Community Development
Planning Division
501 SW Madison Avenue
Corvallis, OR 97333

Approved as submitted, September 13, 2016

CITY OF CORVALLIS
HISTORIC RESOURCES COMMISSION MINUTES
August 9, 2016

Present
Lori Stephens, Chair
Kristin Bertilson, Vice Chair
Peter Kelly
Mike Wells
Cathy Kerr
Charles Robinson
Rosalind Keeney
Kathleen Harris (leaving at 8pm)
Jim Ridlington, Planning Comm. Liaison

Staff
Carl Metz, Associate Planner
Aaron Harris, Associate Planner
Daniel Miller, Deputy City Attorney
Claire Pate, Recorder

Guests

Absent/Excused
Barbara Bull, Council Liaison

SUMMARY OF DISCUSSION

	Agenda Item	Recommendations
I.	Community Concerns	
II.	Public Hearings A. OSU West Dining Hall (HPP16-00010) B. Hartman House (HPP16-00014)	 Approved Approved, with revised Condition 3
III.	Minutes Review A. June 14, 2016	 Approved as drafted
IV.	Other Business/Info Sharing A. Goal 5 Rule Revision Overview B. Historic Preservation Plan Update	 For information only
V.	Adjournment at 8:25pm	

Attachments to the August 9, 2016 minutes:

A. Staff presentation of Goal 5 Rule Amendments.
B. Memo for LCDC regarding Goal 5 Rule Amendments.
C. Proposed Amendments to Goal 5 Rules for Historic Resources.

CONTENT OF DISCUSSION

Chair Stephens called the Corvallis Historic Resources Commission to order at 6:30 p.m. in the Corvallis Downtown Fire Station Meeting Room, 400 NW Harrison Blvd.

I. VISITOR PROPOSITIONS: none

II. PUBLIC HEARINGS –A. OSU WEST DINING HALL (HPP16-000010)

A. Opening and Procedures:

Chair Stephens reviewed the public hearing procedures. Staff will present an overview followed by the applicant's presentation. There will be a staff report and public testimony, followed by rebuttal by the applicant, limited in scope to issues raised in opposition and sur-rebuttal by opponents, limited in scope to issues raised on rebuttal. The Commission may ask questions of staff, engage in deliberations, and make a final decision. Any person interested in the agenda may offer relevant oral or written testimony. Please try not to repeat testimony offered by earlier speakers. It is sufficient to say you concur with earlier speakers without repeating their testimony. For those testifying this evening, please keep your comments brief and directed to the criteria upon which the decision is based.

Land use decisions are evaluated against applicable criteria from the Land Development Code and Comprehensive Plan. A list of the applicable criteria is contained in the staff report.

Persons testifying either orally or in writing may request a continuance to address additional documents or evidence submitted in favor of the application. If this request is made, please identify the new document or evidence during your testimony. Persons testifying may also request that the record remain open seven additional days to submit additional written evidence. Requests for allowing the record to remain open should be included within a person's testimony.

The Chair opened the public hearing.

B. Declarations by the Commission: Conflicts of Interest, Ex Parte Contacts, Site visits, or Objections on Jurisdictional Grounds

1. Conflicts of Interest - none
2. Ex Parte Contacts – none
3. Site Visits – Commissioners Kelly, Harris, Robinson, Kerr, Keeney, Bertilson all walked around the site.
4. Rebuttal of Disclosures - none
5. Objections on Jurisdictional Grounds – none

C. Staff Report:

Planner Harris gave the staff report pertaining to land use application HPP16-00010. The applicant is Susan Padgett, Associate Campus Planner for Oregon State University. Public notices were mailed to adjacent property owners and tenants on July 19th and staff has not received any public testimony.

The applicant is requesting approval to install two replacement mechanical units with attached screening on the Marketplace West Dining Center roof, located on the Oregon State University Campus. Additionally, the applicant's request includes the installation of three small condensers and

the relocation of one ventilation fan on the Marketplace West Dining Center roof. As described in the staff report, the three small condensers and the relocated ventilation fan will not be visible from any rights-of-way and are therefore exempt from HRC-level review per Land Development Code (LDC) 2.9.70.y.1.

He then gave a brief overview of the applicant's proposal.

Marketplace West Dining Center is a noncontributing/non-historic building located between Sackett Place and 30th Street within the OSU National Historic District. Adjacent contributing resources include Reed Lodge and Heckart Lodge to the north, Cauthorn Hall to the east, and Dryden Hall to the southwest.

The roof of Marketplace West Dining Center features older mechanical equipment installations and has no mechanical equipment screen wall. Some of the existing equipment has failed in the recent past. The existing mechanical equipment is located along the north and northeast sides of the roof. In this location, the existing equipment is unscreened and visible from the Jefferson Way right-of-way.

OSU currently needs to replace and upgrade the failing equipment with new units. The proposal will remove the existing, failing mechanical units and replace them with similar sized units with attached screening that matches the existing colors of Marketplace West Dining Center. The proposed screening is a grey louvered material selected to match the accent colors of Marketplace West and surrounding buildings. Due to the building's flat roof and low parapet wall, the preferred method of screening is screening attached to mechanical units.

The applicable approval criteria for the proposal are found in Chapters 3.36 and 2.9 of the LDC. Chapter 3.36 pertains to Oregon State University zoning and Chapter 2.9 pertains to historic preservation. The applicable provisions of LDC 3.36 live in section 3.36.60.02 for roof-mounted equipment. The Code states that, "no roof-mounted mechanical equipment shall be visible from the entrance of buildings that abut the development site." As previously noted, the applicant's proposal includes attached screening that matches the existing colors of the building. The screening will block views of the replacement mechanical units. Staff therefore finds that the provisions of LDC 3.36 are satisfied.

