workers were doing and how this reflected poorly on their business. Threats of violence One person who was strongly anti-historic district was told to stop or his home with his young family, would be burned. Message received, he immediately stopped speaking out against the historic district. In another case, a mother and her young daughter were in front of their home when a car sped up and a man stepped out, thrust out his middle finger, and with the other hand, pulled his thumb across his throat. This was one of the families whose address was published as opposing the historic district. The present (September, 2020) The ENA

continues to ‘stack the deck’, steadfastly refusing to work with any neighbor whose opinions or ideas differ from theirs. Using its social media, newsletter, and email list, they present their choices for board membership and attack those who may not aligned with their views. Despite numerous attempts to gain just one board seat (out of 21), there has not been anyone on the board in the last eight years with any significant opposing views. Dissent is not tolerated by the leaders of the ENA. One resident of Eastmoreland is internationally acclaimed for his academic and civic work on voting and elections, leading an organization to improve access and ensure integrity in elections. Based on what he has written, it would not be a stretch to say he is aghast at the behavior of the ENA (likening it to a banana republic dictatorship) and its continual refusal to take any steps which might heal the rift that exists over the proposed historic district. But really this rift is what the ENA has been nurturing all along. It serves the ENA well to foster threats which can be used to frighten our neighbors and turn them into an angry and compliant mob. The City wants to tear down our homes to build apartments. The State is inept and indifferent to our health. Developers are ready with their bulldozers. The grass is being killed because the City won’t water it. The ENA needs your donations to keep you safe. Every day I see echoes of our sordid national politics right here in our special little place, because it’s clear that these tactics scale nicely. It’s clear that the Eastmoreland Neighborhood Association has subverted the historic district process to its own ends. This is why a significant portion of the neighborhood is resisting their efforts. The requirements and rules for a historic district have some peculiarities which can be manipulated and misused by bad actors, and that is what we have here. Regardless of the individual facts, rules and regulations creating and governing a historic district, Eastmoreland’s historic district should not be approved as a result of its discredited process.

Bert Sperling Portland, OR Transcript of what the ENA labeled a “push poll”

1. What is your top concern in the Eastmoreland neighborhood?
2. Do you trust the current city of Portland planning process to address the neighborhood concerns about demolition and infill?
3. Are you aware that the Eastmoreland Neighborhood Association is proposing to designate the majority of the Eastmoreland neighborhood as an official historic district?
4. An historic district is a group of buildings or properties that have been designated as historically or architecturally significant. Historic districts may require certain criteria or may require adherence to certain historic rehabilitation standards. Would you favor or oppose designating the majority of the Eastmoreland neighborhood as an official historic district?
5. Do you strongly favor that right now or just so much and briefly tell me why?

Caller: “Next I am going to ask you a variety of questions regarding this proposal. For each one, I will give you some information and ask whether, with that information, you favor or oppose.”

6. If you knew that designating the majority of the neighborhood as an official historic district would protect historic homes from being demolished and new modern construction being built in its place, would you favor or oppose designating the majority of the Eastmoreland neighborhood as an official historic district?
7. If you knew the Eastmoreland Neighborhood Association has spent over \$50,000 to designate the majority of the neighborhood as an official historic district before allowing impacted residents to vote on this proposal, would you favor or oppose this proposal?
8. If you knew passage of the proposed historic district would force a property owner to seek approval from the City of Portland above and beyond what is normally required for permits if they want to make changes to the outside of their home, would you favor or oppose the proposal?
9. If you knew that homeowners in the Irvington Historic District in Northeast Portland have reported paying hundreds or thousands of dollars for additional fees and lengthy reviews for some types of remodeling projects, would you favor or oppose designating the majority of the Eastmoreland neighborhood as an official historic district?
10. If you knew that it is nearly impossible to reverse the historic district once it has been designated, would you favor or oppose the proposal?
11. If you knew that designating the majority of the neighborhood as an official historic district would prevent the developers from buying property, tearing down historic homes, and dividing the lots into smaller properties to build massive houses, would you favor or oppose the proposal?
12. If you knew that an Eastmoreland historic district could deter younger families from moving into the neighborhood because of potentially difficult home remodeling restrictions and high costs, would you favor or oppose the proposal?
13. If you knew the only way to stop the historic district beforehand is to have 50% plus 1 of

individual property owners submit a notarized objection, would you favor or oppose designating the Eastmoreland neighborhood as an historic district? 14. If you knew that historic district restrictions could prevent homeowners from installing energy efficient windows and solar panels on their home, would you favor or oppose the proposal? 15. If you knew that repairs caused by potential disasters such as a fire, or a tree falling on your home could be subject to tedious and costly historic district regulations, would you favor or oppose designating the majority of the Eastmoreland neighborhood as an official historic district? 16. On a scale of 1 to 4, with 1 representing no trust, and 4 representing a lot of trust, tell me how much trust you would place in the group or individual as they spoke out on this issue: 1. A fourth generation Eastmoreland homeowner who grew up in the neighborhood 2. The Eastmoreland Neighborhood Association 3. A local architect with an Eastmoreland residence 4. A local realtor with experience selling homes in other historic districts Please answer Yes or No to the next two questions: 17. I value my rights as a property owner. If I want to remodel the outside of my home I should not have to spend additional time and money to get special government approval to do so, so I oppose designating the majority of the Eastmoreland neighborhood as an official historic district. 18. We need to preserve our heritage, the land and the trees in our historic neighborhood. I believe that designating the Eastmoreland neighborhood as an official historic district is the best way to do this. 19. After learning more about this issue, do you favor or oppose designating the majority of the Eastmoreland neighborhood as an official historic district. Are you strongly against, strongly or somewhat in favor? 20. Are you between the ages of 25-34, 35-44, 45-59, or over 60? 21. How long have you lived in the Eastmoreland neighborhood? 22. Do you plan to make changes or remodel the exterior of your home over the next five years?

Submission ID: 057aa021-e9b6-4bae-b812-9015c445df30

Record ID: 156

MARSHALL Janelle * OPRD

From: Kirk Ranzetta <kranzetta@gmail.com>
Sent: Monday, September 14, 2020 4:55 PM
To: PUBLICCOMMENT * OPRD; JOHNSON Ian * OPRD
Subject: Comments on the proposed rules (OAR 736, Division 50) governing the state's processing of National Register nominations
Attachments: Eastmoreland Historic District Appeal FINAL (1).pdf; Oregon National Register Rules_Ian JohnsonI.pdf

Please find attached my comments on the proposed rulemaking. I have also attached

Thank you,

Kirk Ranzetta

MARSHALL Janelle * OPRD

From: Kirk Ranzetta <kranzetta@gmail.com>
Sent: Monday, September 14, 2020 4:57 PM
To: PUBLICCOMMENT * OPRD; JOHNSON Ian * OPRD
Subject: Re: Comments on the proposed rules (OAR 736, Division 50) governing the state's processing of National Register nominations

I have also attached an appeal filed by the Eastmoreland Neighborhood Association in 2017 that is referenced in my comments on the proposed rule.

On Mon, Sep 14, 2020 at 4:54 PM Kirk Ranzetta <kranzetta@gmail.com> wrote:
Please find attached my comments on the proposed rulemaking. I have also attached

Thank you,

Kirk Ranzetta

Eastmoreland Neighborhood Association

February 9, 2018

VIA US MAIL AND EMAIL

J. Paul Loether
Chief, National Register/National Historic Landmarks and
Keeper of the National Register
National Park Service
1849 C Street, N.W.
Washington, D.C. 20240
Email: paul_loether@nps.gov

**RE: Eastmoreland Historic District, Reference Number: MP1000012S6
Appeal of Administrative Decisions Pursuant to 36 CFR 60.12**

Dear Mr. Loether:

This letter is an appeal submitted by the Eastmoreland Neighborhood Association (“ENA”) under 36 CFR 60.12(a) for the failure of Oregon’s State Historic Preservation Officer (“SHPO”) to nominate a property recommended by the Oregon State Advisory Committee on Historic Preservation (“SACHP”), and the failure or refusal of the Oregon SHPO to subsequently nominate a property that the ENA considers to meet the National Register Criteria for Evaluation. The ENA is the nominating party for the Eastmoreland Historic District (“EHD”), reference number MP1000012S6. The ENA requests that the National Park Service (“NPS”) sustain this appeal and immediately command the Oregon SHPO to submit the nomination to the Keeper within 15 days because the nomination has substantively complied with all of the procedural requirements under 36 CFR 60.6.

Over the course of nearly one year, the Oregon SHPO has caused numerous points of confusion, failed to make required decisions, and caused unreasonable and possibly unending delay with procedural irregularities. The EHD nomination had been previously submitted to the Keeper on May 15, 2017, however the Oregon SHPO requested its return due to “procedural problems” related to the office’s inability “to provide a reliable list of property owners eligible to object to the proposed listing as required in 36 CFR60.6(g).”¹ After the Oregon SHPO requested that the Nomination be returned from NPS, the Nomination was removed from the stipulated regulatory timeframes for processing the form, thereby creating a de facto refusal to nominate the EHD. To this date, the Oregon SHPO has not returned the Nomination to NPS and continues to offer no

¹ Exhibit 1: Memorandum from Ian Johnson, OR SHPO to J. Paul Loether, National Register Chief, May 15, 2017.

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indications of timeframes for resubmission, or demonstrate the authority under federal statute to continually delay the Nomination submission.

The origin of the potentially unending delay is the inability of the Oregon SHPO to count objections to the EHD nomination. This is a required basic function of the SHPO in processing any nomination to the National Register of Historic Places (“NRHP”). The failure to make required basic decisions² in the nomination process exposes institutional inadequacies and frustrates the purpose of the NRHP program in Oregon. Moreover, it calls in to question the competency of the Oregon SHPO in any Nomination previously submitted, or moving forward because the Oregon SHPO has demonstrated that it cannot competently count objections to NRHP nominations. Such programmatic inadequacies should warrant review in accordance with the NPS-administered Historic Preservation Fund (“HPF”) grant program.

Because the Oregon SHPO is operating outside of the procedures outlined in 36 CFR 60 and has failed to make a decision on the objection count, we request that the Nomination be returned by the Oregon SHPO to NPS within 15 days of the end of the appeal period. We are attaching an analysis of the objection count with all publicly available information that demonstrates a majority of owners do not object to the EHD.

1. Background and Satisfaction of Procedural Requirements under 36 CFR 60.6.

The EHD nomination has met all of the procedural requirements under 36 CFR 60.6. Below is a basic timeline supplied on the Oregon SHPO website³:

May 26, 2016 – SHPO attended a meeting sponsored by the Eastmoreland Neighborhood Association in Portland to answer questions about the National Register process.

November 1, 2016 – Eastmoreland Historic District nomination submitted for initial review on behalf of the nomination proponent.

December 15, 2016 – Public notice published in The Oregonian announcing the availability of the official draft of the Eastmoreland Historic District nomination; draft available on this website. Notarized objections to the historic district may now be submitted to the SHPO.

December 15, 2016 - Written notification of the upcoming SACHP meeting and copies of the draft nomination provided to the City of Portland and preparers.

December 20, 2016 – Public notice published in the Portland Tribune announcing the availability of the official draft of the Eastmoreland Historic District nomination.

² “Upon receipt of notarized objections respecting a district or single private property with multiple owners, it is the responsibility of the State Historic Preservation Officer to ascertain whether a majority of owners of private property have objected.” 36 CFR 60.6(g).

³ <http://www.oregon.gov/oprd/HCD/NATREG/Pages/Eastmoreland-Historic-District.aspx>

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February 6, 2017 - Press release sent to local print, radio, and TV news outlets announcing the upcoming SACHP meeting on the Eastmoreland Historic District nomination, including The Oregonian.

February 16, 2017 – Tour of the proposed Eastmoreland Historic District held for the benefit of the SACHP. The public is invited, but must provide their own transportation.

