

Oregon Parks and Recreation Commission

June 15, 2022

Agenda Item:	9a	Action
Public Comment Allowed:	No	
Topic:	Adoption of OAR-736-050-0260 Committee Procedures for Review and Approval of Nominations to the National Register	
Presented by:	Chris Havel	

On October 21, 2021, an online meeting of the State Advisory Committee on Historic Preservation (SACHP) was interrupted when a public attendee began typing racial and homophobic slurs, personally directed at members of the committee. The meeting was open to the public, as required by Oregon Administrative Rule 736-050-0260(9). The staff administrator ended the meeting and the matter was referred to the Oregon State Police, who are conducted a criminal investigation, and the Oregon Department of Justice Bias Incident Hotline.

A public hearing is a necessary step in state consideration of nominations to the federal National Register of Historic Places. By rule, after the nomination is presented to the SACHP by the National Register Program Coordinator, public comment must be taken during the meeting. To protect the health and safety of committee members as they fulfill their duty to consider nominations to the National Register, the Oregon State Parks and Recreation Commission temporarily changed administrative rules in November 2021 to allow the committee chair to accept public comments during the meeting in writing, designating the OPRD staff meeting administrator to receive the comments and display them for the committee members' consideration.

The temporary rule was valid for 180 days and expired May 16, 2022. At its April 2022 meeting, the Oregon State Parks and Recreation Commission approved a staff request to take the temporary rule through the regular public process. If approved today, the changes would become permanent unless amended again.

As of the date this brief is due, the public comment period is still open and staff have not developed a recommendation. An updated brief will be provided to commissioners about a week before the business meeting.

Edit June 8, 2022: The three public comments received expressed similar concerns about limitations on free and easy expression of people testifying before the committee. It is important to preserve the authentic voice of people addressing a public body. Staff share these concerns, and have responded in two ways.

1. Rule language:

- a. Amend the rule to include a sunset on December 31, 2025 and document each instance it is used from the effective date to the sunset, recording the result of each use.
2. Policy elements:
 - a. Make it clear to the committee chair this is a discretionary option and offer examples and training to ensure it is applied only when needed.
 - b. Advertise use of this option in advance of each meeting where it is employed.
 - c. Where the chair exercises this option, record testifiers in the hearing portion of a committee meeting, and play the testimony for committee members during the deliberation portion of a meeting.
 - d. Committee members will then interact with testifiers live and in real time.

Prior Action by Commission: November 17, 2021, approved Item 9e, adopting temporary rule. April 14, 2022, approved Item 9d, opening rulemaking.

Action Requested: Amend OAR 736-050-0260 as specified in Attachment B, and direct staff to promulgate policy guidance protecting free speech rights of members of the public testifying before the State Advisory Committee on Historic Preservation.

Attachments: A) Marked-up and B) clean versions of the rule. C) Public comments received.

Prepared by: Chris Havel

OAR 736-050-0260

(1) The committee must review all National Register nomination forms except for those prepared under OAR 736-050-0250(19)(a)(A) to (E) and when a CLG objects to a National Register nomination form as provided under OAR 736-050-0250(13).

(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 property 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(13) by each 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 and potential conflicts of interest in accordance with ORS 244.120 to ORS 244.130.

(6) Committee members must not recuse themselves for a potential conflict of interest.

(7) A quorum of ~~5~~five committee members are required to conduct business. The committee retains a quorum if by the removal of committee members for declared actual conflicts of interest the committee falls below ~~5~~five present, voting committee members.

(8) For each National Register nomination form presented to the committee, the National Register Program Coordinator must provide 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(12).

(9) The chairperson must call for comments from the proponent(s), opponent(s), 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 practices adopted by comments~~ must address one or more of the criteria in section (2) and may suggest an action under section (11). The total time allowed for comments must be determined by the chairperson or by practices adopted by the committee.

