



Oregon

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GOAL 5 HISTORIC RESOURCES RULEMAKING ADVISORY COMMITTEE

**10:00 A.M.–4:00 P.M., OCTOBER 25, 2016
DLCD BASEMENT HEARING ROOM
635 CAPITOL STREET NE, SALEM 97301**

AGENDA

- I. Introductions
- II. Agenda review
- III. Public Comment
- IV. Discussion of draft rule amendments
- V. Discussion of draft statement of need and fiscal impact
- VI. Conclusion and next steps

Lunch will be provided for committee members.



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October 18, 2016

TO: Goal 5 Historic Resources Rulemaking Advisory Committee

FROM: Rob Hallyburton, Community Services Division Manager

RE: Goal 5 Historic Resources Rulemaking Advisory Committee Meeting Materials

The Goal 5 Historic Resources Rulemaking Advisory Committee (RAC) has a meeting scheduled for 9:00 a.m. to 4:00 p.m. on Tuesday, October 25. Materials for that meeting are included in, attached to, and linked within this report.

I. BACKGROUND

The RAC discussed the definitions section of the draft rule amendments at its September 30 meeting. The new draft in Attachment A includes changes directed by the RAC. In cases where the RAC did not reach agreement on the wording (*e.g.*, “demolition”), staff presents a new draft for further consideration. All changes from the previous draft are highlighted in yellow.

The only changes made to the draft rule amendments outside the definitions section pertain to formerly inconsistent use of the terms “resource list” and “list of locally significant resources.” This inconsistency was raised at the last RAC meeting and should be resolved in the latest draft.

Since the RAC did not have time to consider sections of the draft rule amendments beyond definitions, the content of the previous staff report for subsequent sections of the rule is repeated in Section II of this report for convenience. The section of the staff report and the attachment for the Statement of Need and Fiscal Impact agenda item are also included unchanged from the previous materials sent to the RAC.

II. DRAFT AMENDMENTS

An updated draft of possible rule amendments, showing the changes, is provided in Attachment A. A clean copy – that is, a draft without the changes tracked – is included in Attachment B. These attachments include, for context, definitions that apply to the entire Goal 5 rule division which are relevant to the historic resources rule amendments.

The proposed draft rule amendments include changes to increase the clarity and usability of the rule and to implement the direction of LCDC. Titles have been added to subsections to aid users, and increased cross-referencing to the rules on the “standard Goal 5 process” are included in order to create better explanations of when the standard process applies and when it does not. The process for local governments to use when considering and protecting historic resources is provided in sections (3) through (7). Sections are ordered in the sequence a local government would employ them as it implements the rule. Section (8) provides draft amendments regarding protection of National Register resources. Sections (9) and (10) provide draft language regulating removal of a historic resource from a resource list after it has been designated. Sections (11) and (12) specify when the amendments become effective.

A. Relationship of Historic Resource Protection to the Standard Goal 5 Process – OAR 660-023-0200(2)

This existing rule, which specifies that local government implementation of the rule is optional, is proposed for clean-up amendments to make the section complete and consistent with other sections, and to add an exception to the elective nature of the rule with a cross-reference to the mandatory provision regarding National Register resources. Some general guidance provided at the end of the existing rule is proposed for deletion because the department finds it has become unnecessary with the addition of clarifying amendments proposed in subsequent sections. The provision that the ESEE process required in the standard Goal 5 process does not apply to historic resource protection is proposed to be moved to this section.

(a) Local governments are not required to amend acknowledged plans or land use regulations in order to provide new or amended inventories, resource lists or programs regarding historic resources, except as specified in ~~this rule~~ section (8). Rather, local Local governments are encouraged to adopt historic preservation regulations regarding the demolition, relocation, or major exterior alteration of all designated historic resources.

(b) The requirements of the standard Goal 5 process (see in OAR 660-023-0030 through 660-023-0050), in conjunction with the requirements of this rule, apply when local governments choose to amend acknowledged historic preservation plans and regulations.

(c) Local governments are not required to apply the ESEE process pursuant to OAR 660-023-0040 in order to determine a program to protect historic resources.

B. Comprehensive Plan Contents – OAR 660-023-0200(3)

Proposed amendments to this rule, which encourages historic resource protection and use of the Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation, are limited to minor clean-up for consistency with other sections and for rule usability.

Local comprehensive plans should foster and encourage the preservation, management, and enhancement of **buildings**, structures, ~~resources, and~~ objects, **sites and districts** of historic significance within the jurisdiction in a manner conforming with, but not limited by, the provisions of ORS 358.605. In developing local historic preservation programs, local governments should follow the recommendations in the Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation, **produced by the National Park Service**. ~~Where possible, local~~ Local governments should develop a local historic context statement and adopt a historic preservation plan and a historic preservation ordinance before commencement of local historic inventories.

C. Inventorying Historic Resources – OAR 660-023-0200(4)

The “inventory” step of the Goal 5 process for historic resources involves establishing those resources that should be *considered* for protection and is addressed in section (4). Subsequent sections of the rule guide local government consideration of significance and protection of those resources that are found to be significant.

The “standard Goal 5 process” includes all these steps – inventory, significance determination, and adoption of a resource list – in one rule titled “Inventory Process” ([OAR 660-023-0030](#)). Proposed amendments to section (4) of the historic resources rule reference the inventory rule from the standard process in order to clarify that it still applies and that the provisions of section (4) supplement, not replace, the standard process. The existing, retained provisions of section (4) require broad public notice early in the process and notification to individual landowners.

A new provision encouraging local governments to submit inventories in a format compatible with the SHPO database is included at SHPO’s request.

