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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 736
PARKS AND RECREATION DEPARTMENT

FILED
02/25/2022 12:11 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updating National Register document requirements

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/31/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
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HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 03/22/2022

TIME: 6:00 PM

OFFICER: Katie Gauthier

ADDRESS: Virtual hearing, registration required.

virtual

any, OR 97301

SPECIAL INSTRUCTIONS:

Registration required to speak at the hearing:

https://us06web.zoom.us/webinar/register/WN_v3k9NRBETcC97ujq_sREFw

NEED FOR THE RULE(S)

In November 2021, the Keeper of the National Register within the National Park Service (NPS) notified the Oregon State Historic Preservation Office (SHPO) that owner objections for listing historic properties in the National Register of Historic Places were no longer required to be notarized if made in compliance with 28 U.S.C. § 1746.

Under this new requirement, NPS must consider objections made under penalty of perjury consistent with 28 U.S.C. § 1746 to be valid objections, even if they are not notarized, if those objections otherwise comply with the requirements in the NPS's regulations.

After receiving the notification, staff sought clarification from NPS on the impact of this change to Oregon. Based on our current rules, it would be likely the agency could submit a nomination to NPS under the long-standing requirement that objections be notarized without it being returned by NPS. However, an individual could petition NPS to reject the listing under 36 CFR 60.15, for prejudicial procedural error, based on the Oregon SHPO not providing property owners the opportunity to object via declaration as opposed to notarization.

In order to ensure timely processing of nominations, amendments to OAR 736-050-0250 are needed to remove

requirements for a notarized statement and replace with the updated requirement for objections to be made under penalty of perjury consistent with 28 U.S.C. § 1746.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

28 U.S.C. § 1746 <https://www.justice.gov/archives/jm/criminal-resource-manual-1760-perjury-cases-28-usc-1746-unsworn-declarations-under-penalty>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

This amendment removes the requirement for statements to be notarized before submitting an objection for listing on the National Register of Historic Places. This will remove a potential barrier to submitting an objection for all individuals.

FISCAL AND ECONOMIC IMPACT:

Removing the requirement for statements to be notarized before submitting an objection for listing on the National Register of Historic Places may reduce preparation and administrative costs, and avoid legal fees associated with litigation for local governments, state agencies and individuals involved in the nomination process. Ensuring nominations will be processed by the National Park Service may reduce program administration costs for the Oregon SHPO.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) The Oregon SHPO of the Oregon Parks and Recreation Department is the state agency economically affected by these rules. The rules directly address the SHPO's administration of the federal National Register of Historic Places program, providing for specific processes that the agency must follow. Tribes, cities, counties, other subdivisions of Oregon

State government, and organizations and individuals nominating properties for listing in the National Register of Historic Places will be subject to the timelines and processes described in the rule. However, there are no direct costs associated with participation in the program, and the increased clarity of the proposed rule is expected to offset any potential process delays.

(2) The small businesses impacted by the proposed rules include historic preservation consultants and their clients, including local government, property developers, and organizations, and individuals. There are fewer than 50 small businesses that prepare National Register of Historic Places nominations in Oregon. (b) The rule does not require small businesses to create reports, records, complete any specific administrative activity, or pay for a service. The requirements for participation in the program and a complete National Register of Historic Places document remain the same for small businesses to comply with the proposed rules. The requirements for participation in the program and a complete nomination National Register of Historic Places document remain the same. (c) There is no additional increase in costs for professional services, equipment supplies, labor or administration.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

This is an administrative change required a change in the interpretation of federal rules. Small business owners have

been involved in larger rule changes in the past.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

This is an administrative change required a change in the interpretation of federal rules

AMEND: 736-050-0250

RULE SUMMARY: Outlines the process for submitting and reviewing National Register nominations. Amendment removes requirement for statements to be notarized.