February 17, 2017 – The SACHP meets to consider the proposed Eastmoreland Historic District nomination. (Note that the draft agenda is subject to change).

May 15, 2017 – The nomination document is sent to the National Park Service. The Oregon State Historic Preservation Office (SHPO) sent the National Register of Historic Places nomination document for the proposed Eastmoreland Historic District (District) to the National Park Service (NPS) with a recommendation not to list the District due to procedural problems.

* * * * *

June 30, 2017 – Close of the National Park Service’s consideration period.⁴

July 5, 2017 – National Park Service sends notice dated June 30, 2017 to the Oregon SHPO that the agency is returning the nomination for "procedural errors" related to the agency's May 15th recommendation.

August 2017 -- In August, the State Historic Preservation Office asked the National Park Service for clarification on the agency's procedures for resubmitting the nomination for the proposed Eastmoreland Historic District to the National Register of Historic Places. The agency has now provided a response. The Oregon Department of Justice is reviewing the letter and will consider it when answering the questions regarding counting owners and objections submitted in August 2017.⁵

The Oregon SHPO consulted with local authorities during the nomination process and received feedback from the Portland Landmarks Commission on February 17, 2017.⁶ (36 CFR 60.6(b)). “The Oregon SHPO opened the notice period on December 15, 2016 with the posting of a public notice in the Oregonian, a general-

⁴ The Oregon SHPO’s website incorrectly states June 30, 2017 as the end of the consideration period. As noted in the NPS NRHP “Evaluation/Return Sheet” dated June 30, 2017, July 3, 2017 marks the 45th day. It should also be noted that July 3, 2017 marked the 15th day after the June 18, 2017 publication date in the *Federal Register*.

⁵ <http://www.oregon.gov/oprd/HCD/NATREG/Pages/Eastmoreland-Historic-District.aspx>

⁶ Exhibit 2: City of Portland Historic Landmarks Commission Comments dated Feb. 16, 2017.

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circulation newspaper.”⁷ (36 CFR 60.6(d)). The Oregon SHPO and the State Advisory Committee on Historic Preservation both agreed that the EHD was eligible for the NRHP under criterion A and C, and that the form is technically correct and adequately documented.⁸ (36 CFR 60.6(i)-(j)). The SHPO had all of the objections at the time of submission to NPS on May 15, 2017 and failed to take a required action of tallying the objections (36 CFR 60.6(g)). Notice was published in the *Federal Register* on June 28, 2017.⁹ (36 CFR 60.6(q)). The Nomination was not recommended for listing *only* because the Oregon SHPO failed to render a decision on objection counts.¹⁰

All of the procedural requirements for listing the EHD nomination have been fulfilled including publication, technical sufficiency, and receiving commentary at the federal level. Despite having known about its procedural issues for months,¹¹ only at the eleventh-hour did the Oregon SHPO request the return of the Nomination prior to the close of the NPS commentary period. When asked by the Oregon DOJ if assistance was needed to resolve this questions in March, the SHPO indicated that they did not. Because the procedural requirements have been demonstrably met, after sustaining this appeal, the NPS should demand the Nomination be returned to NPS for listing in the NRHP.

2. Oregon SHPO Refusal and Failure to Nominate the EHD recommended by the Oregon State Advisory Committee on Historic Preservation.

Under 36 CFR 60.12(a),

“Any person or local government may appeal to the Keeper the failure or refusal of a nominating authority to nominate a property that the person or local government considers to meet the National Register criteria for evaluation upon decision of a nominating authority to not nominate a property for any reason when requested pursuant to § 60.11, or upon failure of a State Historic Preservation Officer to nominate a property recommended by the State Review Board.”

The Oregon State Advisory Committee on Historic Preservation unanimously recommended the Nomination for listing in the NRHP on February 17, 2017.¹² There was no disagreement on the merits of the Nomination as the SACHP noted that it met the NRHP Criteria for Evaluation. Furthermore, the Oregon SHPO concurred with the

⁷ Exhibit 3: Comments by Christine Curran, National Register of Historic Places Continuation Sheet Section number Additional Documentation Page 1. (The total number of owners provided to NPS was 2,074) *Id.*

⁸ *Id.*; National Register of Historic Places Registration Form dated May 15, 2017.

⁹ 82 Fed. Reg. 29322 (June 28, 2017).

¹⁰ Comments by Christine Curran, National Register of Historic Places Continuation Sheet Section number Additional Documentation Page 1.

¹¹ See Exhibit 4: Email from Ian Johnson to Patricia Brandt dated April 11, 2017. Exhibit 5: The SHPO was quite confident in their methodologies as displayed in an email from Ian Johnson to Christine Curran, dated April 25, 2017, yet this determination substantially changed.

¹² Exhibit 6: Oregon State Advisory Committee on Historic Preservation Meeting Minutes at 9.

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SACHP's finding and attested that "the form was technically correct and the District properly documented."¹³ In spite of the SACHP's recommendation, the Oregon SHPO removed the Nomination from the regulatory framework and created a *de facto* failure to nominate the EHD through potentially unending delay. When the Oregon SHPO requested the return of the Nomination in June, 2017, it unilaterally removed the Nomination from the strict timelines required in 36 CFR 60.6. There is no procedure or timeline for a Nomination requested to be voluntarily returned to the SHPO from NPS. Since the Nomination's return on July 5, 2017, there has been little action moving this Nomination forward or making a decision on the objection count. The Oregon SHPO has engaged in unreasonable and interminable delay and has yet to commit to any timeline and assigning blame to the failure of their legal council to provide direction. The Oregon SHPO is causing harm to the National Register's federal regulatory scheme for nominations and the ENA.

Ian Johnson, Deputy SHPO, has repeatedly communicated the indefinite nature of the delay by removing the Nomination from the regulatory timelines.¹⁴ SHPO Christine Curran has echoed a similar message of unknown timeframes and indeterminate delay.¹⁵ Only recently on January 22, 2018 has the Oregon SHPO stated they have made progress and will be providing a process and new timelines within the coming weeks.¹⁶ Nearly eleven months after identifying issues surrounding objection counting in March 2017, little "progress" been made of coming to some form of process resolution. Following the return of the nomination in July, the Oregon SHPO submitted questions to the Oregon Department of Justice sometime in August of 2017. The DOJ sent an initial response at the end of January 2018, and according to the SHPO, they are conducting ongoing discussions with the DOJ. Based on these extraordinary patterns of delays, NPS should have no reason to anticipate that the Oregon SHPO is acting in good faith on their representations.

Moreover, the Oregon SHPO has been either haphazardly incorrect in their communications, or has been intentionally misleading. First, a July 5, 2017 email from Assistant Deputy SHPO Ian Johnson stated:

"Today I received a brief email from NPS Chief Paul Loether stating that NPS will 'return' the nomination for the proposed Eastmoreland Historic District. Meaning that NPS is not listing the District in the National Register at this time. There was no reason or explanation given, and no direction on next steps."¹⁷

¹³ Comments by Christine Curran, National Register of Historic Places Continuation Sheet Section number Additional Documentation Page 1.

¹⁴ See attached emails from Ian Johnson dated August 24, 2017 (Exhibit 7), August 25, 2017 (Exhibit 8), December 1, 2017 (Exhibit 9).

¹⁵ See Exhibit 10: Letter from Christine Curran to Brian Sheets dated October 30, 2017.

¹⁶ See Exhibit 11: Email from Ian Johnson dated January 22, 2018.

¹⁷ Exhibit 12: Email from Ian Johnson dated July 3, 2017.

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The truth was that the Nomination was returned because the Oregon SHPO requested its return, yet implied to the recipients of the email that he was unaware of the reason. Then, Mr. Johnson analyzed the next steps for “resubmission” in an August 25, 2017 email:

“When NPS returned the nomination on June 30th that step concluded the nomination process. Under the federal regulations, if the proponents want to pursue listing for the Eastmoreland Historic District the nomination must be ‘resubmitted’ to NPS for reconsideration. The resubmission is a new, separate review. For anyone who is interested the process is outlined in 36CFR60.6(w).”¹⁸

36 CFR 60.6(w) relates to major revisions by the State, or the re-nomination of a property rejected by the Keeper. Neither of these situations apply to what the Oregon SHPO requested: the return of the Nomination because they failed to count objections. The Keeper did not reject the Nomination, and there were no major revisions. Nonetheless, Mr. Johnson informs interested parties that there needs to be an entirely new submission through invoking 36 CFR 60.6(w) that the Nomination had been rejected. Mr. Johnson’s erroneous statement is not insignificant as he states the agency’s opinion on the applicable federal regulations (usually the domain of NPS) that the nomination would have to be entirely redone and go through the regulatory process again. At no time did Mr. Johnson confirm with NPS the accuracy of his interpretation of federal regulations nor did he apparently read the actual return documents. As a matter of record, NPS subsequently made clear that the return was subject to 36 CFR 60.6(r) and that the nomination only needed be corrected for listing in the National Register.¹⁹

An additional moment of regulatory imprecision occurred when NPS returned the nomination to the Oregon SHPO and stated that it was returned due to a “procedural error regarding property owner notification and requested the nomination be return for correction.”²⁰ This was simply not the case. The Oregon SHPO went above and beyond the notice publication requirements for historic districts of over 50 properties. Instead, the true reason was that the Oregon SHPO had failed to count objections to the HD as required by 36 CFR 60.6(g).²¹ The Nomination was returned by NPS under false pretenses. The agency later admitted the error by clarifying the specific reasons for the nomination’s return four months later (which did not include an error related to public notice), but not before contributing to the significant delay and confusion to the entire process.²²

¹⁸ Exhibit 8: Email from Ian Johnson dated August 25, 2017.

¹⁹ Exhibit 15. Letter from J. Paul Loether to Mr. Ian P. Johnson dated November 15, 2017.

²⁰ Exhibit 1: NPS Comments Evaluation/Return Sheet dated June 30, 2017.

²¹ See Exhibit 7: Email from Ian Johnson dated August 24, 2017 (“Before moving forward the SHPO must determine how to count owners and objections and identify what the next steps are.”).

²² Exhibit 15. Letter from J. Paul Loether to Mr. Ian P. Johnson, dated November 15, 2017.

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The stance embraced by the Oregon SHPO has the potential to undermine the entire National Register program in Oregon as it highlights how the State of Oregon can abuse a federal regulatory scheme to ensure that a nomination is never ruled upon by NPS, thus depriving the nomination's proponents of due process and amounting to the "interminable delay" that the ENA first foretold in a letter dated May 23, 2017.²³ This eventuality is clearly not envisioned in 36 CFR Part 60 that provides very specific timelines for decision making, and does not afford the SHPO the discretion to either delay or not verify whether a majority of property owners have objected to the nomination. Rather, the regulations impose a duty on the Oregon SHPO who chose not to do so, in essence sending the Nomination into administrative purgatory.

The arbitrary process conducted by the Oregon SHPO has harmed and continues to harm the ENA, the historic district, as well as individual property owners through the Oregon SHPO's failure to determine number of objections to the NRHP. The ENA has spent in excess of \$50,000 on the nomination process, and partnered with its consultant team, City of Portland agencies, and innumerable hours of volunteer time, the ENA has met and exceeded every requirement and every timeline. Despite this effort by the nominating party, the Oregon SHPO continues to delay this Nomination, and it is unclear whether the Oregon SHPO is competent or willing to make a decision. The SHPO has made it clear through statements that if too much time were to elapse, the efficacy of the nomination may be diminished such that it may need to be revised and resubmitted even as the Oregon SHPO continues to be solely responsible for delaying the nomination.²⁴ The amount of time and the money needed to possibly resubmit the nomination would cause additional harm to the ENA, and is solely caused by failures at the Oregon SHPO. The proposed historic district is also being actively deprived of the federal protections and potential federal benefits, including the federal rehabilitation tax credit program, afforded by eligibility or listing in the NRHP through 36 CFR Part 800. In addition, the neighborhood's contributing resources are deprived of local protections such as demolition review that would be afforded by the City of Portland should the listing of the district in the NRHP be approved by NPS as well as eligibility for Oregon's Special Assessment program.