When a local government chooses to inventory historic resources, it must inventory historic resources pursuant to OAR 660-023-0030, this section, and sections (5) through (7). Local governments ~~shall~~ **must** provide broad public notice prior to the collection of information about historic resources. ~~Local governments shall~~ **and** notify landowners about opportunities to participate in the inventory process. **Local governments are encouraged to complete the inventory in a manner that satisfies the requirements for such studies published by the Oregon State Historic Preservation Office and that the inventory be provided to that office in a format compatible with the Oregon Historic Sites Database.**

D. Determining Significance – OAR 660-023-0200(5)

Proposed amendments to this section include (1) reference to the rule on the standard process (OAR 660-023-0030) to establish that it applies during this step of consideration of historic resource protection; (2) reference to the historic context statement and the historic preservation plan to emphasize the status of these documents in the significance-determination process; and (3) guidelines for criteria a local government could use when reviewing historic resources for significance. These amendments are proposed to provide completeness in the rule and usability for local governments.

When a local government chooses to inventory historic resources, it must determine which resources on the inventory are significant pursuant to OAR 660-023-0030(4) and this section.

(a) Local governments may delegate the determination of **locally** significant historic ~~sites~~ **resources** to a local planning commission or historic resources commission.

(b) The determination of significance should be based on the National Register Criteria for Evaluation ~~or the Secretary of the Interior's Standards for Evaluation~~, **the historic context statement and the historic preservation plan. Criteria may include, but are not limited to, consideration of whether the resource has:**

(A) Significant association with events that have made a significant contribution to the broad patterns of local, regional, state, or national history;

(B) Significant association with the lives of persons significant to local, regional, state, or national history;

(C) Distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction;

(D) A high likelihood that, if preserved, would yield information important in prehistory or history; or

(E) Relevance within the local historic context and priorities described in the historic preservation plan.

E. Designation of locally significant resources – OAR 660-023-0200(6)

Proposed amendments to section (6) are intended to aid clarity and completeness but not change the existing requirements. This section includes implementation of ORS 197.772(1).¹ The department finds that the existing provisions adequately implement the statute, so proposed amendments are limited to minor clean-up except an addition of a provision that objection to designation must be made “on the public record.” This objection could be orally at a hearing or through written testimony submitted into the record. This provision will head off possible arguments regarding consent if a property owner does not “officially” submit objection to the designation.

When a local government chooses to inventory historic resources, it must adopt or amend a resource list of those historic resources that were determined to be significant under section (5) (i.e., “designate” such resources) pursuant to OAR 660-023-0030(5) and this section.

~~(a) Local governments shall adopt or amend the list of significant historic resource sites (i.e., “designate” such sites)~~ **The resource list must be adopted or amended** as a land use regulation. **That is, the resource list is not an element of the comprehensive plan.**

(b) Local governments ~~shall~~ **must** allow owners of inventoried historic resources to refuse historic resource designation at any time prior to adoption of the designation and ~~shall~~ **must** not include a site on a **resource** list of significant historic resources if the owner of the property objects to its designation **on the public record.**

F. Historic Resource Protection Ordinances – OAR 660-023-0200(7)

Identifying and designating historic resources are optional for local governments, but protecting the resources once they are designated is not. Proposed new language makes this clear. Otherwise, the rule on providing a protection ordinance is unchanged. Other provisions formerly contained in this section are proposed to be moved to other, more chronologically appropriate, sections.

Local governments must adopt land use regulations to protect locally significant historic resources. Historic protection ordinances should be consistent with standards and guidelines recommended in the Standards and Guidelines for Archeology and Historic Preservation published by the U.S. Secretary of the Interior.

¹ ORS 197.772(1): “Notwithstanding any other provision of law, a local government shall allow a property owner to refuse to consent to any form of historic property designation at any point during the designation process. Such refusal to consent shall remove the property from any form of consideration for historic property designation under ORS 358.480 to 358.545 or other law except for consideration or nomination to the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.).”

G. National Register Resources – OAR 660-023-0200(8)

LCDC's initiation of the rulemaking included these components:

- Achieve a well-articulated base level of protection for historic resources listed in the National Register of Historic Places that can be applied directly without the need to amend local codes.
- Clarify the circumstances under which the owner consent provisions in ORS 197.772(1) apply to resources listed in the National Register.

1. Baseline Level of Protection

Proposed amendments to section (8)(a) and (b) are intended to carry out LCDC's direction regarding baseline protection. The draft contains language intended to make it clear that National Register resources are deemed significant and that local governments must protect these resources even in the absence of a local process. The draft includes, in subsection (a), three options for RAC consideration regarding the level of baseline protection. The first option is the most basic:

[A local government must] protect all National Register Resources, regardless of whether the resources are designated in the local plan or land use regulations by requiring a 120-day [or other period] delay for demolition, relocation or major exterior alteration and require the owner of the National Register Resource to consider options to the proposed demolition, relocation, or major exterior modification.

The second option changes the requirement that the owner "consider" options with a requirement to "pursue options in good faith" and adds the authority for the local government to guide alteration of character-defining features on parts of the building. The department has not written language to implement this addition, but rather presents it conceptually for discussion.

[A local government must] protect all National Register Resources, regardless of whether the resources are designated in the local plan or land use regulations by requiring a 120-day *[or other period]* delay for demolition, relocation or major exterior alteration and require the owner of the National Register Resource to demonstrate a good-faith effort to pursue options to the proposed demolition or relocation [plus guidance on altering character-defining features facing a public right of way, not including alleys]

The final option builds on either of the first two options and adds, again conceptually, the opportunity for the local government to deny demolition or relocation and to guide alterations of character-defining features on the entire building.

The RAC should discuss what level of protection for National Register resources is appropriate for the state to require of local governments, considering that this will apply to all jurisdictions.

Subsection (b) requires a local government to implement the protection measures in subsection (a) through its land use regulations, but specifies that the requirements apply directly during the interim.

[A local government must] amend its land use regulations to protect National Register Resources in conformity with subsection (a). Until such local regulations are adopted, subsection (a) shall apply directly to National Register Resources.

