

# **OREGON STATE HISTORIC PRESERVATION OFFICE CERTIFIED LOCAL GOVERNMENT PROGRAM**

## **LOCAL GOVERNMENT PARTICIPATION PROCEDURES AMENDED 2001**

### **INTRODUCTION**

Federal historic preservation funds are available to Certified Local Governments (CLGs) through the State Historic Preservation Office (SHPO). Funds may be used for a variety of CLG program activities such as: program administration, survey and inventory, planning, public or commission education, heritage tourism, development, and National Register nominations.

The National Historic Preservation Act as amended (16 U.S.C. 470, *et seq.*) and applicable federal regulations (36 CFR 61) require that each state make a minimum of 10% of the state's allocation of federal funds available to certified local governments, as well as one half of any annual appropriations to the National Historic Preservation Fund in excess of \$65,000,000, in a manner to be determined by the U.S. Secretary of the Interior. Traditionally, Oregon has made a high percentage of its allocation available to CLGs to carry out preservation projects. Standards and procedures for allocating those funds are set forth in Oregon Administrative Rules 736-55-005 through 736-55-015.

### **I. CERTIFICATION OF LOCAL GOVERNMENTS**

#### **A. Purpose**

The purpose of this document is to set forth procedures for the certification of and transfer of funds to local governments wishing to participate directly in the State Historic Preservation Program in Oregon. Local governments strengthen their local historic preservation efforts by achieving Certified Local Government (CLG) status from the National Park Service (NPS). NPS and State governments, through their State Historic Preservation Offices (SHPOs), provide valuable technical assistance and small matching grants to diverse communities whose local governments are endeavoring to keep for future generations what is significant from their community's past. In turn, NPS and states gain the benefit of local government partnership in the national historic preservation program.

#### **B. Eligibility**

The goals of Oregon's local government participation program are to certify as many local governments as possible for direct administrative participation in the state's historic preservation program, and that each Certified Local Government program should attain high standards of stability, authority, and credibility.

Local governments that wish to participate in the Certified Local Government program must meet the statutory definition of a local government and must meet the minimum requirements specified below (*Historic Preservation Fund Grants Manual, Glossary*—11).

### C. **Minimum Requirements**

Federal regulations specify that to qualify for and maintain certified state and local government status one must:

1. "Enforce appropriate state or local legislation for the designation and protection of historic properties." (ORS 197.040 & ORS 197.225—ORS 197.245, OAR 660-023-0200)

In the absence of comprehensive state legislation to this end, participating local governments must have adopted an ordinance that enables the designation and protection of local historic properties. Local ordinance provisions must be consistent with the purposes of the National Historic Preservation Act. In addition, local governments shall be responsible for enforcing applicable state legislation and other local ordinances affecting historic properties in Oregon. A list of statutes is available from SHPO.

2. "Establish by state or local law an adequate and qualified historic preservation review commission composed of professional and lay members." 36 CFR 61.6(e)(2). All commission members shall have demonstrated *positive* interest, competence, or knowledge of historic preservation.

The chief elected local official(s) shall appoint a majority of landmark commission members from preservation professionals and/or persons working in historic preservation-related disciplines (archaeology, architectural history, conservation, cultural anthropology, curation, engineering, folklore, historic architecture, historic landscape architecture, historic preservation planning and history), to the extent that these members are available in the community. Professional and preservation-related educational and experience standards are available from SHPO.

A participating local government may be certified with less than a majority of its membership being preservation professionals or employed in historic preservation-related disciplines; however, participating local governments must demonstrate that they have made a reasonable effort to fill the required positions to the extent that such preservation professionals and lay members are available in the community. If unable to fill the required positions with preservation professionals or persons in

preservation-related disciplines, the participating local government must agree to retain consultants with appropriate expertise in cases where expertise may be required. This is particularly important when considering National Register nominations or other actions that would impact properties which are normally evaluated by a professional.

Prior to filling commission vacancies, CLGs must seek SHPO review of qualifications of proposed commission replacement members to ensure that requirements of this section have been met.