CHANGES TO RULE:

736-050-0250

State Advisory Committee on Historic Preservation: Staff Activities Relating to the National Register Program ¶

- (1) The SHPO may delegate authority under this division to the Deputy SHPO, the Associate Deputy SHPO, the National Register Program Coordinator, or other Oregon SHPO staff.¶
- (2) The SHPO must appoint a National Register Program Coordinator to administer the state's National Register of Historic Places program.¶
- (3) Upon request of the receiving party, the Oregon SHPO must make available an un-redacted, complete copy of a National Register nomination form to the federal planning agency, owner(s), CLG, and chief elected official as described in 36 CFR ¶ 60.6(x) (2020), and a copy to the proponent, public, and Tribes subject to the provisions of sections (9) and (10) at any time.¶
- (4) The Oregon SHPO may provide notice to owners by public press release or other means in place of written notice when there are more than 50 owners, except for the public comment period notice described in paragraphs 11(a)(C) and (D), and 18(f)(C).¶
- (5) A proponent may submit a National Register nomination form regardless of ownership status to the SHPO, the federal preservation officer for the appropriate federal agency if the property is entirely located on federally-administered lands, or Tribal Historic Preservation Officer for the appropriate Tribe if the property is entirely located on trust land.¶
- (6) A Tribe may request government-to-government consultation with the Oregon SHPO at any time.¶
- (7) The Oregon SHPO must provide a written response to a proponent seeking to amend a National Register nomination form for a historic property or to nominate a property to the National Register within 60 calendar days of receipt and within 45 calendar days of receipt for a petition to remove a historic property from the National Register stating whether the National Register nomination form is:¶
 - (a) Adequately documented;¶
 - (b) Technically and professionally correct and sufficient; and¶
 - (c) Demonstrates that the property does or does not meet the National Register criteria for evaluation.¶
- (8) A proponent may withdraw the National Register nomination form at any time by submitting a written request to the SHPO.¶
- (9) The Oregon SHPO must keep all or qualifying portions of a National Register nomination form, associated correspondence, and other documents confidential and conditionally exempt from public disclosure under the conditions established in ORS 192.345 and as described in 36 CFR ¶ 60.6(x) (2020). Oregon SHPO staff must apply the conditions of ORS 192.355(4) to submitted National Register nomination forms. In addition, SHPO will not make specific information relating to the location of property available if disclosure would create a risk of destruction or harm as provided in 36 CFR ¶ 60.6(x) (2020).¶
- (10) The SHPO may petition the Keeper to keep all or qualifying portions of a National Register nomination form, correspondence, and other documents confidential and exempt from public disclosure under the provisions of the Act, 54 USC ¶ 307103.¶
- (11) The Oregon SHPO must provide a public comment period for each National Register nomination form considered by the committee. The copy of the National Register nomination form made available for public comment may be redacted as provided for under sections (9) and (10) as applicable.¶
 - (a) The Oregon SHPO must:¶
 - (A) Identify owners using county property tax records obtained within 90 calendar days prior to opening the public comment period;¶
 - (B) Open the public comment period not less than 30 calendar days nor more than 75 calendar days before a scheduled committee meeting;¶
 - (C) Mail a written public comment period notice to the proponent; owner; CLG; chief elected official; federal,

state, and local agencies and subdivisions of Oregon State Government that meet the definition of owner; and Tribes. The Oregon SHPO may choose to coordinate with local governments on the format, content, and distribution of the public comment period notice when nominating districts; and¶

(D) Include in the public comment period notice the date and location of the scheduled committee meeting and the process for submitting comments.¶

(b) The Oregon SHPO may:¶

(A) Publish a public comment period notice in one or more local newspapers of general circulation in the area where the nominated property is located.¶

(B) Hold or attend meetings or publish information to inform the public and interested parties if the SHPO believes that such an action is in the public interest.¶

(12) Any person may comment on a National Register nomination form considered by the committee.¶

(a) The Oregon SHPO must receive written comments at least five business days before the scheduled committee meeting, except as provided for CLGs in section (13). Any written comments received after this time but before the meeting must be included in the public record, but the Oregon SHPO must not provide the comments to the committee.¶

(b) A person may provide written materials or oral comment to the committee for consideration the day of the committee meeting.¶