2. Application of Owner Consent to National Register Resources

Subsection (8)(c) addresses how a local government applies the owner consent provision of ORS 197.772(1) to protection of National Register resources beyond the requirements of the baseline protections in subsection (a). It requires local governments to use the process laid out in sections (4) through (6) as it would for a resource not on the National Register. Subsection (6)(b) implements ORS 197.772(1). It would only apply prospectively; that is, as drafted, it does not affect resources already protected by a local program. Subsection (8)(c) provides an exception to this requirement only for existing Goal 5 programs as applied to National Register districts.

[Local governments must] apply additional local protection measures to resources listed after the effective date of this rule only through a designation process pursuant to sections (4) through (6). A local government may apply additional local protection measures to a district listed in the National Register of Historic Places without a designation process under sections (4) through (6) if the local government's program to achieve Goal 5 pursuant to OAR 660-023-0050 was acknowledged prior to the effective date of this rule and the program permitted implementation of protection measures to National Register districts without a designation process.

The proposed amendments have not been reviewed by legal counsel. The department proposes it for discussion purposes.

H. Removal of a Resource from an Inventory – OAR 660-023-0200(9) and (10)

LCDC's initiation of the rulemaking included the component: "Clarify who has standing under the owner consent provisions of ORS 197.772(2) and highlight an alternate path for removing a local historic designation." Section (9) of the draft amendments addresses this directive as guided by the Oregon Supreme Court decision in *Lake Oswego Preservation Society v. City of Lake Oswego*.

1. Standing to Demand Removal of a Resource from an Inventory

Materials distributed by DLCD and SHPO to the public prior to initiation of the rulemaking (Attachment B to the [August 23 RAC staff report](#)) described the intent of this component of the proposal. The statutory citation in that report was erroneous and that error has been carried forward in documents to LCDC and the RAC. The report's description of the issue makes it clear

that the owner consent provision that needs clarification is in ORS 197.772(3), not 197.772(2) as has been cited.²

The proposed subsection (9)(a) provides the clarification regarding standing for removal of a resource from a resource list. It limits an owner's authority to demand removal to those instances where the designation was imposed without an opportunity for the owner to object. It does not provide for a property owner to object at any time except before and during the designation process.

A local government must remove a property from the resource list of locally significant historic resources if the designation was imposed on the property by the local government and the owner requests that the local government remove it from the list. A designation was imposed if, at the time of designation, the owner of the property was not provided an opportunity to object to the historic designation as required by subsection (6)(b).

The most likely scenario for this this provision to be used is if the local government designated the resource prior to enactment of the owner consent statute. It is possible for a local government to "impose" a future designation only by failing to comply with the requirements of the Goal 5 historic resources rule (specifically, section (4) or subsection (6)(b), or both).

Section (10) is an existing section that prohibits demolition or alteration of a resource removed from a resource list under the owner consent provision of section (9) for 120 days after the property owner requests removal. The department proposes clean-up amendments to conform the language to other sections of the rule and to change a citation due to renumbering within the rule.

A local government shall not issue a permit for demolition, ~~or modification~~ **relocation, or major exterior alteration** of a historic resource ~~described under subsection (6) of this rule~~ **proposed for removal from the resource list under subsection (9)(a)** for at least 120 days from the date a property owner requests removal of historic resource designation from the property.

2. Alternate Path for Removing a Local Historic Designation

The proposed subsection (9)(b) provides four circumstances under which a local government may choose to remove a locally significant historic resource from the resource list. The list is proposed to be exclusive; that is, local governments would not be permitted to add to the list.

² ORS 197.772 provides: "(2) No permit for the demolition or modification of property removed from consideration for historic property designation under subsection (1) of this section shall be issued during the 120-day period following the date of the property owner's refusal to consent.

"(3) A local government shall allow a property owner to remove from the property a historic property designation that was imposed on the property by the local government."

(A) The property has lost the physical qualities for which it was originally recognized;

(B) Additional information shows that the property no longer satisfies the criteria for recognition as a historic resource or did not satisfy the criteria for recognition as a historic resource at time of listing;

(C) The value to the community of the proposed use of the property outweighs the value of retaining the designated historic resource on the present site and the property owner has made a reasonable effort to rehabilitate, reuse, sell, and or relocate the property and has found that the available alternatives are either not technically feasible or not economically feasible.

(D) The local building official declares that the property poses a clear and immediate hazard to public safety and must be demolished to abate the unsafe condition.

Paragraphs (A) and (B) are intended to recognize circumstances where it would be inappropriate to require that the site remain on the resource list due to changed circumstances. Paragraph (D) similarly recognizes a circumstance – an unsafe condition – that most would agree is a reasonable condition to warrant removal of protection of the site.

The criterion in paragraph (C) would provide local governments flexibility to weigh and balance the benefits of retaining protection of a resource versus giving up that protection when other priorities intrude. The provision would not provide *carte blanche* authority to a local government to remove a site from the resource list, but instead require consideration of alternatives and the technical and economic feasibility of preserving the resource.

I. Applicability – OAR 660-023-0200(11) and (12)

The proposed sections (11) and (12) would establish that the baseline protections for National Register resources in subsection (8)(a) and the 120-day prohibition on demolishing or altering a site removed from the resource list under section (10) would be effective immediately. Other sections of the rule would be subject to the applicability provisions of OAR 660-023-0250. This rule would require that a local government comply with OAR 660-023-0200, the historic resources rule, if it chooses to update its plan and land use regulations regarding historic resources, but a local government would not be required to undertake such an update.

III. STATEMENT OF NEED AND FISCAL IMPACT

ORS 183.333(3) provides:

If an agency appoints an advisory committee for consideration of a rule under subsection (1) of this section, the agency shall seek the committee's recommendations on whether the rule will have a fiscal impact, what the extent of that impact will be and whether the rule will have a significant adverse impact on small businesses. If the committee indicates that the rule will have a significant adverse impact on small businesses, the agency shall seek the committee's recommendations on compliance with ORS 183.540.