Local governments are encouraged to employ or to assign staff specialists to assist the landmarks commission and in general to assist in administering all government activities involving historic resources. The professional expertise of such staff persons, if appropriate, can be used to fulfill the requirement stated above for the landmarks commission regarding the retention of professional expertise. Additionally, if staff persons are fully participating members of the landmarks commission, their professional qualifications may be applied to meet the minimum requirements stated above for landmarks commission membership regarding a majority of preservation professionals and/or persons working in historic preservation-related disciplines that must be represented on the landmarks commission. To avoid any potential liability for conflicts of interest, CLGs must include provisions in their written procedures that meet NPS requirements (*Historic Preservation Fund Grants Manual*, Chapter 3, subsections C(1)(2)).

At a minimum, a landmarks commission must have the authority to recommend designation and protection of local historic landmarks and local historic districts, establish an adequate and qualified historic preservation review commission, maintain a system for the survey and inventory of properties that furthers the purposes of the National Historic Preservation Act as amended (16 U.S.C. 470 et seq.), provide for adequate public participation in the local historic preservation program, and satisfactorily perform the responsibilities delegated to it under the above Act. These authorities must be contained in the enabling ordinance. "Protection" mechanisms must include design review authority for alterations and changes made to locally designated landmarks and National Register properties, and authority to review and delay proposals to demolish or remove all or parts of locally designated historic landmarks and National Register properties as well.

In carrying out the above responsibilities, or any duties mutually agreed to by the SHPO and the applicant, the Certified Local Government and landmarks commission shall ensure that their activities are complementary to and carried out in coordination with those of the State Historic

Preservation Office, as outlined in 36 CFR 61, or the *Historic Preservation Fund Grants Manual*. Final signature authority for delegated responsibilities must remain with the state.

The SHPO is responsible for making orientation materials and training available to local commissions and staff. SHPO staff will make every effort to provide training programs in historic preservation, and to keep CLGs informed of training opportunities that are available from other sources. Training expenses for local landmarks commission members and staff are allowable costs for participating local agreements, if the training program is approved by the SHPO. The SHPO will conduct training sessions in accounting requirements and other procedures necessary for local participation in the state program.

3. "Maintain a system for the survey and inventory of historic properties."

Local surveys must contain the minimum information for each property required for the Statewide Inventory of Historic Properties. The State shall issue guidelines for local survey and inventory systems to ensure that such systems and the data produced can be readily integrated into SHPO inventories, the statewide comprehensive historic preservation plan, and other appropriate State and local planning processes. CLG survey data shall be in a format consistent with SHPO inventory requirements and shall not be inconsistent with the Secretary of the Interior's "Standards for Identification and Evaluation." Survey and inventory guidelines will be provided to the local government, and the SHPO will require that the local government be responsible for the satisfactory completion of inventory forms. Inadequate or incomplete inventory forms will be returned to the local government for completion or revision.

Participating local governments must maintain and make available to the public a copy of the Statewide Inventory for the local government's jurisdiction, and provide to the SHPO a copy of completed survey information for each property added to the local inventory, except for those archeological records which are exempted from public disclosure under ORS 192.500(L).

4. "Provide for adequate public participation in the historic preservation program, including the process of recommending properties to the National Register."

Landmarks commission meetings of participating local governments must be held in conformance with State of Oregon public meetings statutes. A summary of public testimony and landmarks commission discussion about

all nominations to the National Register of Historic Places generated from within the local government's jurisdiction must be forwarded to the SHPO when the nomination is forwarded. A summary of similar testimony before, as well as any discussion and action taken by, other local agencies such as planning commissions and city councils must also be forwarded if local ordinance requires review by these other agencies, or if a proposed nomination was reviewed by them.

Rules of procedure regarding the evaluation of potential National Register properties, designation of local historic districts, design review, or any other related activities shall be available for public inspection and comment prior to and after their formal adoption and implementation, with the exception of disclosure exemptions listed in Section 304 of the National Historic Preservation Act of 1966 (16 U.S.C. 470w-3). Copies of such procedures shall be forwarded to the SHPO.

CLGs shall provide a copy of meeting agendas and minutes on a quarterly or more frequent basis.

5. "Satisfactorily perform the responsibilities delegated to it under the Act."