- (a) ~~Notwithstanding OAR 736-050-0250(12), the chairperson may direct that comments provided under this section be submitted in a manner prescribed by the department to the committee assistant designated Oregon Parks and Recreation Department staff who will provide the comments to the committee.~~
- (b) ~~This subsection (a) shall be rescinded is not effective after December 31, 2025.~~

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(10) The SHPO, Deputy SHPO, Associate Deputy SHPO, 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 (2)(a) to (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 (2)(a) to (d) after making less than a major revision(s) to the National Register nomination form;
- (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 (2)(a) to (d); or
- (d) Recommend that the SHPO find that the National Register nomination form does not meet the criteria in subsections (2)(a) to (d). The committee must provide reasons for the recommendation. The committee may re-consider a recommendation at a later committee 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 a major revision.

(13) The SHPO must take action on a National Register nomination form reviewed by the committee as described in 36 CFR § 60.6(k) to (w) (2020).

(14) The committee may provide courtesy comments on a National Register nomination form submitted to the Oregon SHPO by a federal agency or Tribe for properties administered by a federal agency or 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. Reviews completed under section (14) are subject to the procedures described in OAR 736-050-0260(2)(b), (c), and (d), and sections (3), and (5) through (10).

STATUTORY/OTHER AUTHORITY: ORS 358.617
STATUTES/OTHER IMPLEMENTED: ORS 358.622(2)

OAR 736-050-0260

(1) The committee must review all National Register nomination forms except for those prepared under OAR 736-050-0250(19)(a)(A) to (E) and when a CLG objects to a National Register nomination form as provided under OAR 736-050-0250(13).

(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;

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(d) The National Register nomination form demonstrates that the nominated property 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(13) by each 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 and potential conflicts of interest in accordance with ORS 244.120 to ORS 244.130.

(6) Committee members must not recuse themselves for a potential conflict of interest.

(7) A quorum of five committee members are required to conduct business. The committee retains a quorum 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 National Register nomination form presented to the committee, the National Register Program Coordinator must provide 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(12).

(9) The chairperson must call for comments from the proponent(s), opponent(s), and other interested

parties present following the National Register Program Coordinator's presentation. The comments must address one or more of the criteria in section (2) and may suggest an action under section (11). The total time allowed for comments must be determined by the chairperson or by practices adopted by the committee.

- (a) Notwithstanding OAR 736-050-0250(12), the chairperson may direct that comments provided under this section be submitted in a manner prescribed by the department to the designated department staff who will provide the comments to the committee.
- (b) Subsection (a) is not effective after December 31, 2025.

(10) The SHPO, Deputy SHPO, Associate Deputy SHPO, 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 (2)(a) to (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 (2)(a) to (d) after making less than a major revision(s) to the National Register nomination form;
- (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 (2)(a) to (d); or
- (d) Recommend that the SHPO find that the National Register nomination form does not meet the criteria in subsections (2)(a) to (d). The committee must provide reasons for the recommendation. The committee may re-consider a recommendation at a later committee 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 a major revision.

(13) The SHPO must take action on a National Register nomination form reviewed by the committee as described in 36 CFR § 60.6(k) to (w) (2020).

(14) The committee may provide courtesy comments on a National Register nomination form submitted to the Oregon SHPO by a federal agency or Tribe for properties administered by a federal agency or 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. Reviews completed under section (14) are subject to the procedures described in OAR 736-050-0260(2)(b), (c), and (d), and sections (3), and (5) through (10).

STATUTORY/OTHER AUTHORITY: ORS 358.617

STATUTES/OTHER IMPLEMENTED: ORS 358.622(2)



Rulemaking: Historic Preservation Advisory Committee Procedures

**Public comments received
between comment period opening and May 31, 3pm**



Submit a public comment on a rule

Oregon Parks and Recreation Department

Proposed rule change:

**Historic Preservation Advisory
Committee Procedures**

Commenter name (if provided):

Wendy Rahm

Location (if provided): Portland, OR

Public comment:

Please include this testimony unanimously approved on May 24 by the Downtown Neighborhood Association Board in opposition to the proposed rule change to OAR 736-050-0260(9).