ORS 183.540 provides:

If the statement of cost of compliance effect on small businesses required by ORS 183.335 (2)(b)(E) shows that a rule has a significant adverse effect upon small business, to the extent consistent with the public health and safety purpose of the rule, the agency shall reduce the economic impact of the rule on small business by:

- (1) Establishing differing compliance or reporting requirements or time tables for small business;
- (2) Clarifying, consolidating or simplifying the compliance and reporting requirements under the rule for small business;
- (3) Utilizing objective criteria for standards;
- (4) Exempting small businesses from any or all requirements of the rule; or
- (5) Otherwise establishing less intrusive or less costly alternatives applicable to small business.

A statement of need and fiscal impact is included as Attachment C. It states that the proposed rules will not have a negative fiscal impact on local government, small business, state agencies, or the public. Department staff will seek a recommendation from the RAC regarding the content of the statement.

ATTACHMENTS

- A. Draft amendments to OAR 660-023-0200, showing changes
- B. Draft amendments to OAR 660-023-0200, without markup
- C. Statement of Need and Fiscal Impact

DIVISION 23

PROCEDURES AND REQUIREMENTS FOR COMPLYING WITH GOAL 5

660-023-0010

Definitions

1 As used in this division, unless the context requires otherwise:

2

3 * * *

4

5 (4) “Inventory” is a survey, map, or description of one or more resource sites that is prepared by
6 a local government, state or federal agency, private citizen, or other organization and that
7 includes information about the resource values and features associated with such sites. As a verb,
8 “inventory” means to collect, prepare, compile, or refine information about one or more resource
9 sites. (See resource list.)

10

11 * * *

12

13 (6) “Program” or “program to achieve the goal” is a plan or course of proceedings and action
14 either to prohibit, limit, or allow uses that conflict with significant Goal 5 resources, adopted as
15 part of the comprehensive plan and land use regulations (e.g., zoning standards, easements,
16 cluster developments, preferential assessments, or acquisition of land or development rights).

17

18 (7) “Protect,” when applied to an individual resource site, means to limit or prohibit uses that
19 conflict with a significant resource site (except as provided in OAR 660-023-0140, 660-023-
20 0180, and 660-023-0190). When applied to a resource category, “protect” means to develop a
21 program consistent with this division.

22

23 * * *

24

25 (9) “Resource list” includes the description, maps, and other information about significant Goal 5
26 resource sites within a jurisdiction, adopted by a local government as a part of the comprehensive
27 plan or as a land use regulation. * * *

28

29 (10) “Resource site” or “site” is a particular area where resources are located. A site may consist
30 of a parcel or lot or portion thereof or may include an area consisting of two or more contiguous
31 lots or parcels.

32

33 * * *

34

Additions **bold and underscored**

October 14, 2016A-1

Deletions ~~struck~~

Moved text ~~double struck~~ and **double underscored**

Changes from previous draft **highlighted**

October 18, 2016 draft

660-023-0200
Historic Resources

(1) For purposes of this rule, the following definitions apply:

(a) “Demolition” means the destruction or deconstruction of one-half or more of the ground floor square footage of a building unless a local government land use regulation includes a definition that is at least equally encompassing of destruction or deconstruction of a historic resource. Such local definition will replace this definition.

~~(a)~~**(b)** “Designation” is a decision by a local government declaring that a historic resource is “significant” and including the resource on the list of significant historic resources.

~~(b)~~ “Historic areas” are lands with buildings, structures, objects, sites, or districts that have local, regional, statewide, or national historic significance.

(c) “Historic context statement” is an element of a comprehensive plan that describes the important, broad economic, social, and cultural patterns impacting the physical development in a defined geographic area and identifies historic resources representative of the identified broad patterns. The document can serve as the foundation for local decisions about the significance of historic resources.

(d) “Historic preservation plan” is an element of a comprehensive plan that contains the local government’s goals and policies for historic resource preservation and the processes for creating and amending the program to achieve the goal.

~~(e)~~**(e)** “Historic resources” are those buildings, structures, objects, sites, or districts that **potentially** have a **significant** relationship to events or conditions of the human past.

~~(d)~~ “Historic resources of statewide significance” are buildings, structures, objects, sites, or districts listed in the National Register of Historic Places, and within approved national register historic districts pursuant to the National Historic Preservation Act of 1966 (PL 89-665; 16 U.S.C. 470).

(f) “Locally significant historic resource” means buildings, structures, objects, sites, or districts included on a resource list.

(g) “National Register Resource” means buildings, structures, objects, sites, or districts listed in the National Register of Historic Places, and within approved National Register historic districts pursuant to the National Historic Preservation Act of 1966 (PL 89-665; 16 U.S.C. 470).

Additions **bold and underscored**

October 14, 2016A-2

Deletions ~~struck~~

Moved text ~~double struck~~ and **double underscored**

Changes from previous draft **highlighted**

October 18, 2016 draft

1 (h) “Owner”:

2
3 (A) Means the owner of fee title to the property as shown in the deed records
4 of the county where the property is located; or

5
6 (B) Means the purchaser under a land sale contract, if there is a recorded
7 land sale contract in force for the property; or

8
9 (C) Means, if the property is owned by the trustee of a revocable trust, the
10 settlor of a revocable trust, except that when the trust becomes irrevocable
11 only the trustee is the owner; and

12
13 (D) Does not include individuals, partnerships, corporations or public
14 agencies holding easements or less than fee interests (including leaseholds) of
15 any nature.

16
17 ~~(e)(i)~~ “Protect” means to require local government review of applications for demolition,
18 ~~removal~~relocation, or major exterior alteration of a historic resource, or to delay
19 approval of, or deny, permits for these actions in order to provide opportunities for
20 restoration and continued preservation of historic resources, or both.