Participating local governments must meet the four basic requirements above, and participate in the National Register nomination process pursuant to I C. A major review of the CLG's program operation and administration will be performed at least once every four years. Ideally, this evaluation will be conducted in person at the local government, although a written evaluation process may be substituted (q.v., "CLG Evaluation Questionnaire"). In addition, periodic monitoring of CLG activities will ensure that performance is consistent and coordinated with the identification, evaluation, and protection priorities of Oregon's comprehensive historic preservation planning process, and that of federal work program standards regarding SHPO accountability.

The SHPO shall outline procedures and standards by which the performance of CLGs in program operation and administration will be evaluated (q.v., "Annotated Performance Standards—2001"). Written records shall be maintained for all state evaluations of CLGs so that results are available for the Secretary's performance evaluations of states. Evidence of a Certified Local Government's failure to perform agreed upon participation responsibilities may be presented to the State Historic Preservation Officer by SHPO staff. The SHPO may cause the matter to be scheduled for review and discussion by the State Advisory Committee on Historic Preservation. At any time the State determines that the CLG's

performance is inadequate, the State shall recommend corrective measures in writing that the local government must take.

In the event a Certified Local Government does not take recommended measures within 180 calendar days of receipt of the SHPO request to correct inadequate performance, or otherwise fails to perform adequately its duties and responsibilities under this program, or no longer meets the minimum eligibility requirements, the SHPO shall initiate decertification of the Certified Local Government to participate in the program. The state's proposal for decertification of a local government will cite specific reasons and will be appropriately documented. The local government is decertified if the National Park Service concurs in writing with SHPO's recommendation to decertify the local government.

When a local government is decertified, the state will conduct suspension and, if necessary, termination of financial assistance procedures as specified in the *Historic Preservation Fund Grants Manual*.

If at any time the Certified Local Government voluntarily requests decertification, such a request shall be granted without prejudice by the State Historic Preservation Office. Notice of such decertification will be forwarded to the National Park Service.

#### **D. CLG Participation in the National Register Nomination Process**

1. Before a property within the jurisdiction of the Certified Local Government may be considered by the state for nomination to the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official(s), and the local historic preservation commission. Notification will occur at least sixty, but no more than 120, calendar days prior to the scheduled meeting of the State Advisory Committee on Historic Preservation. The local commission, after reasonable opportunity for public comment, shall prepare a report as to whether or not such property, in its opinion, meets the criteria of the National Register, on forms provided by the SHPO. Within sixty days of notice from the State Historic Preservation Officer, the chief local elected official(s) shall transmit the report of the commission and their recommendation to the State Historic Preservation Officer on the property's National Register eligibility. Except as provided in subparagraph 2 of this section, after receipt of such report and recommendation, or if no such report and recommendation are received within sixty days, the state shall make the nomination pursuant to 36 CFR 60. The state may expedite this process with the concurrence of the Certified Local Government.

2. If both the landmarks commission and the chief local elected official(s) recommend that a property not be nominated to the National Register because the property does not meet National Register criteria, the State Historic Preservation Officer shall take no further action, unless within thirty days of the receipt of such recommendation by the State Historic Preservation Officer, an appeal is filed with the state pursuant to 36 CFR 60. If such an appeal is filed, the state shall follow the procedures for making a nomination pursuant to section 101(a) of the National Historic Preservation Act of 1966 as amended. Any report and recommendations made under this section shall be included with any nomination submitted by the state to the Secretary of the Interior.
3. Nominations to the National Register which are received from applicants within a Certified Local Government which chooses to apply for a "Basic Participation" grant as outlined in II B(1) shall be processed using procedures outlined in I C(1) and (2).

Certified Local Governments that receive grant awards to complete individual, theme, multiple property, or district nominations to the National Register shall, in addition to being responsible for the satisfactory completion of these nominations to SHPO specifications, be required to:

- a. Provide, in a timely manner, a list of all affected property owners that must receive official notification from SHPO, pursuant to 36 CFR 60, within 90 calendar days of a scheduled meeting of the State Advisory Committee on Historic Preservation.
- b. Attend the scheduled meeting of the State Advisory Committee on Historic Preservation and introduce and provide comments to the committee on each nomination submitted by the CLG for review by the committee.
- c. Edit, revise, and prepare each nomination for signature by the SHPO pursuant to SACHP comments and SHPO staff procedures. Unsatisfactory submittals will be returned to the Certified Local Government for revision.
- d. Be responsible for any subsequent request for additional information or technical corrections from the National Register of Historic Places regarding any nomination submitted to the SHPO by the Certified Local Government.