(c) The committee must only consider written and oral comment submitted during the public comment period that address:¶

(A) Requirements for a complete National Register nomination form described in section (7), or¶

(B) Procedural requirements under state and federal law.¶

(d) All comments received in any format are public records, except as provided for under sections (9) and (10).¶

(e) The public comment period must remain open when the committee defers making a recommendation under the provisions of OAR 736-050-0260(11) or (12).¶

(13) A CLG may object to the nomination of a property to the National Register or a major revision to a National Register nomination form for a historic property as described in 54 USC § 302504 when all or part of the property is within the CLG's jurisdiction.¶

(a) The CLG must provide the public an opportunity to comment and consider these comments when making a recommendation to the SHPO.¶

(b) A valid objection under this subsection must meet the following requirements:¶

(A) The SHPO must receive the CLG's objection within 60 calendar days following the opening of the public comment period described in section (11);¶

(B) The chief elected official recommends that the property not be nominated to the National Register or that the National Register nomination form for a historic property not receive a major revision; and¶

(C) The local historic preservation commission recommends by majority opinion that the National Register nomination form does not meet one or more of the criteria described in section (7).¶

(c) Upon receipt of a valid objection under subsection (b), Oregon SHPO must:¶

(A) Remove the National Register nomination form from committee consideration and take no further review action from the date the Oregon SHPO receives the objection;¶

(B) Suspend the nomination process for 30 calendar days; and¶

(C) Provide written notice to the persons noted under ~~subsection paragraph~~ subsection paragraph 11(a)(C) within ~~5~~ five calendar days of the action. The notice must specify the date the SHPO received the objection under paragraph (b)(A).¶

(d) Any person may appeal a CLG's objection by submitting a written statement appealing the CLG's objection to the SHPO within 30 calendar days after the date the Oregon SHPO received the CLG's objection. Following the receipt of the appeal, the SHPO must submit the National Register nomination form for committee consideration at the next regularly- scheduled committee meeting, not less than 90 calendar days from the date the Oregon SHPO received the CLG's objection.¶

(e) If an appeal is not submitted from the date the SHPO received a valid objection under subsection (b) within 30 calendar days the SHPO must stop the nomination process and take all necessary actions to close the administrative process.¶

(f) A CLG may object each time proposed revisions to a National Register nomination form meet the definition of a "major revision."¶

(14) The executive department of state government as defined in ORS 174.112 and political subdivisions of state government may comment on a National Register nomination form. State government and political subdivisions of state government may object to listing a property in the National Register, but the SHPO must not count the objection toward the total number of private property owners needed to prevent the property from being listed in the National Register as prohibited by the provisions of 36 CFR § 60.6(g) (2020). As used in section (14), "political subdivision" includes counties, cities, taxing districts, and any other governmental unit within this state.¶

(15) The SHPO must determine if the majority of owners object to listing a nominated property in the National

Register by comparing the total number of owners identified on the property owner list to the number of ~~notarize~~valid statements that object to listing the property in the National Register. The SHPO must provide the Keeper the property owner list and tally of ~~notarize~~valid statements objecting to nominating the property to the National Register through the end of the public comment period.¶

(a) The Oregon SHPO must create a property owner list that includes each owner and parcel of real property within the boundary of a building, district, object, site, or structure nominated for listing in the National Register using county property tax records obtained as provided in ~~subsection paragraph~~ (11)(a)(A). That property owner list is the official list of property owners and real property throughout the public comment period. In creating the property owner list, the Oregon SHPO must:¶

(A) Edit the property owner list based on the submission of a valid, ~~notarized~~ statement and as described in section (16).¶

(B) Assume that the property tax records provided by the county assessor are accurate.¶

(C) Include owners on the property owner list regardless of whether the owner can be contacted using the information included on the property owner list provided by the county assessor's office.¶

(D) When encountering similar names, compare the name and mailing addresses to determine if there are one or more owners. The SHPO must consider Jane Doe and Jane S. Doe as two distinct persons when the county property tax records identify differing mailing addresses. If the mailing address is the same, the SHPO must identify these individuals as the same person.¶

