

Oregon Revised Statute 358.653

Protection of Publicly Owned Historic Properties

Fact Sheet

Oregon Revised Statute (ORS) 358.653 is an Oregon state law obligating state agencies and all “political subdivisions” of the state—including counties, cities, universities, school districts, and local taxing districts—to consult with the State Historic Preservation Office (SHPO) to avoid inadvertent impacts to historic properties for which they are responsible. Impacts are usually the result of construction projects (additions, remodeling, etc.), but may also include the transfer of properties out of public ownership.

The statute does not provide many specifics, and there are currently no clarifying administrative rules, so, as a practical matter, SHPO follows a “lite” version of a similar federal law, Section 106 of the National Historic Preservation Act. In cases where federal funds, permits, or licenses are used, ORS 358.653 is superseded by Section 106.

This statute relates primarily to historic buildings and structures, but includes all real property that has historic significance. Protection of archaeological sites, on both public and private lands, is addressed by several other state and federal laws. See the Archaeological Services section on the SHPO’s website (oregonheritage.org) for guidance on how to comply with these laws if your project involves ground disturbance.

Who needs to comply with ORS 358.653?

Any public entity, including state government, counties, cities, universities, and local taxing districts such as hospitals, schools, irrigation, and fire departments.

What qualifies as a “historic property”?

Any property listed in the National Register of Historic Places or eligible for listing in the National Register qualifies for consideration under this statute. Given that only a relative handful of eligible properties have actually gone through the formal designation process, most of the properties that fall under this statute are not officially designated landmarks. In general, historic properties that meet the 50-year guideline, retain their historic appearance for the most part, and meet one of four qualifying criteria for significance set forth by the National Register.

What types of projects need review?

Any project that involves a property that meets the 50-year guideline at the time of construction of the project must be reviewed under ORS 358.653. Projects include any work that physically impacts a property. For buildings, this includes, but is not limited to, window replacement, roof replacement, new additions, and major interior modifications. (Maintenance activities such as painting, cleaning, and repairing are generally exempt.) The statute also applies if an agency is selling or transferring a property out of public ownership. Proposed demolition, of course, is also subject to review.

Why should my agency comply with the law?

ORS 358.653 does not include any penalties at this time for non-compliance, however, any agency failing to meet its obligations under this law is vulnerable to challenges by aggrieved

parties, resulting in project delays, increased administrative costs, increased staff time, and even legal fees.

How do I consult with the SHPO?

Consultation is easy and can be accomplished quickly without unnecessary project delays.

1. Determine if the property is at least 50 years old. If yes, proceed to steps below. If no, then no further action is needed unless the property is close to 50 years old and has exceptional characteristics of design or historical associations. Contact the SHPO for guidance on this issue.
2. Complete an Oregon SHPO Clearance Form (available on the Review & Compliance page of the SHPO's website: oregonheritage.org). Agencies will need to determine if their building is listed in the National Register **or** is eligible for listing. Please contact the Oregon SHPO for guidance on this process if not using a professional consultant.

Agencies also need to determine if the proposed project will affect the historic characteristics of the property. Be sure to include maps, photos, and drawings as necessary to illustrate what your project involves. In the event of a property sale or transfer, conveyance into private ownership is generally considered a negative impact to the property because it leaves the property without benefit of public stewardship.

3. Submit all materials to the SHPO. The review process takes up to 30 calendar days, usually less.
4. If the SHPO agrees that the property is not historic, or if it is historic and the project will not have negative impacts, the consultation process with the SHPO is complete.
5. If there will be negative impacts to the historic property, options for avoiding those impacts should be explored. Often, relatively minor changes in the work plan can minimize or eliminate negative impacts.
6. If impacts cannot be avoided then they must be "mitigated." Mitigation is negotiated between the SHPO and the agency, often with the involvement of the local government's landmark commission or historic preservation staff. Mitigation may include documentation, public education, protective covenants, or other historic preservation work that "gives back" to the community.

Don't forget the local government's historic preservation review.

If the historic property in question is locally listed as a landmark or listed in the National Register, it typically falls under the purview of the local landmarks board. Contact the local planning department to determine if your property is subject to local review.

Additional questions?

Please contact Ian Johnson at the SHPO: (503) 986-0678 or ian.johnson@state.or.us.