## E. **Application Process for the Certification of Local Governments**

The chief elected official(s) of the local government may request certification from Oregon's State Historic Preservation Office. The request for certification consists of the CLG Application and includes the following:

1. A written certification agreement provided by SHPO and signed by the chief elected official(s) that the local government meets and will fulfill all the requirements and standards for certification outlined above.
2. A copy of the local historic preservation ordinance establishing a local historic preservation commission.
3. Resumes of each commission member.
4. Resumes of each staff member (if applicable).
5. A copy of all local ordinances, resolutions, etc., already in place which deal with historic preservation issues.
6. A statement that the local government, in appointing landmarks commission members, has sought applicants among preservation professionals or within preservation-related disciplines to the extent available in the community. The local government must be able to demonstrate that qualified persons were sought.

Applications must discuss how the local government satisfies the five minimum requirements listed in Section I, B(1-5). Initially, the application will be reviewed by the State Historic Preservation Office, and the local government will be notified of any omissions or suggested changes, if necessary. Upon receipt of an adequately documented CLG Application, the State Historic Preservation Office shall review the request and respond to the chief elected officials within thirty calendar days.

When a local government certification request has been approved by the State, the State Historic Preservation Officer shall sign a written certification agreement that lists the minimum responsibilities required by the federal regulations, and any additional responsibilities delegated to all CLGs in the state by the SHPO.

The SHPO shall then forward to the Secretary of the Interior a copy of the approved request and the signed certification agreement, as well as a signed review checklist. If the request for concurrence cannot be affirmed as submitted, the NPS will notify the SHPO prior to fifteen working days after receipt of the request. The NPS shall provide written notice of what



is necessary for the request for concurrence to be approved. The effective date of certification is the date of National Park Service concurrence.

## II. TRANSFER OF FUNDS TO CERTIFIED LOCAL GOVERNMENTS

### A. Introduction

Under the provision of the National Historic Preservation as amended (16 U.S.C. 470 *et seq.*), at least ten percent of Oregon's annual Historic Preservation Fund (HPF) allocation shall be designated for transfer to Certified Local Governments.

All Certified Local Governments are eligible to compete for the funds from the state's ten percent CLG reserve, as well as in additional program areas provided they meet the criteria set forth in Section I B. Applications for grant funds shall be made during the SHPO annual grant application process, and according to instructions in the SHPO's *Grant Application Manual*.

Any funded activities must meet the Secretary of the Interior's "Standards for Archaeology and Historic Preservation," and be activities eligible for Historic Preservation Fund assistance.

In any year in which the total annual National Park Service grant appropriations to the states exceeds \$65,000,000, one-half of the excess shall be transferred to CLGs according to procedures to be provided by the Secretary of the Interior.

Certified Local Governments receiving HPF grants from the CLG share shall be considered subgrantees of the state.

No Certified Local Government is automatically entitled to receive funds, and the Oregon SHPO is not required to award funds to all governments that are eligible.

Transferred monies shall not be applied as matching share for any other Federal grant. State directed specific uses of CLG funds are to be for activities that are eligible for Historic Preservation Fund assistance. State directed specific uses of CLG funds are to be consistent with the state comprehensive historic preservation planning process.

State awarded CLG funds must be sufficient to produce a specific impact and to generate effects directly as a result of the funds transfer. The requirement for tangible results may not be waived, even if there are many otherwise eligible applicants for the amount set aside for CLG share. The State may choose to use additional funds from its regular Historic Preservation Fund annual grant to satisfy competing demands. The State shall ensure that no CLG receives a disproportionate share of its yearly CLG allocation.