(E) Count entities, such as named trusts, corporations, partnerships, etc., as individual owners when the owner name differs in any way, even when the mailing address is the same.¶

(F) Count a trust as a single owner when multiple trustees are named, but no trust is identified.¶

(G) Unless the terms of a trust expressly provide that the trust is irrevocable, count the settlor as the owner of the trust consistent with ORS 130.505.¶

(H) Use any adopted system of abbreviations, symbols, or other codes used by the county assessor from the county providing property tax records to identify owners when creating the property owner list.¶

(b) An owner may submit a ~~valid notarized~~ statement to take the actions in paragraphs (A) to (E) at any time during the public comment period.¶

(A) Object to listing a property in the National Register. An owner may object only once regardless of how many properties or what portion of a property the owner owns;¶

(B) Withdraw their own previous objection;¶

(C) Remove the previous owner as the owner of record from the property owner list and withdraw the previous owner's objection;¶

(D) Assert ownership of a property within the nominated area when the property owner list does not include the owner or parcel of real property and add the name of the owner and the real property to the property owner list; or¶

(E) Any combination of paragraphs (A), (B), (C), and (D).¶

(c) To be valid ~~notarized~~ statements must meet the following criteria:¶

(A) An owner must submit to the Oregon SHPO an original, ~~notarized~~ statement;¶

(B) The ~~notarized~~ statement must be on a form provided by the Oregon SHPO;¶

(C) The ~~notarized~~ statement must identify private, real property within the boundary of the nominated property that the owner owns;¶

(D) The ~~notarized~~ statement must clearly identify the intent of the owner as described in subsection (b);¶

(E) The owner must identify the name they were previously known by and listed in the county property tax records if different from their current legal name;¶

(F) The ~~notarized~~ statement must clearly identify the nature of the owner's property interest;¶

(G) The owner must sign and date the ~~notarized statement~~; and¶

~~H) statement, and either:~~¶

(i) The statement must include an unsworn declaration that information provided is true under penalty of perjury in compliance with the provisions of 28U.S.C §1746; or¶

(ii) A notary public must confirm, or "attest," the identity of the owner signing the notarized statement as provided in ORS chapter 194 and OAR chapter 160, division 100.¶

(d) The SHPO must consider only the most recent valid ~~notarized~~ statement submitted under subsection (b) when determining the total number of statements of objection and the total number of owners and parcels of real property on the property owner list under subsection (a) ~~and notarized statements of objection.~~¶

(e) The SHPO must not accept a ~~notarized~~ statement that does not meet the requirements of subsection (c), or that is incomplete, or illegible.¶

(f) The legal representative of an owner may submit a ~~valid notarized~~ statement on an owner's behalf under subsection (b). The representative must provide documentation demonstrating that they legally represent the owner.¶

(g) A person not listed on the property owner list created in subsection (a) that submits a ~~notarized~~ statement must submit documentation demonstrating that they meet the definition of "owner" in OAR 736-050-0230(16), including instruments used to create legal entities such as trusts, limited liability corporations, and any other legal entities. For a trust, a certification of trust that complies with ORS 130.860 is adequate documentation under subsection (g).¶

(h) When removing the objection of a previous owner under paragraph (b)(C), a person must submit documentation demonstrating that the previous owner no longer has an ownership interest and that they themselves meet the definition of "owner" in OAR 736-050-0230(16).¶

(i) The SHPO must not recognize any person as an "owner" who is unable or refuses to submit documentation as required by this rule.¶

(j) All ~~notarized~~ statements and accompanying documentation are public records as defined in ORS 192.311(5)(a) and subject to inspection as provided for in ORS 192.311 through ORS 192.380.¶

(k) The SHPO must acknowledge persons in writing within 30 calendar days of the receipt of their ~~notarized~~ statement and any accompanying documents. Acknowledgements must indicate if the ~~notarized~~ statement and accompanying documents are valid under subsections (c) through (i) and if not valid, describe why and how to correct the error.¶