21
22 (2) Relationship of Historic Resource Protection to the Standard Goal 5 Process.

23
24 (a) Local governments are not required to amend acknowledged plans or land use
25 regulations in order to provide new or amended inventories, resource lists or programs
26 regarding historic resources, except as specified in this rule section (8). Rather, local
27 Local governments are encouraged to adopt historic preservation regulations
28 regarding the demolition, ~~removal~~relocation, or major exterior alteration of all
29 designated historic resources.

30
31 (b) The requirements of the standard Goal 5 process (see in OAR 660-023-0030 through
32 660-023-0050), in conjunction with the requirements of this rule, apply when local
33 governments choose to amend acknowledged historic preservation plans and regulations.
34 However, the sequence of steps in the standard process is not recommended, as per
35 section (3) of this rule. The provisions in section (3) of this rule are advisory only.
36 Sections (4) through (9) of this rule are mandatory for all local governments, except
37 where the rule provides recommended or optional criteria.

38
39 (c) Local governments are not required to apply the ESEE process pursuant to
40 OAR 660-023-0040 in order to determine a program to protect historic resources.

1 (3) **Comprehensive Plan Contents.** Local comprehensive plans should foster and encourage the
2 preservation, management, and enhancement of **buildings**, structures, ~~resources, and objects,~~
3 **sites and districts** of historic significance within the jurisdiction in a manner conforming with,
4 but not limited by, the provisions of ORS 358.605. In developing local historic preservation
5 programs, local governments should follow the recommendations in the Secretary of the
6 Interior’s Standards and Guidelines for Archeology and Historic Preservation, **produced by the**
7 **National Park Service.** ~~Where possible, local~~ **Local** governments should develop a local
8 historic context statement and adopt a historic preservation plan and a historic preservation
9 ordinance before commencement of local historic inventories.

10
11 (4) **Inventorizing Historic Resources. When a local government chooses to inventory**
12 **historic resources, it must inventory historic resources pursuant to OAR 660-023-0030, this**
13 **section, and sections (5) through (7).** Local governments shall ~~shall~~ **must** provide broad public
14 notice prior to the collection of information about historic resources. ~~Local governments shall~~
15 **and** notify landowners about opportunities to participate in the inventory process. **Local**
16 **governments are encouraged to complete the inventory in a manner that satisfies the**
17 **requirements for such studies published by the Oregon State Historic Preservation Office**
18 **and that the inventory be provided to that office in a format compatible with the Oregon**
19 **Historic Sites Database.**

20
21 (5) **Determining Significance. When a local government chooses to inventory historic**
22 **resources, it must determine which resources on the inventory are significant pursuant to**
23 **OAR 660-023-0030(4) and this section.**

24
25 (a) Local governments may delegate the determination of **locally** significant historic sites
26 **resources** to a local planning commission or historic resources commission.

27
28 (b) The determination of significance should be based on the National Register Criteria
29 for Evaluation ~~or the Secretary of the Interior’s Standards for Evaluation,~~ **the historic**
30 **context statement and the historic preservation plan.** **Criteria may include, but are**
31 **not limited to, consideration of whether the resource has:**

32
33 (A) **Significant association with events that have made a significant**
34 **contribution to the broad patterns of local, regional, state, or national**
35 **history;**

36
37 (B) **Significant association with the lives of persons significant to local,**
38 **regional, state, or national history;**

39
40 (C) **Distinctive characteristics of a type, period, or method of construction, or**
41 **represents the work of a master, or possesses high artistic values, or**
42 **represents a significant and distinguishable entity whose components may**
43 **lack individual distinction;**
44

(D) A high likelihood that, if preserved, would yield information important in prehistory or history; or

(E) Relevance within the local historic context and priorities described in the historic preservation plan.

~~(5)~~(6) Designation of Locally Significant Historic Resources. When a local government chooses to inventory historic resources, it must adopt or amend a resource list of those historic resources that were determined to be significant under section (5) (i.e., “designate” such resources) pursuant to OAR 660-023-0030(5) and this section.

~~(a) Local governments shall adopt or amend the list of significant historic resource sites (i.e., “designate” such sites).~~ The resource list must be adopted or amended as a land use regulation. That is, the resource list is not an element of the comprehensive plan.

~~(b) Local governments shall~~ must allow owners of inventoried historic resources to refuse historic resource designation at any time prior to adoption of the designation and ~~shall~~ must not include a site on a resource list of significant historic resources if the owner of the property objects to its designation on the public record.

~~(6) The local government shall allow a property owner to remove from the property a historic property designation that was imposed on the property by the local government.~~

~~(7) Local governments are not required to apply the ESEF process in order to determine a program to protect historic resources. Rather, local governments are encouraged to adopt historic preservation regulations regarding the demolition, removal, or major exterior alteration of all designated historic resources.~~ Historic Resource Protection Ordinances. Local governments must adopt land use regulations to protect locally significant historic resources. Historic protection ordinances should be consistent with standards and guidelines recommended in the Standards and Guidelines for Archeology and Historic Preservation published by the U.S. Secretary of the Interior.

~~(8) Local governments shall protect all historic resources of statewide significance through local historic protection regulations, regardless of whether these resources are “designated” in the local plan.~~ National Register Resources must be considered significant under section (5). For these resources, local governments are not required to follow the process described in OAR 660-023-0030 through 660-023-0050 or sections (4) through (6). Instead, a local government must:

(a) [Option 1] Protect all National Register Resources, regardless of whether the resources are designated in the local plan or land use regulations by requiring a 120-day [or other period] delay for demolition, relocation or major exterior alteration and require the owner of the National Register Resource to consider options to the proposed demolition, relocation, or major exterior modification.