Between the communication and process errors and unending delays, the Oregon SHPO has displayed a pattern of incompetence or prejudice, or some combination of these in managing the proposed EHD. Because of this, we request that the NPS treat the potentially unending series of delays as an inability, failure, or a refusal by the Oregon SHPO to list this eligible property to the NRHP.

²³ Exhibit 16: Letter from Jeffrey L. Kleinman to J. Paul Loether, dated May 23, 2017.

²⁴ Exhibit 8: Email from Ian Johnson to Liz Dexter dated August 25, 2017.

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3. Oregon SHPO Failure and Refusal to Nominate the EHD that the ENA Considers to Meet the National Register Criteria

The ENA considers the Nomination to meet the National Register criteria A and C. The Oregon SHPO similarly considers the Nomination to meet criteria A and C.²⁵ Under 36 CFR 60.12(a),

“Any person or local government may appeal to the Keeper the failure or refusal of a nominating authority to nominate a property that the person or local government considers to meet the National Register criteria for evaluation upon decision of a nominating authority to not nominate a property for any reason when requested pursuant to § 60.11 . . .”

The Oregon SHPO made the recommendation not to list the EHD because the Oregon SHPO abdicated their duty to count owners and qualifying objections under 36 CFR 60.6(g). Then, the Oregon SHPO made the decision to request the return the Nomination because of “procedural problems.” These decisions are separately and collectively significant in demonstrating a failure and refusal to nominate a property after the ENA requested nomination pursuant to 36 CFR 60.11 by submitting a completed application for the nomination of the EHD. For the reasons discussed above in section 2 of this letter demonstrating unreasonable delay and misinformation, the Oregon SHPO has failed, or refuses, to nominate the EHD to the NRHP.

Because the Oregon SHPO has failed, or refused to nominate a property that the ENA, SACHP, and even the SHPO itself considers to meet the National Register criteria, the NPS should sustain this appeal and demand that the Oregon SHPO return the Nomination within 15 days of the end of the appeal period for listing in the NRHP.

4. Objection Counting Analysis.

Upon submission of the Nomination to NPS, the Oregon SHPO included in a memo to the Keeper a tally of the property owners and objections that the office had received. In the memo, the Oregon SHPO stated:

“Using a list of property owners provided by the City of Portland on November 18, 2016 from the Multnomah County Tax Assessor as required in 36.CFR60.6(g) and counting private property owners and objections as described in this section, the Oregon SHPO compiled an initial list identifying 2,600 property owners. In consultation with the Multnomah County Tax Assessor and National Park Service staff, the Oregon SHPO reduced the total number of owners to 2,252 in response to inquiries by the public regarding determining ownership as it relates to trusts, deceased persons, and other issues. On April 24, 2017, the office received a new property list from the County Assessor and further refined the total number of property owners to 2,074.

²⁵ Exhibit 3: Comments by Christine Curran, National Register of Historic Places Continuation Sheet Section number Additional Documentation Page 1.

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As of 4:00pm on Monday, May 15th, our office received 925 notarized objections where the owner name and address matched the assessor records, an additional three objections where the owner(s) name(s) on the submitted objection differed from the tax records, and 13 objections from property owners outside of the proposed district boundaries.

Because federal regulations require that all submitted notarized objections for properties within the proposed boundary of a nominated district be counted, we count a total of 928 objections.”²⁶

Simple math would demonstrate that 50% of 2074 property owners results as 1037 property owners, requiring 1038 property owners to object to be a simple majority objecting. The Oregon SHPO calculated 928 objections, resulting in 110 objections short of a simple majority objecting to listing the EHD in the NRHP. Nonetheless, the Oregon SHPO determined that “[a]s of the date of this memo, the Oregon SHPO finds that due to procedural problems in the tallying of property owners within the District, our office cannot at this time provide a reliable list of property owners eligible to object to the proposed listing as required in 36 CFR 60.6(g).”²⁷

At no point in any of the Nomination processing has the Oregon SHPO released any justification or methodology explaining a need for alternative analyses whereby any amount of objections could be considered in flux, or would be able to overcome a simple majority. Because of this inability to come to a concrete decision, we have compiled an analysis of the count according to NPS guidelines and have even afforded for an approach least favorable to the establishment of the EHD. Under both approaches, the objections fail to meet a simple majority. The analysis and report is attached to this letter and titled “Eastmoreland Historic District Objection and Rescission Analysis,” dated January 21, 2018, and includes data provided to July 3, 2017. This analysis includes all publicly available information on the objections, rescissions, and property count listings. In summary, the following table explains the summary of the three methods of counting property owners and objections, and by all methods employed, the objections fail to reach a simple majority:

Scenario	Cumulative Net Objections	Total Owners	% Objecting
Most Favorable to EHD	903	2,074	43.5%
Suggested Approach	970	2,068	46.9%
Least Favorable to EHD	1,059	2,147	49.3%

NPS should also fix the date for objection submissions to the original cut off of the comment date after publishing in the National Register: July 3, 2017. There is no justification for extending the objection date beyond the federally allowed commentary period, and the hijacking of the process by the Oregon SHPO should

²⁶ Exhibit 13: Memorandum from Ian Johnson to J. Paul Loether dated May 15, 2017.

²⁷ *Id.*

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not include the added benefit of increased time to tirelessly solicit additional objections and reconfigure property ownership in trusts to increase owners and objections. Indeed, the only benefit to the increased and nearly open-ended timeline for submitting objections is to sink the Nomination and submit consenting property owners to increased pressure to object.

36 CFR Part 60 sets important benchmarks and hard times in submitting objections, and 36 CFR 60.13 provides for a 15-day commenting period that may be shortened or waived to assist in the preservation of historic properties. The regulations do not allow for an indefinite commenting period, nor does the implication of granting commenting waivers or shortening commenting periods to preserve historic properties allude to a desire to have open-ended objection timeframes. Extending the commenting and objection timeline beyond July 3, 2017 would violate 36 CFR 60.13 and a decision to extend the objection timeline would be arbitrary, capricious, and not in accordance with the law under the Administrative Procedures Act, 5 USC § 706(2)(A), and without observance of procedure required by law. 5 USC § 706(2)(D).

Based on the analysis of the objections and property lists, the objections would fail to meet the simple majority threshold required to prevent the nomination of the EHD to the NRHP. Attempts to increase the objection period are contrary to law, and therefore the objection period closed on July 3, 2017.

5. Oregon SHPO Grant Funding Implications.

The State of Oregon, through the Oregon State Historic Preservation Office, receives grant funding from the federal Historic Preservation Fund (“HPF”) that is allocated from the United States Congress on a yearly basis. The fund is administered by NPS. The National Park Service, through a collaborative federal and state relationship embodied in the NHPA, certifies the National Register program of each SHPO in the United States and ensures that the SHPO NRHP programs are operated consistently with the NHPA while also ensuring that the HPF are used for programs in an appropriate manner. If a SHPO, or the state for that matter, acts inconsistently with the NHPA in the implementation of this federal program, NPS has the discretion and regulatory responsibility to initiate an investigation into any financial or regulatory deficiencies and require substantive remedies. This most recently occurred when the NPS, after a review by the Department of Interior Office of Inspector General (“OIG”), initiated a Corrective Action Plan to rectify several SHPO program deficiencies in the State of Hawaii identified during state and federal audits.²⁸ As this example points out, NPS has the unique oversight role and can recommend the withholding of non-discretionary HPF funds if program deficiencies are not rectified within a reasonable amount of time. The NPS retains the administrative gravitas, therefore, to compel action by the State of Oregon in order to resolve the ongoing delays that the state continues to propagate in the EHD nomination process.

²⁸ 36 CFR 61.4; 43 CFR 12.83; *see also* <http://dlnr.hawaii.gov/shpd/files/2013/08/NPS-CAP-Final-Review-May-2013.pdf>

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The implications of this appeal are not inconsequential as the administrative delay and uncertainty concerning the counting of property owners by the State of Oregon, in the words of the SHPO, is “relevant to the entire National Register program and other active projects.”²⁹ This ongoing harm to the regulatory scheme was recently accentuated by SHPO as it presaged delays to future nominations. The SHPO noted that for nominations where “opponents are close to attaining a simple majority, we [SHPO] are recommending that the proponents hold off on official submission until the questions regarding counting owners and objections are resolved.”³⁰ Furthermore, if future applicants do submit a nomination with substantive opposition, the SHPO “would not be able to provide any certainty about the process.”³¹ As NPS can see, the attenuation of the Eastmoreland Historic District nomination decision has left the process in tatters as the ongoing agency actions are devoid of structure, *ad hoc*, and lacking precedent. The creation of differently tiered consideration for nominating historic properties based on perceived support or opposition leaves the Oregon SHPO in a process outside of the federal regulations, and subject to the creation of non-existent standards as created in the minds of the personnel in the Oregon SHPO office. These acts are without any basis in law, and demonstrate severe deficiencies within the Oregon SHPO.

The Oregon SHPO has failed to differentiate how the proposed EHD is different or unique from any other historic district nomination that would require balking at its regulatory responsibility to count property owners and certify objections to NPS. For example, the Oregon SHPO forwarded to the Peacock Lane Historic District and the Redmond Downtown Historic District nominations to NPS for listing on the NRHP, resulting in their listings on October 30, 2017.³² These historic districts faced the same dilemma of identifying property owners and certifying objections at the same time as the Oregon SHPO was claiming that it could not determine basic property ownership issues in identifying owners within other historic district nominations. Within the past eight years and prior to Eastmoreland’s listing effort, the SHPO had no difficulty in certifying listings of large historic districts including Irvington (2,900+ properties) and Oak Hills (600+ properties) while also certifying the objections for the North Buckman Historic District (420 properties) that resulted in the district not being listed. SHPO has not offered any justifiable reason for its failure to count property owners with one nomination when it had easily done so with other historic district nominations. Moreover, the Oregon SHPO has suggested a two-tiered approach in an October 24, 2017 email based on their current inability to determine ownership issues:

“Anyone can submit a nomination as before. For those submitting district nominations we are recommending that they make sure that they have strong support for the nomination. We currently have two district nominations, Peacock Lane, Portland, and the Downtown Redmond

²⁹ Exhibit 7: Email from Ian Johnson dated August 24, 2017.

³⁰ Exhibit 14: Email from Ian Johnson to Kirk Ranzetta dated October 24, 2017.

³¹ *Id.*

³² 82 Fed. Reg. 47249-50 (Oct. 11, 2017).

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Historic District that have gone through the process since the questions about the nomination for the proposed Eastmoreland Historic District were raised. We expect both districts to be listed soon. Both have strong community support.

In cases where the opponents are close to attaining a simple majority, we are recommending that the proponents hold off on official submission until the questions regarding counting owners and objections are resolved. The concern here is that if an opposition group could get reasonably close to the simple majority threshold that they could cite the issues raised in the Eastmoreland nomination process to claim that the SHPO cannot recommend the district for listing. Ultimately, if the proponents for a district want to take the risk, they can go forward with the nomination process. However, we would not be able to provide any certainty about the process.”³³

This is an *ad-hoc* creation of a two-tiered nomination process based on perceived support of a nomination and the SHPO’s inability to implement their responsibilities under the federal regulations. Perceived support is not a standard in the federal or state regulations, and the risk created for other nominations is a creation of the SHPO’s own administrative failures. None of what is suggested above is necessary if the SHPO had not waived in the EHD nomination process. It plainly demonstrates that the Oregon SHPO is incapable of handling the NRHP program in Oregon.

