

## Oregon Parks and Recreation Commission

April 14, 2022

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Agenda Item: 9d

**Action**

Public Comment Allowed: Yes

Topic: Request to open OAR 736-050-0260 Committee Procedures for Review and Approval of Nominations to the National Register

Presented by: Chris Havel

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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, 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 conducting a criminal investigation, and the Oregon Department of Justice Bias Incident Hotline.

The public meeting 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 Parks and Recreation Department requested a temporary change to administrative rules 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. Comments not material to the nomination would not be displayed.

In November 2021, the Commission adopted the temporary amendment active for up to 180 days. Without action, the rule language would revert to its prior form on May 16, 2022. In order for the temporary rule language to become permanent, the agency must open the proposed amendment for public comment and follow the rule adoption process.

The SACHP has met twice after implementation of the temporary rule. Staff and committee members felt the temporary rule worked well to ensure public participation in the review process while protecting the health and safety of committee members considering National Register nominations. Committee members have requested this rule change become permanent.

**Prior Action by Commission:** Adoption of temporary rule change to OAR 736-050-0260(9) as agenda item 9e at the November 2021 Commission meeting.

**Action Requested:** Staff request permission to open rulemaking on amendments to OAR 736-050-0260(9) to make temporary changes to public comment process for SACHP permanent.

**Attachments:** Attachment A Marked Copy.

**Prepared by:** Chris Havel and Katie Gauthier

Oregon Administrative Rule 736-050-0260

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

(1) The committee 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 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 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. Notwithstanding OAR 736-050-0250(12), the chairperson may direct that comments provided under this section be submitted in writing to the committee assistant who will provide the comments to the committee.

(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).