1 (a) [Option 2] Protect all National Register Resources, regardless of whether the
2 resources are designated in the local plan or land use regulations by requiring a 120-
3 day [or other period] delay for demolition, relocation or major exterior alteration
4 and require the owner of the National Register Resource to demonstrate a good-
5 faith effort to pursue options to the proposed demolition or relocation [plus guidance
6 on altering character-defining features facing a public right of way, not including
7 alleys]

8
9 (a) [Option 3] Option 1 or 2 plus provision for optional demolition and relocation
10 denial by local government subject to a specified process, and guidance on altering
11 character-defining features on the entirety of the building.

12
13 (b) Amend its land use regulations to protect National Register Resources in
14 conformity with subsection (a). Until such local regulations are adopted, subsection
15 (a) shall apply directly to National Register Resources.

16
17 (c) Apply additional local protection measures to resources listed after the effective
18 date of this rule only through a designation process pursuant to sections (4) through
19 (6). A local government may apply additional local protection measures to a district
20 listed in the National Register of Historic Places without a designation process under
21 sections (4) through (6) if the local government’s program to achieve Goal 5
22 pursuant to OAR 660-023-0050 was acknowledged prior to the effective date of this
23 rule and the program permitted implementation of protection measures to National
24 Register districts without a designation process.

25
26 (9) Removal of a historic resource from an inventory of significant historic resources a
27 resource list by a local government is subject to this section.

28
29 (a) A local government must remove a property from the resource list if the
30 designation was imposed on the property by the local government and the owner
31 requests that the local government remove it from the list. A designation was
32 imposed if, at the time of designation, the owner of the property was not provided
33 an opportunity to object to the historic designation as required by subsection (6)(b).

34
35 (b) A local government may remove a property from the list of locally significant
36 historic resources resource list only if the circumstances in (A), (B), (C), or (D) exist.

37
38 (A) The property has lost the physical qualities for which it was originally
39 recognized;

40
41 (B) Additional information shows that the property no longer satisfies the
42 criteria for recognition as a historic resource or did not satisfy the criteria
43 for recognition as a historic resource at time of listing;

1 (C) The value to the community of the proposed use of the property
2 outweighs the value of retaining the designated historic resource on the
3 present site and the property owner has made a reasonable effort to
4 rehabilitate, reuse, sell, and or relocate the property and has found that the
5 available alternatives are either not technically feasible or not economically
6 feasible.

7
8 (D) The local building official declares that the property poses a clear and
9 immediate hazard to public safety and must be demolished to abate the
10 unsafe condition.

11
12 ~~(9)~~**(10)** A local government shall not issue a permit for demolition, ~~or modification~~ **relocation,**
13 **or major exterior alteration** of a historic resource ~~described under subsection (6) of this rule~~
14 **proposed for removal from the ~~list of locally significant historic resources~~ resource list**
15 **under subsection (9)(a)** for at least 120 days from the date a property owner requests removal of
16 historic resource designation from the property.

17
18 **(11) OAR 660-023-0200(8)(a) is effective [upon filing of the rule with the Secretary of State]**
19 **or [on a specific date] and applies directly to local government permit decisions until the**
20 **local government has amended its land use regulations as required by OAR 660-023-**
21 **0200(5)(b).**

22
23 **(12) OAR 660-023-0200(10) is effective [upon filing of the rule with the Secretary of State]**
24 **or [on a specific date] and applies directly to local government permit decisions.**

DIVISION 23

PROCEDURES AND REQUIREMENTS FOR COMPLYING WITH GOAL 5

660-023-0010

Definitions

1 As used in this division, unless the context requires otherwise:

2

3 * * *

4

5 (4) “Inventory” is a survey, map, or description of one or more resource sites that is prepared by
6 a local government, state or federal agency, private citizen, or other organization and that
7 includes information about the resource values and features associated with such sites. As a verb,
8 “inventory” means to collect, prepare, compile, or refine information about one or more resource
9 sites. (See resource list.)

10

11 * * *

12

13 (6) “Program” or “program to achieve the goal” is a plan or course of proceedings and action
14 either to prohibit, limit, or allow uses that conflict with significant Goal 5 resources, adopted as
15 part of the comprehensive plan and land use regulations (e.g., zoning standards, easements,
16 cluster developments, preferential assessments, or acquisition of land or development rights).

17

18 (7) “Protect,” when applied to an individual resource site, means to limit or prohibit uses that
19 conflict with a significant resource site (except as provided in OAR 660-023-0140, 660-023-
20 0180, and 660-023-0190). When applied to a resource category, “protect” means to develop a
21 program consistent with this division.

22

23 * * *

24

25 (9) “Resource list” includes the description, maps, and other information about significant Goal 5
26 resource sites within a jurisdiction, adopted by a local government as a part of the comprehensive
27 plan or as a land use regulation. * * *

28

29 (10) “Resource site” or “site” is a particular area where resources are located. A site may consist
30 of a parcel or lot or portion thereof or may include an area consisting of two or more contiguous
31 lots or parcels.

32

33 * * *

34

660-023-0200
Historic Resources

1 (1) For purposes of this rule, the following definitions apply:
2

3 (a) “Demolition” means the destruction or deconstruction of one-half or more of the
4 ground floor square footage of a building unless a local government land use regulation
5 includes a definition that is at least equally encompassing of destruction or deconstruction
6 of a historic resource. Such local definition will replace this definition.
7

8 (b) “Designation” is a decision by a local government declaring that a historic resource is
9 “significant” and including the resource on the list of significant historic resources.
10

11 (c) “Historic context statement” is an element of a comprehensive plan that describes the
12 important, broad economic, social, and cultural patterns impacting the physical
13 development in a defined geographic area and identifies historic resources representative
14 of the identified broad patterns. The document can serve as the foundation for local
15 decisions about the significance of historic resources.
16

17 (d) “Historic preservation plan” is an element of a comprehensive plan that contains the
18 local government’s goals and policies for historic resource preservation and the processes
19 for creating and amending the program to achieve the goal.
20