Wendy Rahm
Portland, OR

Date comment received:

May 25, 2022 10:28 AM

Commenter email (if provided):

wwrahm@aol.com



Date: May 25, 2022

To: Oregon Parks and Recreation Commission

Copy: Oregon State Advisory Committee on Historic Preservation

From: Portland Downtown Neighborhood Association

Subject: Rulemaking for OAR 736-050-0260(9)

The Downtown Neighborhood Association (DNA) appreciates the service of both the Oregon Parks and Recreation Commission and the State Advisory Committee on Historic Preservation (SACHP).

The DNA was one of the groups affected by the October 2021 racist incident, resulting in the SACHP meeting being postponed which had been scheduled to hear the DNA-sponsored nomination of the South Park Blocks (SPB) to the National Register. This was expected to be the culmination of a two-and-a-half-year effort for this particular nomination, which many felt was long overdue. The DNA had managed to get testifiers to take time off from their work to be at this meeting. Its cancellation, while understandable, caused unrecognized damage to these individuals.

The temporary rule at the rescheduled meeting that created a digital firewall to protect members of the SACHP was understandable at that time. However, it eliminated the ability of presenters to be visible both to the committee and to other presenters. Public comments could not be delivered by individual testifiers, but were instead read by staff of Oregon Parks and Recreation Department.

It was soon apparent that this format harmed the voice and visible presence of the public at a public meeting. The negative impact was substantial in the case of the SPB nomination.

To respond to unjustifiable accusations, the DNA had scheduled one African American female testifier – the Oregon representative to the National Trust for Historic Preservation and Board President of the Architectural Heritage Center – and one female Native American-African American testifier, both of whom had strong personal testimony to deliver in support of the nomination. Instead of seeing their faces and hearing their testimony in their own voices, their testimony was read instead by a visible, white male staff moderator. The DNA went to great effort as did the testifiers to be sure there were demonstrable and varied perspectives at the hearing. And those who testified had taken time off to appear a second time.

It was clear to everyone that implementing this digital firewall did not serve equity interests at all. The rule was easily manipulated and misused so that the voices of some were elevated while others were neutralized.



The DNA submits that this rule is inconsistent with Oregon's Administrative Procedures Act (ORS 183). Now is not the time to add to the isolation brought on by the pandemic, nor is it the time to depersonalize (disembody) public voices or worse, silence them with baffling technology that also misfired. If implemented permanently, the new rule constitutes an undemocratic procedure.

The Portland City Council has returned to a mix of in person meetings with options for digital testimony. At a recent meeting, the atmosphere was joyous to have the City Commissioners face to face with the public. Both were smiling broadly. It restored a sense of democracy in action.

Therefore, the DNA opposes the adoption of language from the temporary rule and recommends instead that OAR 736-050-0260 should not be modified.

Thank you for your consideration.

A handwritten signature in black ink that reads "Walter E. Weyler". The signature is written in a cursive style with a large, prominent 'W'.

Walter Weyler
Chair, DNA Board

A handwritten signature in black ink that reads "Wendy Rahm". The signature is written in a cursive style with a large, prominent 'W'.

Wendy Rahm
Vice-Chair, DNA Board



Submit a public comment on a rule

Oregon Parks and Recreation Department

Proposed rule change:

Historic Preservation Advisory Committee Procedures

Date comment received:

May 30, 2022 11:02 AM

Commenter email (if provided):

bvbseattle@comcast.net

Commenter name (if provided):

Brooke Best

Location (if provided): Portland, OR

Public comment:

I'm submitting these comments regarding the proposed rulemaking OAR 736-050-0260(9) that takes a temporary rule for public testimony and makes it permanent. I'm aware that the Downtown Neighborhood Association (DNA) and Kirk Ranzetta have also submitted their comments related to this rulemaking.

First, I'd like to thank both the Oregon Parks and Recreation Commission (OPRC) and State Advisory Committee on Historic Preservation (SACHP) for your dedicated service, especially in light of what occurred at the previous scheduled meeting where SACHP members were assaulted by a racist incident that shut down the October 2021 virtual meeting. No one should be subjected to that in a public meeting or personally threatened while undertaking their committee obligations.

The SACHP temporary rules for public comment was instituted in order to protect SACHP members and meeting participants, which was necessary until a digital firewall could be installed to prevent future abuse. This was achieved by eliminating the ability of presenters to be visible to the Committee and having individual testifiers' public comments reviewed and read by an OPRD staff person.