Either there are undisclosed political reasons for treating this historic district nomination differently from prior nominations, or the Oregon SHPO is plainly not capable of administering the NRHP program in the Office’s current capacity. Because of the Oregon SHPO’s failure to perform a basic responsibility in administering the NRHP in Oregon, the ENA is deliberating whether to request an investigation by NPS and Office of Management and Budget pursuant to Chapter 22(D)(1) of the HPF Grant Manual for failing to meet the obligations of the State SHPO under Chapter 3(B)(2)(a)(2)³⁴ and Chapter 3(B)(2)(b).³⁵ Through the repeated delays caused by failing to perform the regulatory duty of counting property owners and certifying objections in the EHD nomination, the Oregon SHPO failed to nominate eligible properties and demonstrates a lack of internal controls and evaluation procedures necessary for implementing the NRHP in Oregon. The ENA believes that a properly monitored Corrective Action Plan could improve communication between NPS and SHPO and provide regulatory guidance and training about the historic district process in 36 CFR Part 60 while providing remedial oversight over the NRHP program for several years.

³³ Exhibit 14: Email from Ian Johnson to Kirk Ranzetta, dated Oct. 24, 2017.

³⁴ “(2) Nominating eligible properties to the National Register.”

³⁵ “The State Historic Preservation Officer shall ensure that the State Historic Preservation Office has adequate internal program and accounting controls, personnel standards, property management standards, evaluation procedures, availability of in-service training and technical assistance programs, and other policies as may be required by the terms of the grant, the Historic Preservation Fund Grants Manual, or other NPS regulations, that are necessary for program efficiency and effective, proper use of HPF funds.”

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6. Conclusion

The Oregon SHPO has failed or refused to nominate the EHD as recommended by the Oregon State Advisory Committee on Historic Preservation by causing unreasonable delay. Additionally, the Oregon SHPO has failed or refused to nominate the EHD that the ENA considers to meet the criteria for listing in the NRHP. Both of these failures and refusals to act were caused by the Oregon SHPO failing to meet its non-discretionary regulatory duty in counting property owners and counting objections. The Oregon SHPO has not begun to count property owners and objections since the Nomination was submitted in May of 2017, or after its return in July 2017.

Despite the length of time and a clearly identified deficiency, the Oregon SHPO has only recently announced any progress, after nearly a year since the Nomination was brought before the State Advisory Committee for Historic Preservation. Since the Oregon SHPO will not provide a property and objection count, we have provided an analysis that shows that the objecting owners do not constitute a majority of the EHD property owners. During this nomination process, the Oregon SHPO has given misleading information to the nominating party, has arbitrarily extended the objection period for this Nomination, and is creating unprecedented procedures and standards out of thin air for processing the Nomination further. For all of these reasons, the NPS should sustain this appeal and demand that the nomination be returned to NPS within 15 days from the conclusion of the appeal period. We look forward to your response.

Sincerely,

Rod Merrick
President,
Eastmoreland Neighborhood Association

Enclosures.

Ian Johnson
Associate Deputy State Historic Preservation Officer
Oregon State Historic Preservation Office
Oregon Parks & Recreation Department
ian.johnson@oregon.gov
&
Members of the Oregon Parks and Recreation Commission

RE: Draft Historic Resources Administrative Rules, OAR 736, Division 50

Dear Mr. Johnson and to Members of the Oregon Parks and Recreation Commission (Commission),

Pursuant to the original solicitation for public comments issued on July 1, 2020 to amend and adopt rules associated with the State Advisory Committee on Historic Preservation (SACHP), more specifically the provisions contained in Oregon Administrative Rules (OAR 736-050-0220 to 0270), I am providing these comments to assist the Commission

Overall, I have several significant concerns about the development of these rules by the State of Oregon as I believe that several of the proposed changes exceed the authorities delegated to the State under the National Historic Preservation Act of 1966 (54 U.S.C. § 300101 et seq.) as implemented in 36 Code of Federal Regulations (C.F.R.) Part 60 and further guided by *The National Register of Historic Places Regulations (36 CFR Part 60): A Brief History and Annotated Guide* published National Register of Historic Places (NRHP) staff in 2012. As I will outline below, the proposed changes

- 1) openly conflict with the procedural requirements outlined in 36 C.F.R. Part 60;
- 2) seeks to preempt federal statutes and regulations by supplementing the existing federal regulatory scheme with more stringent, costly, and arbitrary state regulations and deliberately attenuated timelines; and
- 3) clearly intends to interfere with the success of the federal regulatory process by seeking to institutionalize clear violations of the federal Administrative Procedures Act (APA) (5 U.S.C. § 551 et seq.)

Background

As the Commission may know, the Oregon SHPO is a recipient of monies from the federal Historic Preservation Fund (HPF). The HPF was partially intended to fund certain activities performed by SHPOs under the provisions of the NHPA when it was authorized in 1976 under Public Law 94-422. One of those activities is to administer the NRHP program at the state level. As the grantee, the state must conduct its activities in compliance with the NHPA, 36 CFR Part 800, and the Historic Preservation Fund Grant Manual (2007). As the recipient and thus grantee of these federal funds (which are administered by the National Park Service (NPS)) SHPOs must comply with applicable federal statutes, regulations, and federal grant assurances or risk sanctions for noncompliance (see HPF Grant Manual Chapter 22). While it is not under the Commission's purview, I strongly urge the Commission to work closely with the

National Park Service staff and the Department of Interior's Office of the Solicitor to ensure that nothing within the proposed state regulations conflict, interferes, or confounds the processes and procedures found in the applicable federal statutes and regulations.

A letter with similar content is being drafted for submittal to the Secretary of the Interior's Office of the Solicitor, Advisory Council on Historic Preservation, and the National Trust for Historic Preservation. I believe that these administrative rules, if they were to be approved by the Commission, would set an unseemly precedent. As I will demonstrate below, the revised provisions of the OARs provide a fertile environment for developing regulatory standards that exceed the state's authority under the NHPA, could cause NPS to violate the federal APA, and potentially violate the HPF grant requirements.

Poor Federal Statute Regulatory Citations

Please note that the citations within the proposed rule that refer to federal statutes and regulations should be reviewed for consistency. At times they refer to the NHPA under its old citation (16 U.S.C. § 470 et seq.) and sometimes under its new citation (54 U.S.C. § 300101 et seq.). I would recommend using the newest citation consistently throughout the document.

CLGs are Granted Powers and Authorities Not Otherwise Granted by the NHPA or State/Local Enabling Statutes

Under 54 U.S.C. § 302504, Certified Local Governments (CLGs), which consist of the local historic preservation commission and the Chief Elected Official (CEO), retain certain responsibilities within the National Register process that are also discussed in the proposed state rule under 736-050-0250 (10). Under the federal statute 54 U.S.C. § 302504 (b),

The local historic preservation commission, after reasonable opportunity for public comment, shall prepare a report as to whether the property, in the Commission's opinion, meets the criteria of the National Register. Within 60 days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and the recommendation of the local official to the State Historic Preservation Officer.

Unfortunately, the revised rule greatly broadens the discretion of the CLGs. First it allows, the local historic preservation commission and the CEO to "object" to nominating a historic resource within their jurisdiction and notes that "the local landmarks commission may find that the historic resource is eligible for listing in the National Register but not recommend that it be nominated to the National Register." This expansion of the local landmarks commission's discretion is clearly not afforded in the federal statute as the sole recommendation it makes in this matter is whether the resource "meets the criteria of the National Register." Furthermore, the arbitrary nature of a local commission's discretion here clearly subverts the NRHP program as it allows for completely immaterial political intrigue to replace clear criteria that a resource either meets or does not meet.

Furthermore, as became clear during the revision to previous state rules regarding the protection of National Register-listed properties by the state, a survey of CLGs by the Oregon SHPO revealed that few

maintained updated local ordinances. Most local ordinances have not created enabling legislation that allow local commissions to “object” to a National Register nomination but instead only allows them to “review” nominations (see for instance Portland City Code Title 33 pertaining to the Portland Historic Landmarks Commission).

Local commissions must be granted sufficient land use authority under their existing ordinance because if they are afforded the regulatory opportunity to make an objection (as opposed to merely a recommendation) their objection, once combined with the objection of the local government official, would potentially serve as a final land use decision as it would trigger the dropping of the nomination by the SHPO and thus deprive the property of certain land use protections. I recommend that this rule be revised to ensure that it is consistent with the United States Code as well as the state land use enabling statutes and regulations and that these excessive CLG powers be voided.

Lastly, a provision should be added to ensure that the nomination proponent is notified as to their options for appeal if a CLG and CEO recommend that the historic resource is not eligible. Just because the local commission and/or the CEO recommend against nominating doesn’t mean the process necessarily “stops”. As noted under 54 USC § 302504(c)(2), the preparer should be provided official notice of their appeal options under 36 CFR Part 60.

Incremental Reductions in a Historic District’s Integrity

OAR 736-050-0250 (18)(d) permits the changing of “the contributing status of a secondary historic property such as garage, shed, or other small-scale building, structure, object, or site that in the opinion of the SHPO does not qualify for listing in the National Register on its own merit included within the boundary of a historic property; “ Rather than allowing the SHPO the ability to blow off outbuildings within a district, it should be incumbent upon the SHPO to ascertain whether the historic property contributes to the significance of the overall district. Furthermore, the National Register does not relegate these outbuildings necessarily to “secondary” status as they may actually be a part of why the district was listed in the National Register. To pick apart smaller buildings within a district and say they are not each individually eligible is an obvious and easy prelude to their destruction and contradicts with NPS guidance on the listing and significance of Historic Districts (See NR Bulletin “Guidelines for Completing National Register of Historic Places Forms”(1997)). This provision should be removed as it openly contradicts National Register guidance. If it is retained, I recommend the regulations stipulate that the SHPO make an assessment on the overall historical integrity of the district and whether the decision to change the contributing status of the resource would have an impact on the larger eligibility of the district.

Institutionalizing the State of Oregon’s Preemption of Federal Regulatory Timelines and Decision-Making Authority

OAR 736-050-0250 (20) is clearly intended to interfere with the success of the federal regulatory process as spelled out in 36 CFR part 60 because it seeks to institutionalize the adjudication of a state administrative process that would presuppose the prevailing federal timelines for the submitting of a National Register nomination. This provision would effectively place on hold a nomination submitted to

the SHPO under 736-050-0250 (3) and hold it in purgatory while the State of Oregon Office of Administrative Hearings conducts a contested case hearing, contemplates testimony, and then makes a subsequent decision. This now institutionalized step in the state's processing of NRHP nominations would intentionally confound the nomination process as it is entirely unclear when a Hearing would be convened, how long it would take, and how it relates to the larger federal nomination process and its associated timelines. 36 CFR Part 60 does not afford SHPOs the discretion to hold nominations pending the adjudication of state administrative hearings. This provision is also unnecessary and duplicative as OAR 736-050-0250 (19) already stipulates that any person can appeal to the NPS any SHPO decision regarding the nomination of a property to the NRHP (including the decisions SHPO makes under (20a) and (20b)). This ability to issue a federal appeal is based on 54 § U.S.C. 302104(c). If administrative appeals under the federal statute are already permitted, why would the state then attempt to preempt the federal decision-making process with its own administrative appeals process? The final decision on a nomination and its process lies with a federal realm – not with a state agency, commission, nor with a state court.

The motivations behind this step, therefore, is clearly intended to create a procedural defect when the timelines for the prompt review of nominations in 36 CFR Part 60 could not be maintained by the SHPO and NPS while they wait for the administrative hearings process to unfold. It would also provide the SHPO with the power to effectively hold a nomination contrary to the responsibilities it is given in 36 CFR Part 60, thus creating the prospects for unending and ceaseless delay in the timely submittal of nominations to NPS. The Eastmoreland nomination is a case in point as to how a SHPO can self-create a procedural defect and then undertake an extra-legal administrative process that constantly changes the rules for counting property owner objections over a four-year period – all the while accepting up to four other historic district nominations under the existing rules.