21 (e) “Historic resources” are those buildings, structures, objects, sites, or districts that
22 potentially have a significant relationship to events or conditions of the human past.
23

24 (f) “Locally significant historic resource” means buildings, structures, objects, sites, or
25 districts included on a resource list.
26

27 (g) “National Register Resource” means buildings, structures, objects, sites, or districts
28 listed in the National Register of Historic Places, and within approved National Register
29 historic districts pursuant to the National Historic Preservation Act of 1966 (PL 89-665;
30 16 U.S.C. 470).
31

32 (h) “Owner”:
33

34 (A) Means the owner of fee title to the property as shown in the deed records of
35 the county where the property is located; or
36

37 (B) Means the purchaser under a land sale contract, if there is a recorded land sale
38 contract in force for the property; or
39

40 (C) Means, if the property is owned by the trustee of a revocable trust, the settlor
41 of a revocable trust, except that when the trust becomes irrevocable only the
42 trustee is the owner; and
43

1 (D) Does not include individuals, partnerships, corporations or public agencies
2 holding easements or less than fee interests (including leaseholds) of any nature.
3

4 (i) “Protect” means to require local government review of applications for demolition,
5 relocation, major exterior alteration of a historic resource, or to delay approval of, or
6 deny, permits for these actions in order to provide opportunities for restoration and
7 continued preservation.
8

9 (2) Relationship of Historic Resource Protection to the Standard Goal 5 Process.
10

11 (a) Local governments are not required to amend acknowledged plans or land use
12 regulations in order to provide new or amended inventories, resource lists or programs
13 regarding historic resources, except as specified in section (8). Local governments are
14 encouraged to adopt historic preservation regulations regarding the demolition,
15 relocation, or major exterior alteration of all designated historic resources.
16

17 (b) The requirements of the standard Goal 5 process in OAR 660-023-0030 through 660-
18 023-0050, in conjunction with the requirements of this rule, apply when local
19 governments choose to amend acknowledged historic preservation plans and regulations.
20

21 (c) Local governments are not required to apply the ESEE process pursuant to OAR 660-
22 023-0040 in order to determine a program to protect historic resources.
23

24 (3) Comprehensive Plan Contents. Local comprehensive plans should foster and encourage the
25 preservation, management, and enhancement of buildings, structures, objects, sites and districts
26 of historic significance within the jurisdiction in a manner conforming with, but not limited by,
27 the provisions of ORS 358.605. In developing local historic preservation programs, local
28 governments should follow the recommendations in the Secretary of the Interior’s Standards and
29 Guidelines for Archeology and Historic Preservation, produced by the National Park Service.
30 Local governments should develop a local historic context statement and adopt a historic
31 preservation plan and a historic preservation ordinance before commencement of local historic
32 inventories.
33

34 (4) Inventorying Historic Resources. When a local government chooses to inventory historic
35 resources, it must inventory historic resources pursuant to OAR 660-023-0030, this section, and
36 sections (5) through (7). Local governments must provide broad public notice prior to the
37 collection of information about historic resources and notify landowners about opportunities to
38 participate in the inventory process. Local governments are encouraged to complete the
39 inventory in a manner that satisfies the requirements for such studies published by the Oregon
40 State Historic Preservation Office and that the inventory be provided to that office in a format
41 compatible with the Oregon Historic Sites Database.

1 (5) Determining Significance. When a local government chooses to inventory historic resources,
2 it must determine which resources on the inventory are significant pursuant to OAR 660-023-
3 0030(4) and this section.

4
5 (a) Local governments may delegate the determination of locally significant historic
6 resources to a local planning commission or historic resources commission.

7
8 (b) The determination of significance should be based on the National Register Criteria
9 for Evaluation, the historic context statement and the historic preservation plan. Criteria
10 may include, but are not limited to, consideration of whether the resource has:

11
12 (A) Significant association with events that have made a significant contribution
13 to the broad patterns of local, regional, state, or national history;

14
15 (B) Significant association with the lives of persons significant to local, regional,
16 state, or national history;

17
18 (C) Distinctive characteristics of a type, period, or method of construction, or
19 represents the work of a master, or possesses high artistic values, or represents a
20 significant and distinguishable entity whose components may lack individual
21 distinction;

22
23 (D) A high likelihood that, if preserved, would yield information important in
24 prehistory or history; or

25
26 (E) Relevance within the local historic context and priorities described in the
27 historic preservation plan.

28
29 (6) Designation of Locally Significant Historic Resources. When a local government chooses to
30 inventory historic resources, it must adopt or amend a resource list of those historic resources
31 that were determined to be significant under section (5) (i.e., “designate” such resources)
32 pursuant to OAR 660-023-0030(5) and this section.

33
34 (a) The resource list must be adopted or amended as a land use regulation. That is, the
35 resource list is not an element of the comprehensive plan.

36
37 (b) Local governments must allow owners of inventoried historic resources to refuse
38 historic resource designation at any time prior to adoption of the designation and must not
39 include a site on a resource list if the owner of the property objects to its designation on
40 the public record.

41
42 (7) Historic Resource Protection Ordinances. Local governments must adopt land use regulations
43 to protect locally significant historic resources. Historic protection ordinances should be
44 consistent with standards and guidelines recommended in the Standards and Guidelines for
45 Archeology and Historic Preservation published by the U.S. Secretary of the Interior.