While I understand the intent of this change, instituting this revised format as a permanent measure will have a profound impact on the public's ability to share their testimony, in their own voice, in a public setting.

We had first-hand experience of its impact at the rescheduled November SACHP meeting, when the South Park Blocks nomination was being considered. The DNA made great efforts to organize a range of individuals who took the time to prepare and present their testimony. While their remarks

were part of the public record, they were read by an OPRD moderator who was visible to the Committee. Instead of hearing and seeing the individual testifier, we heard an unimpassioned white male read the words verbatim. It was more painful and tone-deaf than anything else.

Even more frustrating was the fact that an administrator from Portland State University ((a white male) was able to testify before the SACHP, using his own voice, and express his objections to the nomination. He was elevated to this status by a moderator, who treated PSU as a “property owner,” which is not the case. Instead, he should have been considered a member of the public and treated the same way as the other individual testifiers. Further disappointing was the fact that much of his testimony was irrelevant to the proceeding and did not meet the provisions set forth in this temporary rule, under Section 2, which served as a means to eliminate testimony that is not pertinent to the SACHP’s consideration of the nomination. As Kirk Ranzetta clearly states:

Rather than limiting his concerns to the nomination’s content, the administrator embarked upon a misguided commentary that outlined the purely speculative impacts of the nomination on the 25,000 students of PSU who would be harmed by the listing and how the nomination would serve as a hindrance to the University’s future use of the park that it does not own. And yet, despite the lack of pertinency and even after it was reviewed by OPRD staff, the administrator’s testimony was entered into the record by his own voice despite its unfounded and immaterial content. This behavior was allowed by OPRD’s moderator and the Chair while presumably following the temporary rule’s non-discretionary mandate that notes that “comments **must** [*emphasis added*] address one or more of the criteria in section (2)”. The administrator’s testimony can be listened to at the following link and proceeds from 35:12 to 39:32. See the video here https://www.youtube.com/watch?v=_WmT-schruQ

It was very evident that implementing this temporary rule did not serve equity interests but, instead, showed how it could be misdirected. In this case, it denied the voices of some, while elevating the voices of others. More importantly, this rule is inconsistent with Oregon’s Administrative Procedures Act (ORS 183).

As the DNA letter pointed out, the Portland City Council recently resumed in-person meetings at City Hall (using a hybrid model allowing other participants to be seen and heard virtually). I was part of a group of citizens who showed up to present in-person testimony and from the moment we set foot in the chambers, there was a sense of comradery (and moments of joy and laughter!) being there face-to-face. Everyone there was relieved and eager to be actively engaged with each other – listening and watching people’s expressions and reactions. As the DNA letter states, “It restored a sense of democracy in action.”

OPRD has the ability to develop policies that utilize well-established safeguards for online meeting formats, allowing members of the public to be given the opportunity to be seen and heard. Other boards and commissions across the state have done this, so can OPRD. As the Portland City Council meeting demonstrated, there’s no substitute for in-person meetings. The SACHP should resume in-person meetings as soon as possible, and could easily implement a hybrid format that

utilizes readily available online protection tools.

It would be a huge mistake for OPRC to institute the adoption of this language from the temporary rule. I strongly recommend that OAR 736-050-0260 should not be modified.

Thank you for your consideration.

Brooke Best



Submit a public comment on a rule

Oregon Parks and Recreation Department

Proposed rule change:

**Historic Preservation Advisory
Committee Procedures**

Commenter name (if provided):

Kirk Ranzetta

Location (if provided): ,

Public comment:

Please find attached my comments on the proposed rulemaking for the State Advisory Committee on Historic Preservation.

Date comment received:

May 31, 2022 08:56 AM

Commenter email (if provided):

kranzetta@gmail.com

Oregon Parks and Recreation Commission

Testimony of Kirk Ranzetta Concerning Rulemaking for OAR 736-050-0260(9)

****A different version of this letter was distributed by OPRD staff to State Advisory Committee on Historic Preservation on February 9, 2022****

Thank you members of the State Advisory Committee on Historic Preservation (SACHP) and the Oregon Parks and Recreation Commission (OPRC) for your service. I wanted to convey how sorry I was that the State instituted a temporary rule as a result of the racist incident that occurred during the aborted online October 2021 meeting of the SACHP. No one ever deserves to be threatened or subjected to abuse like that.