While NPS has enabled this behavior through its own game of administrative “hot potato,” the Commission should be reminded that the nomination of properties to the NRHP is at its core a federal process and the State of Oregon would do well to not draft more stringent administrative rules that seek to confound, obfuscate, or restrict opportunities to list a property to the NRHP. The adoption of this rule would create a significant added expense as it would likely require the nomination proponent to retain legal counsel in order to defend its interests before the state's warren of administrative rules and statutes. The insertion of this state administrative hearing process into an otherwise clear federal procedure that already permits appeals to NPS would be an obstacle to the accomplishment and execution of the full purposes and objectives of Congress as envisioned in the National Historic Preservation Act of 1966. The State of Oregon should not be imposing additional legal and regulatory hurdles here and this portion of the rule should be removed.

“Substantive Revision” (OAR 736-050-0250(15)(e)(B) and elsewhere) vs. “Major Revisions”

I encourage the Commission to not attempt to broaden the SHPO's abilities to “stop” a nomination process. Throughout this particular rule, the words “substantive revision” are broadly construed and the SHPO is given broad discretion to ascertain what this means. I encourage the Commission to adopt the term “major revision” instead as it is more appropriately defined in 36 CFR § 60.5(w) as:

revisions of boundaries or important substantive revisions to the nomination which could be expected to change the ultimate outcome as to whether or not the property is listed in the National Register by the Keeper.

Again, by providing a more sweeping ability to redefine the revisions process, the state's regulatory procedures attempt to imbue the SHPO with powers and responsibilities that extend beyond those allocated under 36 CFR Part 60. I would encourage the Commission to review the usage of Substantive Revision/Major Revisions to ensure that it does not unnecessarily afford the SHPO with administrative powers that are not otherwise identified in 36 CFR Part 60.

Nomination Returns and the Associated Substantive Revision

Rule OAR 736-050-0250(15)(e)(B) would allow the SHPO to independently determine whether a nomination needs to go through the Commission review process again. This responsibility is clearly not held with the SHPO as it again attempts to institute a means for unnecessarily lengthening the administrative process in an arbitrary and capricious fashion. This was attempted with the Eastmoreland nomination. When the nomination was first returned to the SHPO on July 5, 2017, the SHPO discerned NPS's return of the nomination as a rejection and then subsequently asserted that the nomination would have to go through the state's process again (Email from Ian Johnson dated July 3, 2017 and August 25, 2017)). This was clearly not NPS's intent as NPS returned the nomination solely because of the state's self-created procedural defect and the state's own request to return the nomination so it could rectify the error. This became even more clear in a letter from the Keeper to Ian Johnson dated November 15, 2017 where NPS clarified that it was returning the nomination under 36 CFR § 60.6(r) as opposed to 36 CFR § 60.6(w) (see also pages 5 and 6 of the 2017 Eastmoreland appeal that have been attached to these comments). This meant that NPS felt the nomination met the National Register Criteria and that the SHPO just needed to fix its procedural error and thus not have the nomination go through the entire state nomination process again.

The language under the proposed rule would ensconce SHPO's discernment as opposed to requiring the SHPO to verify with NPS which of these provisions apply for a nomination that is returned. I would highly recommend that the SHPO be required in the proposed rule to receive written verification from NPS as to whether a nomination returned by the federal agency is returned under the auspices of 36 CFR 60.6(r) and/or 36 CFR 60.6(w).

"Public Interest" Determinations

Located in several places in the proposed rule, the SHPO is afforded the discretion to perform certain actions concerning nominations based on "public interest" determination. The genesis for SHPO's omnipotence in making a "public interest" determination does not appear in the federal statutes and/or regulations (see 736-050-0250(15)(e)(B) and again in 736-050-0250(8)(f) as to whether to process a nomination). Again, the SHPO is not afforded responsibilities by the federal statutes and/or regulations to make "public interest" determinations that are not based on any federal criteria or objective decision making. These determinations are nothing short of political touchpoints that could significantly impact the outcome of a nomination and its passage through the State's hurdle-strewn administrative process.

Public interest determinations are clearly intended to interfere with the success of the federal National Register program in the state and thus preempting the intent of the NHPA.

Thank you for your careful reading of my suggestions.

Sincerely,



Kirk Ranzetta
Architectural Historian

Cc: John M. Fowler, Executive Director, ACHP

Javier Marques, General Counsel, ACHP

Daniel H. Jorjani, Solicitor, USDOJ

Megan Brown, Chief, State, Tribal, and Local Plans and Grants Division, USDOJ

Paul Lusignan, National Register Reviewer

Elizabeth (Betsy) Merritt, General Counsel, National Trust for Historic Preservation

Daniel H. Jorjani, Office of the Solicitor, National Park Service

Ian Johnson, Assistant State Historic Preservation Officer (Oregon)

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Monday, September 14, 2020 2:27 PM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	Karl
Last Name	Lee
Email	karlknutelee@gmail.com
Public Comment	<p>Thank you for the opportunity to provide comments. I believe the entire application process for historic district designation is flawed. In the case of Eastmoreland, the application was prepared on behalf of the neighborhood without consent from the affected homes. If there is to be a wholesale application, the burden must be placed on residents who want to opt in rather than the opt out (or object) as is the current mode. As such, owners would submit a notarized letter of consent. As it stands right now, those who chose to object needed to go through the notary process, and subject themselves to a form of public shaming where their objections became public record. The application was flawed from the outset, beginning with an erroneous percentage of 'historic' or 'contributing' homes. This was accomplished by an over-ambitious suite of volunteers who were encouraged to err on the side of 'historic' rather than dig into the history of the homes themselves, and all done without the express consent of the homeowner. This was compounded by what amounted to a gerrymandering of the district to include, and exclude some areas to boost the 'contributing' percentage. I am really ok if individual homeowners want to designate their homes on the national register. Our neighborhood has some old houses, and some of them have a history. A lot of others are lovely, but in the end, they're just houses that have been fixed up (or kept the same) along the way to suite the people that get to live in them. I am opposed to using the national program as a de-facto land use planning tool. Portland is fully capable of land-use rules to encourage multi-family and a variety of housing types, especially in areas well served by transit and in the core part of the city. Such is the case with Eastmoreland. Gaming the system, where a small group of residents that want to keep things the same as they were a few decades ago and trump locally developed and approved land-use regulation needs to be stopped. Heightened awareness of inequities based on income level and race should lead the SHPO to think more broadly of the implication of federal designations on local areas. Again, local control is what is needed. While not the fault of many residents in my neighborhood, the reason there are few to no low-income families (of any color) is there is few to no housing that is affordable. Establishing a historic district will exacerbate this inequity because it will curtail the evolution of the housing stock to keep up with the needs of society. I am sure part of the question before SHPO at the moment is how to count property owners. While it makes little sense for a single owner to chop their home into a thousand "trustlets", it makes equally little sense to let a small handful of people push a historic district down the throats of a thousand property owners.</p>

Submission ID: d41d9658-21d5-4d62-9baf-903c052a2fc4

Record ID: 154

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Monday, September 14, 2020 4:01 PM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

First Name	Rob
Last Name	Zoeller
Email	rzoeller@beavertonoregon.gov
Public Comment	I propose modifying OAR 736-050-0250(12) as follows: (12) The SHPO must determine if the majority of owner(s) object to listing a nominated historic resource in the National Register by comparing the total number of owners identified on the property owner list to the number of notarized statements that object to listing the historic resource. For purposes of determining the majority of owner(s) under this subsection, each property shall be deemed to have one owner. For properties with multiple owners, an objection may be filed only if all of the owners join in the objection.

Submission ID: edf41a50-44c3-4345-a2d7-e911a173724b

Record ID: 155

MARSHALL Janelle * OPRD

From: oregon-gov-web-services@egov.com
Sent: Monday, September 14, 2020 10:41 PM
To: PUBLICCOMMENT * OPRD
Subject: National Register Rulemaking Public Comment
Attachments: formsubmission.csv

Follow Up Flag: Follow up
Flag Status: Completed

First Name	Liz
Last Name	Oliver
Email	lizzie.oliver@gmail.com
Public Comment	<p>Attention: Katie Gauthier Oregon Parks and Recreation Department 725 Summer St NE, Suite C Salem OR 97301 Thank you for the opportunity to comment on the proposed changes to Oregon's state rules for the administration of the federal National Register of Historic Places program in Oregon. Please consider the following comments: 1. The proposed rules refer to the National Historic Preservation Act of 1966, as amended, at 16 USC §§470 et seq. The National Historic Preservation Act of 1966 was recodified at 54 USC §§ 300101-307108. Recommend updating all references to the law with the appropriate US code. 2. 736-050-0230 (22) "Tribe" means one or more of the nine federally-recognized Indian tribes in Oregon. This definition disenfranchises tribes with ceded land and/or reservation land in Oregon because they do not have a political headquarters within the state. As the rules are derived from a federal law and federal regulations, these rules should rely on the NHPA 54 USC § 300309 definition of Indian tribe. 3. 736-050-0250 (7) The Oregon SHPO may keep all or qualifying portions of a National Register nomination form submitted for review confidential and exempt from public disclosure under the provisions of section 304 of the Act. SHPO staff must establish a procedure for applying the conditions of section 304 of the Act to submitted National Register nomination forms. Per 36CFR60.6(x) the State Historic Preservation Officer in the nomination notification process has to provide a "Federal agency planning a project, the property owner, the chief elected local official of the political jurisdiction in which the property is located, and the local historic preservation commission for certified local governments" specific information relating to the location of properties proposed to be nominated to, or listed in, the National Register. Please ensure future procedures are consistent with the 36CFR60 requirements. 4. 736-050-0260 (13) The Committee may provide courtesy comments on National Register nomination forms submitted to the SHPO for historic resources on lands held in trust by the United States of America on behalf of a tribe or an individual allotment held by a tribal member or administered by a U.S. federal agency. SHPO staff must establish a procedure for applying the conditions of this subsection. If the rules limit the definition of Tribe to only nine tribes, tribal citizens with allotments or tribes with lands held in trust within Oregon that are not included in the nine will not receive a copy, and potentially no notification, of a nomination on their property. When SHPO staff establishes a procedure for conditions of this subsection, they should account for situations in which nominations may be on tribal allotments or tribal trust lands for tribes not considered one of the nine federally recognized tribes of Oregon. 5. The proposed rule changes appear to derive from the controversy surrounding the Eastmoreland District nomination in Portland. While this nomination needs resolution, the rules should not be updated solely to address on type of property in one location. The rules must work for all types of National Register properties across the whole state. I hope the Rule Advisory Committee has considered and continues to examine how these changes may affect the</p>

	archaeological sites, historic properties of religious and cultural significance to Indian tribes, hydroelectric facilities, trails, and cemeteries that also make up Oregon's historic resources. Thank you again for the opportunity to comment; and thank you to all the hard work done by the Oregon Parks and Recreation staff during these challenging times. Liz Oliver Portland, OR
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Submission ID: ec47cf62-5818-48a9-af9e-526e4986d202

Record ID: 157

MARSHALL Janelle * OPRD

From: Beth Warner <beth.warner48@comcast.net>
Sent: Monday, September 14, 2020 9:28 PM
To: PUBLICCOMMENT * OPRD
Subject: Testimony for RAC
Attachments: Testimony on Trust Definition.docx

Follow Up Flag: Follow up
Flag Status: Flagged

Please accept this testimony to the Rule Advisory Committee. I realize I am a few hours late in submitting. I thought it went in earlier today but my computer was shut down for a few hours.

Thank you,

Beth Warner



This email has been checked for viruses by Avast antivirus software.
www.avast.com

Current New Rule

5(a)(A) The owner of the fee simple absolute or fee simple defeasible estate title to a property as shown in the property tax records of the county where the property is located, including, but not limited to, trusts, limited liability corporations and any other legal entity that can hold fee simple absolute or fee simple defeasible title to real property within the State of Oregon.