1 (8) National Register Resources must be considered significant under section (5). For these
2 resources, local governments are not required to follow the process described in OAR 660-023-
3 0030 through 660-023-0050 or sections (4) through (6). Instead, a local government must:
4

5 (a) [Option 1] Protect all National Register Resources, regardless of whether the
6 resources are designated in the local plan or land use regulations by requiring a 120-day
7 [or other period] delay for demolition, relocation or major exterior alteration and require
8 the owner of the National Register Resource to consider options to the proposed
9 demolition, relocation, or major exterior modification.
10

11 (a) [Option 2] Protect all National Register Resources, regardless of whether the
12 resources are designated in the local plan or land use regulations by requiring a 120-day
13 [or other period] delay for demolition, relocation or major exterior alteration and require
14 the owner of the National Register Resource to demonstrate a good-faith effort to pursue
15 options to the proposed demolition or relocation [plus guidance on altering character-
16 defining features facing a public right of way, not including alleys]
17

18 (a) [Option 3] Option 1 or 2 plus provision for optional demolition and relocation denial
19 by local government subject to a specified process, and guidance on altering character-
20 defining features on the entirety of the building.
21

22 (b) Amend its land use regulations to protect National Register Resources in conformity
23 with subsection (a). Until such local regulations are adopted, subsection (a) shall apply
24 directly to National Register Resources.
25

26 (c) Apply additional local protection measures to resources listed after the effective date
27 of this rule only through a designation process pursuant to sections (4) through (6). A
28 local government may apply additional local protection measures to a district listed in the
29 National Register of Historic Places without a designation process under sections (4)
30 through (6) if the local government's program to achieve Goal 5 pursuant to OAR 660-
31 023-0050 was acknowledged prior to the effective date of this rule and the program
32 permitted implementation of protection measures to National Register districts without a
33 designation process.
34

35 (9) Removal of a historic resource from a resource list by a local government is subject to this
36 section.
37

38 (a) A local government must remove a property from the resource list if the designation
39 was imposed on the property by the local government and the owner requests that the
40 local government remove it from the list. A designation was imposed if, at the time of
41 designation, the owner of the property was not provided an opportunity to object to the
42 historic designation as required by subsection (6)(b).
43

44 (b) A local government may remove a property from the resource list only if the
45 circumstances in (A), (B), (C), or (D) exist.
46

1 (A) The property has lost the physical qualities for which it was originally
2 recognized;

3
4 (B) Additional information shows that the property no longer satisfies the criteria
5 for recognition as a historic resource or did not satisfy the criteria for recognition
6 as a historic resource at time of listing;

7
8 (C) The value to the community of the proposed use of the property outweighs the
9 value of retaining the designated historic resource on the present site and the
10 property owner has made a reasonable effort to rehabilitate, reuse, sell, and or
11 relocate the property and has found that the available alternatives are either not
12 technically feasible or not economically feasible.

13
14 (D) The local building official declares that the property poses a clear and
15 immediate hazard to public safety and must be demolished to abate the unsafe
16 condition.

17
18 (10) A local government shall not issue a permit for demolition, relocation, or major exterior
19 alteration of a historic resource proposed for removal from the resource list under subsection
20 (9)(a) for at least 120 days from the date a property owner requests removal of historic resource
21 designation from the property.

22
23 (11) OAR 660-023-0200(8)(a) is effective [upon filing of the rule with the Secretary of State] or
24 [on a specific date] and applies directly to local government permit decisions until the local
25 government has amended its land use regulations as required by OAR 660-023-0200(5)(b).

26
27 (12) OAR 660-023-0200(10) is effective [upon filing of the rule with the Secretary of State] or
28 [on a specific date] and applies directly to local government permit decisions.

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing accompanies this form.

FILED 9-15-16 3:38 PM ARCHIVES DIVISION SECRETARY OF STATE
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Land Conservation and Development Department

660

Agency and Division

Administrative Rules Chapter Number

Rulemaking regarding protection of historic resource sites under Statewide Planning Goal 5

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Rulemaking regarding protection of historic resource sites under Statewide Planning Goal 5

Statutory Authority:

ORS 197.040

Other Authority:

Statewide Planning Goal 5

Statutes Implemented:

ORS 197.772

Need for the Rule(s):

The current rule requires local governments to protect structures on the National Register of Historic Places and provides an option for local protection of significant historic structures that are not on the National Register.

Documents Relied Upon, and where they are available:

Statewide Planning Goal 5; ORS 197 are available at the department, 635 Capitol St. NE, Ste. 150, Salem, OR 97301.

Fiscal and Economic Impact:

See below

Statement of Cost of Compliance:**1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):**

The current rule requires local governments to protect structures on the National Register of Historic Places and provides an option for local protection of significant historic structures that are not on the National Register. The amendments are intended to clarify how local governments are to carry out these two objectives. No fiscal impact on state agencies is expected. The proposed amendment is not expected to add a new trigger for comprehensive plan or code changes. The rule will include the option of applying the rule directly, rather than amending local codes, so the department does not expect there to be a fiscal impact on local governments. The department does not have any information that would suggest that the amendments would either increase or reduce the administrative or construction costs associated with protection of historic resources for the general public.

2. Cost of compliance effect on small business (ORS 183.336):**a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:**

Small businesses are not subject to this rule. Small businesses are subject to local codes that implement the rule. The proposed amendments are not expected to change the number or types of small businesses that are subject to local historic preservation programs.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

There are no reporting, recordkeeping or other administrative activities required of small businesses by the proposed amendment.

c. Equipment, supplies, labor and increased administration required for compliance:

There are no new equipment, supplies, labor or increased administration required of small businesses by the proposed amendment.

How were small businesses involved in the development of this rule?

Small businesses will have the opportunity to participate in public hearings held on the proposed rule amendment. Small businesses were not involved in the development of the draft amendments.

Administrative Rule Advisory Committee consulted?: Yes**If not, why?:**

An Administrative Rule Advisory Committee (RAC) was appointed and consulted in the development of the proposed rule amendment. The

RAC was composed of members from local government and historic preservation interests groups. The proposed amendments were to add clarity to existing processes. People with experience in the application of historic preservations codes provided the technical knowledge needed by the department.

<u>11-18-2016 Close of Hearing</u>	<u>Casaria Taylor</u>	<u>casaria.taylor@state.or.us</u>
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

ARC 925-2007