(16) The SHPO must examine the accuracy of the property owner list and validity of ~~notarized~~ statements when the SHPO determines that the reasonably possible outcome of identifying potential error(s) may determine if the nominated property is or is not listed in the National Register.¶

(a) Any person may request that the SHPO carry out an examination of the property owner list. Such a request must be in writing, and identify and document with evidence of one or more of the following:¶

(A) Factual inaccuracy;¶

(B) Error in the property owner list;¶

(C) Error in the tally of ~~notarize~~valid statements; or¶

(D) Any combination of paragraphs (A), (B), or (C).¶

(b) The SHPO must respond in writing to the petitioner within 15 calendar days of a request for an examination stating whether the SHPO will conduct an examination and the basis for the decision. The SHPO must provide the response to the proponent, owner, CLG, chief elected official, and Tribes if proceeding with an examination.¶

(c) The SHPO may complete an examination for any reason. The SHPO must notify the proponent, owner, CLG, chief elected official, and Tribes within 5 calendar days of initiating an examination.¶

(d) The SHPO must determine how best to conduct an examination on a case-by-case basis based on the nature of the identified concern.¶

(e) An examination under subsection (a) is limited to the specific nature of the identified concern and does not include an evaluation of each entry in the property owner list or each submitted ~~notarized~~ statement unless the SHPO determines that this step is necessary.¶

(f) The SHPO may choose to re-examine the property owner list and ~~notarize~~valid statements against official land recordation records or property tax assessor records, the results of a title search, or any public record.¶

(g) The SHPO may require that persons submit documentation to prove their ownership status, existence of real property, or the validity of their submitted ~~notarized~~ statements. The Oregon SHPO must not treat persons as "owners" who are unable or refuse to submit documentation for the purposes of taking any action under subsection (15)(b).¶

(h) The SHPO may add or remove a person or real property from the property owner list or invalidate a ~~notarized~~ statement upon completion of an examination. The SHPO must inform a person in writing within 30 calendar days of acting and provide the reason the SHPO took the action. A person receiving notice of the SHPO's action under this section may submit documentation as described in this rule to the SHPO for an action under subsection (15)(b).¶

(i) An examination under section (16) is complete once the SHPO determines that further identification and correction of errors will not determine if the nominated property will or will not be listed in the National Register.¶

(17) The SHPO must consider the comments from the committee, CLG, Tribes, and all other comments received during the public comment period when making a recommendation and submitting a National Register nomination form to the Keeper under the provisions of 36 CFR § 60.6(o) and (p) (2020). The SHPO must provide the recommendation provided to the Keeper to the proponent, owner, CLG, chief elected official, and Tribes.¶

(18) Under the Act, upon receipt of a National Register form from the SHPO the Keeper may list a property in the National Register; correct a submitted National Register nomination form and list the nominated property in the National Register; or return a National Register nomination form without listing the property in the National Register.¶

(a) If the Keeper lists a property in the National Register the SHPO must provide notice to the committee at their next regularly-scheduled meeting and written notice to the proponent, owner(s), CLG, chief elected official, and

Tribes within 30 calendar days.¶

(b) If the Keeper corrects a submitted National Register form and lists a property in the National Register, the Oregon SHPO must provide notice to the committee at their next regularly-scheduled meeting, and written notice to the proponent, owner(s), CLG, chief elected official, and Tribes within 30 calendar days.¶

(c) If the Keeper returns a National Register nomination form without listing the property in the National Register, the Oregon SHPO must provide notice to the committee, and written notice to the proponent, owner(s), CLG, chief elected official, and Tribes within 30 calendar days. The notice will forward the Keeper's reasons for the return and state whether the SHPO intends to resubmit the National Register nomination form to the committee or the Keeper and the reasons for the decision.¶

(A) The Oregon SHPO must provide the proponent, owner, CLG, chief elected official, and Tribes 30 calendar days to comment and consider their opinion before making a final decision. The SHPO must provide a written final decision to the proponent, owner, CLG, chief elected official, and Tribes after considering any comments received.¶