(c) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner.

To clarify the issue of ownership of trusts, I would like to recommend the following wording:

5(a)(A) The owner of the fee simple absolute or fee simple defeasible estate title to a property as shown in the property tax records of the county where the property is located, including, but not limited to, ~~trusts~~ trustees and/or settlors of revocable or irrevocable trusts, limited liability corporations and any other legal entity that can hold fee simple absolute or fee simple defeasible title to real property within the State of Oregon.

(c) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner.

MARSHALL Janelle * OPRD

From: John Liu <johnyaoliu@gmail.com>
Sent: Monday, September 14, 2020 5:12 PM
To: PUBLICCOMMENT * OPRD
Subject: Comments on Proposed Rules 736-050-0220 to 736-050-0270
Attachments: SHPO RULE COMMENT - John Liu.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

My name is John Liu. I was the at large community member on the RAC. I submitted these comments on the morning of September 14 via the webform at <https://www.oregon.gov/oprd/PRP/pages/PRP-rulemaking.aspx>, but am now unsure if they were registered as I didn't get a confirmation email.

Therefore, I am submitting them in the attached PDF document. Thank you.

September 13, 2020

Oregon Parks and Recreation Commission 725 Summer Street NE, Suite C Salem, OR 97301

Re: Proposed administrative rules for National Register Program, 736-050-0220 to 736-050-0270

Dear Commissioners:

My name is John Liu. I was the at large community member of the RAC. I was co-leader of the Laurelhurst Historic District nomination effort from 2016-2019 which ultimately led to the listing of the Laurelhurst National Register Historic District. I am also a (former, i.e. recovering) attorney and have examined the relevant Federal statute and rules under which the National Register program operates. I would like to offer my comments on the proposed rules, in light of my personal experience with the formation of one of Oregon's newest historic districts.

I will start with brief technical comments on the proposed rules, which I support. Then I will address the larger context and practical ramifications.

Technical Comments on Proposed Rules

I support the proposed rules. Having participated in all sessions of the RAC, I believe the RAC and SHPO staff reached reasonable, workable, and fair positions and that staff effectively captured those in proposed rule language. I would like to highlight a few specific provisions that are particularly important and, I feel, deserving of your support.

736-050-0230 – “owner” Definition

The major change here is section (16) which defines “owner”. The primary issue addressed here is the so-called **“1000 Trusts” legal tactic that was recently used to derail an historic district nomination** and, if unchecked, can block any future district nomination.

Five homeowners in Eastmoreland each transferred their property to 1,000 revocable “objection trusts” with each trust holding a 1/1000 interest and themselves as the trustee of every trust, and then submitted 1,000 objections – one for each trust. By doing so, they created 5,000 objections from thin air and effectively achieved a “veto” on the nomination, regardless of the desires of all other neighbors. Many commentators pointed out that this contravenes Oregon trust and property law, as well as the intent of the National Register process. Nevertheless, SHPO claimed to be unable to invalidate these objections. Having blocked the nomination, these homeowners then revoked the trusts, reverting their properties to their original ownership.

This **deeply unfair** result left an unfortunate precedent that may be used to block any future historic district nomination.

Laurelhurst's own nomination was nearly derailed in the same manner. Our neighborhood voted overwhelmingly to pursue this nomination. Hundreds of volunteers helped with fundraising and research. Only about 14 persons ultimately objected to SHPO, less than a 0.5% objection rate. Yet one neighbor almost blocked the entire effort by threatening to use the “1000 Trusts” maneuver.

Subsection (C) is intended to **foreclose this 1000 Trusts maneuver**. It conforms to existing trust and property law and adopts language already in Oregon law, e.g. ORS 195.300(18). This change was broadly supported by the RAC.

736-050-0250 – CLG Objection

Section (10) permits a CLG to object to a nomination if *both* the chief elected official and the local landmarks commission concur in the objection.

The RAC and SHPO staff explored variations on the CLG objection provision, ranging from eliminating it entirely to granting the chief elected official the sole right to object, before settling on the proposed language. I believe and staff made the right decision, because **Federal statute 54 USC sec 302504 requires exactly this process for CLG objection**. Oregon's process for administering the federal National Register program must conform to Federal law.

54 USC sec 302504 is reproduced below. Proposed 736-050-0250(10) is substantially similar.

§302504. Participation of certified local governments in National Register nominations

(a) NOTICE.—Before a property within the jurisdiction of a certified local government may be considered by a 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.

(b) REPORT.—The local historic preservation commission, after reasonable opportunity for public comment, shall prepare a report as to whether the property, in the Commission's opinion, meets the criteria of the National Register. Within 60 days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and the recommendation of the local official to the State Historic Preservation Officer.

(c) RECOMMENDATION.—

(1) PROPERTY NOMINATED TO NATIONAL REGISTER.—Except as provided in paragraph (2), after receipt of the report and recommendation, or if no report and recommendation are received within 60 days, the State shall make the nomination pursuant to section 302104 of this title. The State may expedite the process with the concurrence of the certified local government.

(2) PROPERTY NOT NOMINATED TO NATIONAL REGISTER.—**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 30 days of the receipt of the recommendation by the State Historic Preservation Officer, an appeal is filed with the State.** If an appeal is filed, the State shall follow the procedures for making a nomination pursuant to section 302104 of this title. Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary.

Giving chief elected officials sole discretion to object will, in addition to creating conflict between Oregon rules and the Federal statute, **unduly politicize** the National Register process. In most CLGs the chief elected official appoints the local landmarks commission and already has ample influence over the commission's selection and charge.

736-050-0250 – Two Year Time Limit

Section (15) (d) provides that if a nominated resource is not listed by two years after first return by the National Park Service, SHPO may terminate the nomination. I fear this provision invites legal delaying tactics designed to “run out the clock” and feel that a longer period such as 5 years would be better. My other concern is that nominations in progress should not be unfairly cut off by a time limit imposed after the nomination started. 736-050-0270 (4) adequately addresses that concern.

Context and Practical Ramifications

There has been, before your Commission, an effort to weaponize the language of race and equity to politicize the National Register program and paint historic preservation as racist, anti-equity, anti-environment, and other labels of convenience. I ask you to consider what a National Register historic district listing *actually* means in Oregon.

First, the land use effects.

In Oregon, if a district is today listed in the National Register, that listing will not prohibit any use, including multifamily occupancy, of any structure. Nor does it prevent solar panels, window replacement, or other alterations.

The only effects of a listing on land use in the district are:

- 1) The local government must hold a **public hearing to review proposed demolition** of a structure that is a historic resource. After this hearing, commonly called “demolition review”, the local government may then approve the demolition. OAR 660-023-0200 (8) (a)
- 2) The local government may, but **is not required to, enact additional restrictions** on alteration of structures (commonly called “design review”). OAR 660-023-0200 (8) (b).

Demolition review applies only to historic resources. In most National Register historic districts, only about 65% to 85% of structures will have demolition review.

The cited rule was approved by this Commission in 2017 and became effective February 2017. For all National Register districts since created or to be created in the future, a historic resource merely gets a demolition review hearing before it is demolished. No public hearing or approval is required to use the structure for multi-family dwellings, to update it for energy efficiency, or make other uses or alterations, other than normal city permits.

The claim that National Register historic district designation will promote racism, prevent redevelopment, or stymie energy efficiency, is thus incorrect. For example, if Eastmoreland were to someday be listed as a National Register historic district, *every* historic house could still be demolished with the city of Portland’s approval, *hundreds* of non-historic houses could be demolished without approval, and *every* house could be altered to multiple dwellings with solar panels and new windows with only standard city permits.

As for the century-old racial deed covenants that were all too common in Oregon and nationally, listing will not revive those, but the nomination’s research will help **expose** this history.

Second, the community effects.

In Laurelhurst the Historic District nomination effort from 2016 to 2019 **energized our community**. Hundreds of neighbors met, gained a new appreciation for their neighborhood, and learned to organize and work together. It was a common cause – before submitting the nomination, our neighborhood voted by 83.4% (about 1,570 “yes” votes to about 240 “no” votes, about 60 undecided) to do so. Neighbors **both white and of color** joined in this effort, donating money and time, and testifying in support at hearings. This testimony <https://youtu.be/7MeH0wiYRQs> that was provided by video to the SACHP, is an example.

Those new connections and energy drove a **large increase in community involvement and volunteerism** that goes beyond historic preservation. We have able to raise more donations for our neighborhood school and playground, organize more volunteers to maintain Laurelhurst Park, hold more neighborhood events, and strengthen our community’s emergency preparedness program. We helped a developer obtain public funding for and overcome permit obstacles to a large affordable housing conversion of Laurelhurst’s historic “Mann Old People’s House”, and we are continuing to support this project as it progresses through the city approval process. We formally supported code changes to permit conversion of existing houses to multiple-dwellings without demolition. When Covid shelter-in-place started, our new volunteers organized a “neighbor to neighbor” program to provide grocery shopping and other services to elderly and medically vulnerable households.

<https://www.laurelhurstpdx.org/covid-19> We published a history of the racially exclusionary covenants that were common throughout Portland, Oregon, and other states, based on the research documented in our nomination. <https://www.laurelhurstpdx.org/history> We will soon publish a community-developed statement on racial discrimination in policing. These are difficult topics; the personal and community connections built in our nomination effort helped us to tackle them collaboratively without rancor.

When people are proud of their community, they get involved to help and make things better. **One of the greatest benefits of *community-driven* historic preservation is the engagement and involvement it brings.** For this to work, our National Register process **must be fair and non-political**. The proposed rule will help accomplish that.

Thank you for considering my input. I urge approval of the proposed rule.

MARSHALL Janelle * OPRD

From: Chelsea Schnabel <cschnabel@northbendcity.org>
Sent: Thursday, October 15, 2020 9:34 AM
To: PUBLICCOMMENT * OPRD
Cc: David Milliron; Ralph Dunham; Mike Stebbins (mike@stebbinsandcoffey.com)
Subject: North Bend_Comments on Proposed Rule Changes
Attachments: North Bend_Nat'l Register of Historic Properties Proposed Rule Comments (10.15.20).pdf

Hello –

Please find attached the City of North Bend's comments on the proposed changes to OAR 736-050 related to the National Register Program.

Thank you,

Chelsea Schnabel, CFM

City Planner – City of North Bend | Phone: (541) 756-8535 | cschnabel@northbendcity.org



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Submitted Electronically on October 15th, 2020 at 9:30 am

CITY OF NORTH BEND

835 CALIFORNIA AVENUE, P.O. BOX "B", NORTH BEND, OR 97459 | (541) 756-8500

These comments are sent on behalf of the City of North Bend ("City") on the proposed changes to Oregon's National Register Program Rules.

These comments are based on the problems the City had with the nomination process and problems the City is still having as a result of the nomination process for the Q'alya ta Kukwis shichdii me Traditional Cultural Property Historic District ("District"). That proposed district covered over 26 square miles. In that application process it was documented that there were 1,655 properties included in the proposed district. Approximately one half of those properties are located within the city limits of the City of North Bend. The City of North Bend makes these comments in hopes of avoiding these problems in the future for any other nominations that might be presented. Most of them center around transparency and providing procedural due process to the participants in this process. For purposes for our comments those "participants" include the CLG, chief elected official, owner(s), and the proponent.

CONFIDENTIALITY PROVISIONS

During the previous District application, the City participated in filing a public records request along with the Oregon International Port of Coos Bay and sent separate requests to SHPO and to the sponsor. The request was to be able to identify the discrete areas of the district the sponsor was claiming as contributing resources. Any reference to these areas was redacted in the application. To date, this information has never been provided. SHPO is obligated to disclose the entire, unredacted application to property owners within the proposed district and the parties. 36 CFR 60.6(x), 60.11(c).¹ In Order to ensure that federal mandate is followed in the future and there is transparency and full disclosure in to the process, the City would suggest that the proposed rules found at OAR 736-050.0250(6) and (7) do not leave it up to SHPO's staff to establish a procedure for disclosure and making a determination as to whether parts of a particular nomination may qualify for exemption. Any rule that gets established should have a specific procedure within it so it can be reviewed in the same fashion that this set of rules is being reviewed. The City of North Bend also requests that if any party objects to a determination about the confidentiality of certain portions of the nomination they have a right to request a review of that decision under sub-section 20 of this same rule.