I truly understand that the temporary rule was instituted to install a digital firewall to protect members of the SACHP (and all meeting participants) by eliminating the ability of presenters to be visible to the Committee and for public comments to be reviewed and then read by staff of Oregon Parks and Recreation Department (OPRD).

While well intentioned, this format has a profound ability to significantly harm the voice and visible presence of the public.

As an example, during a November meeting of the SACHP, the temporary rule had the effect of eliminating the face and voice of a woman of color who testified in support of the South Park Blocks National Register Nomination when it was considered at the November SACHP meeting. While the remarks of this individual were entered into the public record, they were dispassionately read by an OPRD moderator who is a white male and was visible. To witness how well this process worked in this particular instance, please review the SACHP meeting from 39:59 to 45:04 for the video linked here: <https://www.youtube.com/watch?v=WmT-schruQ>

Furthermore, during the very same meeting an administrator (a white male) from Portland State University (PSU) was able to use his own voice to testify before the SACHP. He was provided this opportunity by a moderator under the imprimatur he was a "property owner" which PSU is not. He should have been considered a member of the public. Prior to the meeting, the representative had provided written testimony to OPRD staff prior to the meeting concerning the South Park Blocks nomination. Unfortunately, half of his testimony was clearly not germane to the proceeding as required under section 2 of OAR 736-050-0260. This provision is referred to in the temporary rule as a means of eliminating testimony that is not pertinent to the SACHP's consideration of the nomination. For reference section 2's text is included below:

- (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;*

(d) The National Register nomination form demonstrates that the nominated property meets the National Register criteria for evaluation.

Rather than limiting his concerns to the nomination's content, the administrator embarked upon a misguided commentary that outlined the purely speculative impacts of the nomination on the 25,000 students of PSU who would be harmed by the listing and how the nomination would serve as a hindrance to the University's future use of the park that it does not own. And yet, despite the lack of pertinency and even after it was reviewed by OPRD staff, the administrator's testimony was entered into the record by his own voice despite its unfounded and immaterial content. This behavior was allowed by OPRD's moderator and the Chair while presumably following the temporary rule's non-discretionary mandate that notes that "comments **must** [*emphasis added*] address one or more of the criteria in section (2)". The administrator's testimony can be listened to at the following link and proceeds from 35:12 to 39:32. See the video here <https://www.youtube.com/watch?v=WmT-schruQ>

The implementation of the temporary rule, from its outset, readily illustrated how the existing rule can be manipulated, misused, or implemented in a slipshod fashion by participants, agency officials, and commission members in such a way that efficiently denies the voices of some while elevating the voices of others.

Having witnessed the implementation of the rule, the format was on its face Draconian. At worst it was arbitrary, capricious, and inconsistent with Oregon's Administrative Procedures Act (ORS 183). It would not survive a contested case hearing.

Given the profound isolation that many Oregonians continue to grapple with, now is not the time to depersonalize the public, silence voices, and remove faces from the SACHP's record. If it were to be implemented, the new rule would constitute a horrendous precedent that other State boards and commissions will undoubtedly point to as an effective way to truncate the public's voice and their visible presence.

Instead of minimizing the power of public input, I would recommend that OPRD develop policies that utilize well-established safeguards for the online meeting format and that members of the public be given the opportunity to be seen and heard like other boards and commissions have done across the State already. I also firmly believe that in-person meetings provide the public more substantive and productive opportunities to participate. The SACHP should resume in-person meetings as soon as possible but implement a hybrid format that utilizes readily available online protection tools.

While the events at the October 2021 meeting were undoubtedly traumatic, and the impacts palpable, I would ask that the OPRC and OPRD utilize common sense digital protections as opposed to revising the procedures that serve to depersonalize the public, silence voices, and remove faces from a state proceeding.

OPRC should not adopt language from the temporary rule and OAR 736-050-0260 should not be modified.