(B) The SHPO may resubmit a National Register nomination form not requiring major revision to the Keeper without committee review.¶

(C) The SHPO may resubmit to the committee a National Register nomination form returned by the Keeper. The SHPO must address the reasons the Keeper returned the National Register nomination form before resubmission to the committee and the Keeper.¶

(d) The SHPO may either require that the proponent complete the revisions identified by the Keeper before resubmission of the National Register nomination form to the committee or the Keeper or the Oregon SHPO may complete needed revisions itself.¶

(e) The SHPO must resubmit a National Register nomination form to the Keeper within two years from the date the Keeper initially returns the National Register nomination form for correction as described in subsection (c) or end the National Register nomination process. If the SHPO does not resubmit a National Register nomination form to the Keeper the public comment period and the nomination process end.¶

(f) The Oregon SHPO must complete the following to continue the National Register process following the two-year period from the date of the Keeper's initial return of a National Register nomination form:¶

(A) Review the National Register form as described in section (7) for completeness and accuracy. The Oregon SHPO may require the proponent to complete revisions before resubmitting the National Register nomination form to the committee or the Keeper, or the Oregon SHPO may complete needed revisions itself;¶

(B) Close the public comment period;¶

(C) Provide a public comment period notice as provided in paragraph (11)(a)(C), and subsection (11)(b); and¶

(D) Complete an examination of the property owner list created in subsection 15(a) using the process described in subsections (16)(d) through (i).¶

(g) ~~Notarized~~ Statements submitted and determined to be valid under the provisions of section (15) remain valid unless determined to not be valid under the provisions of section (16).¶

(19) Petitioning the Keeper:¶

(a) The SHPO may petition the Keeper to take the following actions without review by the committee:¶

(A) Remove a razed historic property from the National Register;¶

(B) Amend a National Register nomination form for a historic property when the amendment is not a major revision;¶

(C) Change the contributing status of an individual historic property within a historic district listed in the National Register;¶

(D) Change the contributing status or recommend the relocation of a secondary historic property, such as a garage, shed, or other small-scale building, object, site, or structure that in the opinion of the SHPO does not qualify for listing in the National Register on its own merit included within the boundary of a historic property; or¶

(E) Any combination of paragraphs (A), (B), (C), and (D).¶

(b) Prior to petitioning the Keeper under subsection (a), the SHPO must notify the proponent, owner, CLG, chief elected official, and Tribes, and allow for a 30 calendar day comment period following notice and consider the provided comments. The SHPO may waive the comment period if the CLG provides a comment period as part of a local process.¶

(A) The SHPO must provide the proponent, owner, CLG, chief elected official, and Tribes notice of the SHPO's petition to the Keeper.¶

(B) The SHPO must notify the proponent, owner, CLG, chief elected official, and Tribes of the Keeper's decision within 30 calendar days. The SHPO shall inform the committee at the next scheduled committee meeting.¶

(20) Any person may appeal directly to the Keeper any SHPO decision regarding the nomination of a property to the National Register, an amendment to a National Register form for a historic property, or a petition to remove a historic property from the National Register under the provisions of 36 CFR § 60.12 (2020).¶

(21) The SHPO may refer a nomination submitted pursuant to section (5) to the State of Oregon Office of

Administrative Hearings for a contested case hearing as provided in ORS 183.413 to 183.425, 183.440 to 18.452, 183.457, 183.460 to 183.470 following the Keeper's return of a National Register nomination form for issues related to counting owners, parcels of real property, and ~~notarize~~valid statements. The proponent shall be a party to any contested case. The SHPO shall designate the scope of issues that may be addressed in the contested case, which may include:¶

(a) The determination of whether a majority of owners provided ~~notarize~~valid statements of objection as provided in section (15); and¶

(b) The determination of the accuracy of the property owner list and validity of ~~notarized~~ statements as provided in section (16).

Statutory/Other Authority: ORS 358.617

Statutes/Other Implemented: ORS 358.565(3)