NOTICE

OAR 736-050.0250(8) deals with the public comment period and the type of notice required to the parties for purposes of providing public comment. Timing in relation to this public comment period should be tied into the procedure that is established in the rule making process to make the appropriate public disclosures of the nomination form discussed above. Public comment is not going to do much good if nobody knows where these particular historic places are located.

OAR 736-050-0250(8)(c) should be amended to include "owner or owners" not less than 90 days in advance of rescheduled commission meeting at which the nomination will be considered. In order to be consistent with that provision, subsection 14 of the same rule should indicate that SHPO shall provide notice of this action to proponent, owner, CLG, chief elected official and tribes. This will be a written notice

¹ 36 CFR 60 has been incorporated in to Oregon's Administrative Rules OAR 736-050-0220 any citation to 36 CFR 60 reflects a requirement under Oregon Law.

to all those parties. Your current version calls for SHPO's ability to give notice to owners by public press release or other means, in place of written notice. When the City of North Bend looks at the number of affected property owners within its city limits this unfairly affects an inordinate number of people.

DUE PROCESS

OAR 736-050-0220(20) sets out some limited hearing rights in relation to determining whether there is a majority of property owners objecting to the nomination and the accuracy of the property owner list. The rule shall indicate that any party can request a hearing under this provision before the Oregon Office of Administrative Hearings. The list of matters that could be subject to hearing should include those already listed in the proposed rule as well as: (1) resolving a dispute over disclosure of redacted information in a nomination application; (2) resolving any issue about a party(ies) not receiving proper notice; and (3) appealing the SHPO eligibility determination before it is sent to NPS.

These are significant hearing rights. They are requested because these determinations deal with significant property rights. And, in the case of the City of North Bend, significant property rights of a significant amount of people. In a letter dated December 9, 2019 from SHPO the Mayor of the City of North Bend was informed that, "...the Oregon State Historic Preservation Office erred when it didn't provide them during the nomination process." (See July 9, 2019 SHPO letter attached as Exhibit A.) This refers to unredacted versions of the nomination. In that same letter, SHPO directs the mayor that it considered the District an eligible historic property in the federal regulatory environment and subject to all the rights that standing merits under Federal law. That statement was made in spite of the fact that in July, 2019 the NPS indicated that the nomination was premature and was being returned on that basis. It was found to be premature because the parties were not provided with an unredacted version of the nomination, "...and thus were not able to substantively comment on the District's eligibility..." (See July 2, 2019 NPS letter attached as Exhibit B.)

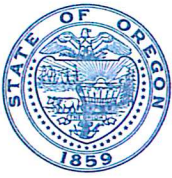
So, here in North Bend, the Tribe considers a large swath of land in the City of North Bend to be part of their historical district and the City of North Bend has no real way to challenge that. Similarly, the City is still unable to get any indication of where the discrete boundaries of their historical properties may be. The City has no way to challenge that. Granting the parties some hearing rights, whether they be proponent, owner or government body should bring some due process and accountability to the SHPO regulatory environment.

Please contact Chelsea Schnabel, City Planner at (541) 756-8535 or by email at cschnabel@northbendcity.org with any questions.

Respectfully,



David Milliron
City Administrator
City of North Bend



Oregon

Kate Brown, Governor

Parks and Recreation Department

State Historic Preservation Office

725 Summer St NE Ste C

Salem, OR 97301-1266

Phone (503) 986-0690

Fax (503) 986-0793

www.oregonheritage.org

December 9, 2019



Mayor Rick Wetherell
City of North Bend
PO Box "B"
835 California Avenue
North Bend, Oregon 97459

RE: Status of proposed National Register nomination for the *Q'alya ta Kukwis shichdii me*
Traditional Cultural Property Historic District, Coos County

Dear Mayor Wetherell:

The purpose of this letter is to update local officials, federal agency partners, and Tribal governments who own or regulate property inside the proposed boundary depicted in the *Q'alya ta Kukwis shichdii me* Traditional Cultural Property Historic District (TCP) National Register nomination form. As you are aware, the nomination was prepared by the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians (CTCLUSI) and submitted to the National Park Service (NPS) in May 2019 by the Oregon State Historic Preservation Office (SHPO) for a determination of eligibility instead of a request for listing because a majority of private owners inside the proposed district objected to the listing. The nomination was returned by the NPS in July 2019 without a decision because the SHPO committed a procedural error by failing to provide local officials, Tribal governments, and federal agencies an unredacted copy of the nomination on which to comment. The NPS raised several other substantive issues in the return letter, including concerns about how the boundary was delineated, and asked that they be addressed should the CTCLUSI decide to resubmit the nomination. Since that time, questions have arisen from Tribal and agency stakeholders about the status of the nomination. This memo addresses the questions from the SHPO's point of view.

The SHPO relationship to the TCP is prescribed by two very different federal laws. Under 36 CFR 60, which the SHPO uses to administer the National Register of Historic Places program, the TCP nomination process is concluded. That is because the NPS declined to determine the eligibility of the TCP because they had substantive concerns about the nomination document and how the notification procedure was handled by the SHPO. The TCP was not listed by the NPS; the nomination document was returned to the SHPO. Any corrections, boundary adjustments, owner notifications, and procedural improvements requested by the NPS in its return letter would need to occur under 36 CFR 60 only if CTCLUSI provides a fresh submittal to the SHPO. The future of the nomination is now in the hands of the CTCLUSI. Should the Tribe decide to restart the process, corrections to the nomination and the process would be a shared responsibility between the Tribe and the SHPO, as part of a public process determined by 36 CFR 60.

Under 36 CFR 800, which lays out the consultation process under Section 106 of the National Historic Preservation Act, the TCP exists as a historic property identified by the CTCLUSI, unrelated to the National Register process. The SHPO defers to Tribes when they identify TCPs through this process,



and expect federal agencies to do the same during their consultation with Tribes whenever projects are permitted, licensed, or funded by federal agencies. Over the years, many TCPs have been identified by Oregon's federally recognized Tribes across the state through this process. The TCP exists because CTCLUSI says it exists, and this existence has nothing to do with the Tribe's later effort to nominate the TCP to the National Register. The NPS's failure to make a determination of eligibility on the nomination has no effect on the existence of the TCP for the CTCLUSI. The TCP remains a historic property on which federal agencies will need to assess the effects of their projects as long as the CTCLUSI asserts that it is. In cases where Tribes have asserted the existence of a TCP in a federal project area, the SHPO's role is to assist all consulting parties in assessing effects of the project to the property as a whole and determining appropriate mitigation if necessary.

I want to address the issue of public records law, as well. When the nomination was active, some parties requested less-redacted versions of the document, and the Oregon State Historic Preservation Office erred when it didn't provide them during the nomination process. Since the TCP has been returned and is not the subject of any further federal action under 36 CFR 60, the nomination document is regarded as a state, not federal, record. As a state document, the SHPO would currently respond to a record request by redacting information that qualifies for an exemption from disclosure under state law. For the TCP nomination, that means blacking out text that: a) refers to the location of an archaeological site or object; and b) represents an unreasonable invasion of privacy, meaning the SHPO's response would be very similar (if not identical) to the document already published. If CTCLUSI resubmits the nomination, the SHPO would respond to future record requests from any property owner by removing redactions that had been applied to the requester's property. It would respond to requests from a government by removing redactions that correspond to the government's jurisdiction.

Finally, what does all this mean to local governments who are required by the Goal 5 rule to regulate National-Register-listed properties in cases of demolition and relocation? Since the TCP nomination was returned unlisted, the TCP is not a National-Register-listed property. There is no National-Register-listed TCP that exists. The SHPO considers it an eligible historic property in the federal regulatory environment and subject to all the rights that standing merits under federal law. That means if a project is proposed within the boundary depicted in the TCP nomination, and it is not using federal funding, permits, or licenses, local jurisdictions will apply local regulations dictated by current local ordinances and management plans, just as they did before the TCP nomination was initiated.

If you have questions regarding the contents of this letter, please feel free to contact me. We are committed to administering Oregon's preservation programs with as much clarity as possible, and we appreciate your participation in these efforts.

Sincerely,



Christine Curran

Deputy State Historic Preservation Officer

cc: Coos County; City of Coos Bay; CTCLUSI; Coquille Indian Tribe; BIA; USACE; USFS; Navy; BLM; US Coast Guard



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO:

H30(2200)

JUL 02 2019

Ms. Chrissy Curran
Deputy State Historic Preservation Officer
Oregon Heritage
Oregon Parks & Recreation Department
725 Summer Street NE, Suite C
Salem, Oregon 97301

Subject: Proposed National Register Nomination for the Q'alya ta Kukwis shichdii me
Traditional Cultural Property Historic District, Coos Co., Oregon

Dear Ms. Curran:

I am returning your May 23, 2019 request for a determination of the eligibility of the Q'alya ta Kukwis shichdii me Traditional Cultural Property Historic District in Coos County, Oregon for listing in the National Register of Historic Places (National Register). Your request indicates that your office decided not to nominate the District for listing in the National Register, because you concluded that a majority of private property owners in the District objected to the listing. As explained below, based on a detailed review of all of the materials your office has provided on this nomination, including applicable portions of the National Historic Preservation Act of 1966 (NHPA), applicable portions of the National Register program regulations (36 C.F.R. § 60 et seq.), written comments of federal agencies with property within the proposed district, and the written comments of other persons or entities with an interest in the proposed District, including the certified local governments of North Bend and the City of Coos Bay, I have decided to return this nomination.

Background

The nomination, prepared by the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians (CTCLUSI), covers approximately 26 square miles of Coos Bay with approximately 16 square miles identified as the estuary subtidal. Ownership, both subtidal and estuary adjacent uplands, consists of roughly 6.4 square miles of federal and state ownership, less than 0.2 tribally owned, 7.8 of local government ownership and 4.6 square miles of private ownership. It includes portions of the cities of Coos Bay and North Bend and Coos County. It contains 158 historic "contributing" properties associated with the history, culture, and beliefs of the Coos people. The nomination form identifies the property as significant at the state and local level, under National Register Criterion A, B and D.

Your office, Oregon's state historic preservation office (SHPO), first submitted the nomination for the District to the Keeper on May 23, 2019, along with the opinion that the District is eligible for listing in the National Register. In that submission, you explained that the Oregon SHPO identified a total of 1001 private property owners with fee-simple title to real property within the District, and that your office had received 696 notarized objections, or 70% of the total number of owners. Accordingly, you determined that the majority of the property owners object to listing the District. Due to a recent Oregon State Court of Appeals ruling, the total number of property owners on your property owner list does not include trusts, and objections submitted on behalf of trusts were not counted. However, you concluded that counting trusts as owners and/or objectors would not have affected the outcome here; put differently, had trusts been counted by your office, you determined that the property owners objecting to listing would still be in the majority.

At CTCLUSI's request, the parties involved in the nomination process were provided with copies of the nomination that had content relating to the location of archaeological resources, storied sites, resource gathering areas, information deemed culturally sensitive by the tribe, and identifications of specific persons. You encouraged private and public property owners to contact the Oregon SHPO to obtain specific information. On February 20, 2019 the City of North Bend and the Oregon International Port of Coos Bay commented that the SHPO's large number of redactions preclude property owners, local governments, and the public from fully evaluating the merits of the nomination. You subsequently determined that you were required to provide unredacted site specific information to the Coquille Indian Tribe, Coos County, and the cities of North Bend and Coos Bay, and state in your letter accompanying the nomination that you intend to provide this information to those jurisdictions.