## **B. Allocation of Funds to Certified Local Governments**

Two levels of participation in Historic Preservation Fund (HPF) grants are available to Certified Local Governments: "Basic Participation," and "other" HPF Projects. In Oregon, both levels of funding must be matched with non-federal funds at a 50/50 match ratio or greater.

Allowable costs for all HPF-funded projects must be incurred in specific and quantifiable activities which have specific impacts and tangible results (measurable products).

### **1. Basic Participation**

A Certified Local Government desiring to participate in the Historic Preservation Fund grants program may request a basic participation grant of up to \$3,000, which must be matched with non-federal funds at a 50/50 match ratio or greater. The standard grant request form will be used to apply for the basic participation funds.

The CLG Basic Participation Grants are non-competitive. They will be awarded to CLGs that meet the basic program activity requirements and demonstrate that 50% matching funds are available. Reporting and funds management requirements are the same as those for all other HPF subgrants, as described in the *Historic Preservation Fund Grants Manual*, with one exception: billings will occur once per year, at project completion.

Payment for all HPF grants is made on a reimbursement basis only. These grant and matching funds are to be used to pay allowable direct costs such as salaries, contracts, printing, mileage, and postage for tangible historic preservation products flowing from:

- \* Preservation ordinance work; development, revision, implementation.
- \* Review and comment on National Register Nominations.
- \* Landmarks Commission meetings.
- \* Staff and Landmarks Commission education and training.
- \* Brochure or educational material development.

Any indirect cost rate included in the grant application budget detail must be pre-approved by SHPO. Indirect costs may not be included in the federally-assisted program budget or claimed for reimbursement unless the local government has a current indirect cost rate established by agreement with the federal government. This agreement must be submitted to SHPO, and approved prior to grant award. Indirect costs may be charged as part of the CLG grant only if the CLG subgrantee meets the requirements of the federal "Standards for Allowability of Costs", included in the *Grant Application Manual*.

At a minimum, participating CLGs must agree to:

- a. Maintain and fulfill satisfactorily all of the minimum CLG requirements, as previously specified in Section I, B and C, of this document.
- b. Maintain adequate financial management systems. Local financial management systems shall be in accordance with the standards specified in OMB Circular A-102, Attachment G, "Standards for Grantee Financial Management Systems." Local financial management systems shall be auditable in accordance with the General Accounting Office's *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*.
- c. Adhere to all requirements of the *Historic Preservation Fund Grants Manual* and OMB Circular A-133.
- d. Adhere to any requirements mandated by Congress regarding use of federal historic preservation funds.

## 2. **Other Historic Preservation Fund Projects**

For preservation activities other than those listed as basic participation, CLGs may apply for funds in regular HPF grant-assisted program areas as described in the *Historic Preservation Fund Grants Manual*. These projects may include survey and inventory, planning, National Register nominations, community education, and development projects.

Two project categories have been added. The first category is funding for landmarks commission staff time and expenses to monitor the State's special assessment properties in their jurisdiction and to prepare written reports on the properties' compliance with program requirements. The second category of eligible for funding is graduate student internships with the CLG agency.

Special assessment activities will require written reports and could include, but are not limited to: random on-site inspections and observation reports (on SHPO supplied forms); open house visitation; and alteration or rehabilitation observations. A complete updated listing of special assessment properties in each community will be provided by SHPO.

Internships with CLGs will require coordination with SHPO and a college or university having an accredited graduate program in historic preservation. The college/university internship program must require that a specific work program or objective be developed, and that a designated supervisor be identified. 180 hours is the minimum number of hours required for internships over a single term. For an internship to be considered for matching funds by the SHPO, a specific project must be identified that meets all other HPF funding eligibility priorities, and have a final product. The types of projects a CLG/Internship Program may consider are: historic context development, survey, National Register nomination, design guidelines for historic districts, educational materials such as walking tour brochures or technical briefs, and special projects. CLGs considering an internship should contact the appropriate college or university graduate program in historic preservation and the SHPO.

All program area HPF applications, including the Basic Participation Grant, must use the regular Grant Application Form, and individual rules for each program area must be followed. Program area HPF grant applications are open and competitive. If the CLG is awarded both the Basic Participation Grant and a grant for another Historic Preservation Fund project, one Agreement will be written to include both projects.