You explained that of the 16,656 acres in the proposed District, 3,550 acres, or 21%, is administered by federal agencies. Your office contacted each of these agencies in April 2019 and requested their review and comment on the proposed nomination pursuant to 36 C.F.R. 60.6(y). Below is my understanding of the status of each of these agencies' response:

- U.S. Bureau of Indian Affairs (BIA): BIA administers trust lands within the District on behalf of the Coquille Indian Tribe and the CTCLUSI, BIA's Federal Preservation Officer initially deferred to the two Tribal Historic Preservation Officers with respect to BIA's comments on the proposed nomination. Via letter dated May 23, 2019, BIA subsequently stated that it is currently reviewing the documentation in the nomination form and compiling its comments for review by its Federal Preservation Officer. BIA stated that its intent would be to provide its position directly to the National Park Service (NPS). To date, the NPS has not received BIA's comments. The Coquille Indian Tribe submitted a letter to the National Park Service requesting that the nomination be returned for several reasons. Among the reasons cited by the Tribe was the heavily redacted nomination form which the Tribe contended made it difficult for the Tribe to understand the scope and scale of the nomination.
- U.S. Department of the Navy (Navy): The NPS is unaware of any response by the Navy to the request for review and comment.

- U.S. Army Corps of Engineers (USACE): Via letter dated May 17, 2019, USACE explained that it was still reviewing the nomination and compiling its comments but that it would not be able to complete those comments by May 20, 2019, when the SHPO requested those comments. USACE stated that its intent would be to provide its position directly to the NPS. To date, the NPS has not received USACE's comments.
- U.S. Coast Guard: Via letter dated June 17, 2019, the Coast Guard indicated that it was still conducting a thorough review of the listing document and was requesting an unredacted copy of the nomination document to facilitate their review. To date, the NPS has not received the Coast Guard's comments.
- U.S. Bureau of Land Management (BLM): BLM's Federal Preservation Officer signed the nomination form for the District.
- U.S. Forest Service (USFS): The delegated Federal Preservation Officer for the USFS signed the nomination form for the District.

Substantive review of the nomination was requested by Jordan Cove Energy Project L.P, a private property owner within the District, and its affiliate Fort Chicago Holdings II U.S. LLC. Pursuant to the National Register regulations, where a majority of private property owners object to listing, I am required to review the nomination and make an eligibility determination within 45 days of receipt of the nomination, unless an appeal is filed or the nomination is returned. 36 C.F.R. § 60.6(s). Because July 7, 2019, is a Sunday, my determination is due July 8, 2019.

The Keeper's return decision

a. Procedural reasons for returning

The National Register regulations provide that if a nomination contains property under Federal ownership or control "completed nomination forms shall be submitted to the Federal Preservation Officer for review and comment," and further that the "Federal Preservation Officer, may approve the nomination and forward it to the Keeper..." 36 C.F.R. § 60.6(y). The National Historic Preservation Act requires that local landmark commissions and chief elected local officials are provided an opportunity to comment on completed nominations. 54 U.S.C. § 302504. The purpose of these requirements is to ensure that those entities have an opportunity to review and comment on the nominations, and that the Keeper then has the benefit of that information when substantively reviewing a nomination to determine its eligibility.

The National Register regulations provide that in the nomination notification process or otherwise, the SHPO "need not make available to any person or entity (except a Federal agency planning a project, the property owner, the chief elected local official of the political jurisdiction in which the property is located, and the local historic preservation commission

for certified local governments) specific information relating to the location of properties proposed to be nominated to...the National Register if he or she determines that the disclosure of specific information would create a risk of destruction or harm to such properties.” 36 C.F.R. § 60.6(x). Accordingly, your office, at the request of the nomination’s proponent made appropriate redactions to the nomination.

Local officials and federal agencies with substantial property and operational interests within the proposed District, were not provided unredacted copies of the nomination prior to its submission to the Keeper. It is my understanding that some or all of them continue to work with the nomination proponent in order to obtain unredacted copies of the nomination while, at the same time, ensuring that sensitive information remains protected.

In returning this nomination, I am not offering an opinion on the appropriateness of the redactions made by the SHPO. The reason I am returning the nominations is that private property owners, local officials and federal agencies were not provided with an unredacted version of the nomination, and thus were not able to substantively comment on the district’s eligibility, prior to submission of the nomination to the Keeper or prior to the deadline for the Keeper to make an eligibility determination. I find that, in this instance, submission of the nomination to the Keeper was premature and the nomination is being returned on that basis. I am aware of the challenges that are presented with respect to protecting sensitive information while, at the same time, affording those entities that are entitled to review such information sufficient information to do so, and the NPS is willing to assist in that process, to the extent such assistance would be helpful.

b. Substantive issues

Although these issues are not the primary rationale for returning the nomination, I note that there are certain substantive issues with the nomination that should be addressed when it is resubmitted.

1. The Resource Count

National Register guidance stipulates that nominations must identify all resources located within the bounds of the nominated property to assess their contributing or non-contributing status. *See* National Register Bulletin: How to Complete a National Register Registration Form, pp. 16, 32. The nomination form for the District does not provide an accurate count of the non-contributing resources; instead, the nomination attempts to address this issue through blanket statements regarding the categorization of resources not directly identified as contributing or significant to the traditional tribal community. If the nominated areas were rural in nature and contained only minimal numbers of such non-contributing resources, this approach might be acceptable as an accommodation for documenting traditional cultural properties. However, given the extensive nature of the proposed historic district, its inclusion of sizeable areas of developed and urbanized land, and the fact that much of the locational information is redacted and precise boundaries are unclear in many areas (see Boundary discussion below), it is difficult to assess the eligibility of the nomination.

In describing many of the significant contributing sites in Section 7, the narratives in the nomination are often unclear as to what is actually extant at these locations. In certain cases this may refer to modern intrusions or the level of alteration that has taken place, while in other situations the nature of the historic tribal resources is not always clear. It is important that the descriptions of the specific sites in Section 7 directly address the issues of integrity, particularly in those areas of significant modern redevelopment. Justification should be provided for the inclusion of highly developed or altered lands. The narratives should also clearly acknowledge the nature of the extant historic features at certain sites and the basis for identification of those features as contributing resources. When reference is made to former village sites, for example, is there specific evidence of intact features? Or was the basis for identification simply oral and ethnographic history? In some cases contributing features are identified as archeological features. Are these documented archeological sites or assumed potential resource locations? A more direct connection between the sites identified in Table 2 and the individual site descriptions might help here. It is important to clearly outline what is being protected at these locations. For the most part the site descriptions do a good job at the end of each narrative in highlighting what the most noteworthy contributing features are and what are non-contributing features, but amplification of this would strengthen the nomination.

2. The Boundary

The verbal boundary description and justification sections need to address the lack of specificity with regard to the proposed boundaries. While the general concept for the district appears appropriate—following the general outlines of the bay/estuary at the high tide line diverging to capture specific named sites and resources—the verbal boundary description lacks sufficient specificity at the locations of the contributing site/resources. For example, the current verbal boundary description reads “From *Hanisiich* it [boundary] continues north following just above the high tide mark to the site of *Ntiise’ich*, and includes the tribally-owned Old Empire Cemetery. The tribal land is located in T...” While providing the Town Range Section narrows the location to some degree there is really no sense from the boundary description or the narrative description in Section 7 as to exactly how large an area is included in the boundaries. Figures 30-39 showing the ownership parcels provides some additional information, but not at a scale sufficient to allow someone to clearly establish the boundary area on the ground. In addition, without labeling it is often difficult to reconcile the ownership parcel lines with specific sites.

The lack of specificity makes assessments of the character and integrity of the resources difficult. It also renders it unclear what exactly is inside the District and what is outside. The latter is a particularly acute issue given the redacted nature of the document and the highly developed setting for many of the resources, which often include considerable modern private development (see discussion above). While we acknowledge the difficulty inherent in establishing fixed boundaries for traditional cultural places and sites, for purposes of National Register designations such detail is necessary. There may be a number of options for providing such documentation including, but not limited to, a full disclosure of the included parcels at each site (as was provided for the Tribal Hall and Chief Daloose Jackson burial site), or larger scale maps for the contributing resources. Parcel numbers could be provided

on spreadsheets rather than in the narrative, but there would need to be some clarity in the case of partial lots. The most direct solution would be more detailed sketch maps or aerials for the specific contributing site locations.

In areas with significant modern development that overlays significant tribal locations and sites it will be important to directly address the boundary selection justifications and the issues of physical and associative integrity. There should be a very direct discussion of the reasoning for including large swaths of altered (private and public) lands. Such a discussion should tie back to the main nomination narratives as well.

3. Maps

With regard to the maps in Figures 30-39. Are the lands off shore from the high-tide line privately owned? It seems that in some cases there is land marked as private located within the boundaries, but in areas where the boundary is noted as following the high tide line. Please clarify. In addition there are areas in which the boundary lines on the maps appear to take in lands beyond the high tide line (for example, the area east of the Charleston marina around Barview wayside).

The use of two different base scales for the tax lot maps (Figures 30-39) and the contributing resource maps (Figures 7-13) often makes overlaying the map information unnecessarily difficult.

On Figures 14-17, it is unclear what the term “historic parcel” refers to and what the connection of these parcels is to the sites defined in the nomination. Additional clarification regarding the purpose of these figures would be useful. In addition, it would be helpful to clarify what it means when “historic parcels” extend beyond the district boundary. The same question arises with Figures 22-29 and the demarcation of “cultural land use” areas.

c. Treatment of Trusts

Another issue with this nomination is the treatment of trusts. The National Register Program regulations (36 C.F.R. § 60.3(k)) define the terms owner/owners as “...those individuals, partnerships, corporations, or public agencies holding fee simple title to a property.” Trusts are not included within this definition. As we have previously advised, the NPS views the intent and purpose of the NHPA and National Register Program regulations to be inclusive rather than exclusive when it comes to recognizing the legitimate rights of private property owners. If, under applicable state law, a valid trust can legally own a fee simple interest in real property, such trust should be accorded the right to object to listing. If, under applicable state law, the trustee or settlor/grantor of a validly created trust holds the fee simple ownership, the trustee or settlor/grantor should be accorded the right to object to listing.

As you have explained, on April 3, 2019, the Oregon State Court of Appeals found that when the Oregon SHPO published our guidance describing trusts as property owners eligible to object to a National Register nomination, you “inadvertently created a ‘rule’ within the meaning of the Oregon Administrative Procedures Act,” and the court held that your

compliance with our guidance was invalid because your office failed to comply with Oregon rulemaking procedures. As a result, until the Oregon SHPO promulgates a rule pursuant to State law, the court has held that you are precluded under state law from complying with our guidance regarding a federal program.

The Secretary of the Interior, acting through the Director of the NPS, has the authority to make rules and regulations regarding the National Register and to interpret those regulations, which are applied nationwide. The Oregon State Court of Appeals' ruling was limited to a question of state law, and does not affect the NPS's guidance with respect to the ability of validly created trusts to be counted as property owners and to object to listing, if they so choose. I appreciate that in submitting the nomination you acknowledged this conflict and, in addition to a certification that a majority of owners objected to listing if trusts were not counted as owners, you also completed an analysis to determine if counting trusts as owners and objections received on behalf of trusts, and determined that this would not affect the outcome. At present, on the facts of this nomination, this issue does not require resolution, though if the owner/objector count were to change, this may become an issue.

If you have any questions regarding this determination, please feel free to contact Paul Lusignan (202-354-2229).

Sincerely,

A handwritten signature in dark ink, appearing to read "Joy Beasley", with a long, sweeping horizontal line extending to the right.

Joy Beasley

Acting Associate Director, Cultural Resources, Partnerships, and Science
and Keeper of the National Register of Historic Places