Moving on to LDC 2.9, the applicable provisions are contained in 2.9.90.06 and 2.9.100.04. The provisions of 2.9.90.06 pertain to compliance with City codes and ordinances. Staff has included a Condition of Approval stipulating that the applicant shall obtain all necessary building permits associated with the proposal and that all work conducted shall comply with applicable City and State Codes and Ordinances.

The provisions of 2.9.100.04.a. pertain to "Alteration or New Construction Parameters and Review Criteria for an HRC-level Historic Preservation Permit." Staff finds that the two proposed replacement mechanical units fall within the parameters for an HRC-level Historic Preservation Permit per 2.9.100.04.a.11, due to their visibility from the Jefferson Way right-of-way. Staff finds that the proposed screening for the replacement mechanical units falls within the parameters for an HRC-level Historic Preservation Permit per 2.9.100.04.a.16.

General Review Criteria for an HRC-level historic preservation permit live at 2.9.100.04.b.1 and .2. In summary, Marketplace West Dining Center is a noncontributing/non-historic building within the OSU National Historic District. The building has no historic integrity within the OSU National Historic District due to its noncontributing/non-historic building classification. The building was

constructed in 1961 and is a modern commercial, restaurant-style building. The building is in good condition but its mechanical systems are in need of replacement.

As previously noted, the proposed screening is a grey louvered material selected to match the accent colors of Marketplace West and surrounding buildings. The surrounding buildings are predominantly red brick and feature grey accents. The windows of adjacent Hawley, Cauthorn, and West Halls are grey metal and the trim on all surrounding buildings, and Marketplace West itself, is grey. The proposed material of the screen is grey, non-reflective and will blend into the sky and match the grey accent color of the surrounding buildings. Staff finds that the mechanical equipment screening is compatible with the District in terms of appearance and coloration.

Compatibility Criteria for Structures and Site Elements are contained in 2.9.100.04.b.3. In summary, the proposal will have no effect on the building's facades and no architectural features or details will be impacted. The proposal will not affect the scale and proportion of the existing structure and will not alter the building's roof shape. The proposed screening will provide screening at approximately 77 inches in height. Staff finds the alteration, as proposed and conditioned, to be historically compatible with both the design style and appearance of the Marketplace West Dining Center and the OSU National Historic District.

Based on the discussion, findings and conclusions addressed in the staff report, staff finds that the application is consistent with the applicable LDC review criteria for approval of an HRC-level historic preservation permit. Staff therefore recommends approval of the Marketplace West Dining Center preservation permit application HPP16-00010 as conditioned in the August 2, 2016, staff report to the Historic Resources Commission.

There were no questions of staff.

D. Legal Declaration:

Deputy City Attorney Daniel Miller stated that the Commission would consider the applicable criteria as outlined in the staff report, and he asked that citizens direct their testimony to the criteria in the staff report or other criteria that they feel are applicable. It is necessary at this time to raise all issues that are germane to this request. Failure to raise an issue, or failure to provide sufficient specificity to afford the decision-makers an opportunity to respond, precludes an appeal to the State Land Use Board of Appeals on that issue.

The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the local government to respond to the issue precludes an action for damages in Circuit Court.

E. Applicant's Presentation:

Dave Dodson, Campus Planning Manager, introduced Rob Skaugstad with OSU Dining and Housing Services. Since Planner Harris had given a complete overview of the project, Mr. Dodson said he would just cover a few items in more detail.

OSU has a number of membrane roof systems which are typically good for 20-30 years. The roof warranty specifies that no additional penetrations be made in the roof, and for this reason the type of screening proposed for the rooftop equipment is a hanging screenwall system, which essentially hangs off the equipment with no roof-membrane penetration. This system is the most efficient way of addressing some of the screening requirements on campus.

There are two locations where new equipment will be installed. There will be a screen wall on the west, north and east sides, which are the sides on which the roof can be seen from Jefferson Way and across 30th Street. The most visible portion of the roof is to someone walking along Sackett Place approaching Jefferson Way, or to someone walking along Jefferson between Heckart and Reed.

They support staff's recommendation for approval, and were available to answer any questions.

F. Public Testimony in favor of the application: None.

G. Public Testimony in opposition of the application: None.

H. Neutral testimony: None.

I. Additional Questions for Staff: None.

J. Rebuttal by Applicant: None.

K. Sur-rebuttal: None.

L. Additional time for applicant to submit final argument:

The applicant waived the right to submit additional testimony and there was not a request for a continuance or to hold the record open.

M. Close the public hearing:

MOTION: By unanimous consent, Chair Stephens closed the public hearing.

N. Discussion and Action by the Commission:

MOTION: Commissioner Bertilson moved to approve the Marketplace West Dining Center preservation permit application (HPP16-00010), as conditioned in the August 2, 2016, staff report to the Historic Resources Commission. This motion is based on findings in support of the application presented in the August 2, 2016, staff report to the Commission, and findings in support of the application made by the Commission during deliberations on the request. Commissioner Keeney seconded the motion which **passed** unanimously.

O. Appeal Period:

Chair Stephens stated that any participant not satisfied with this decision may appeal to the City Council within 12 days of the date that the Notice of Disposition is signed.

II. PUBLIC HEARINGS –B. HARTMAN HOUSE (HPP16-00014).

A. Opening and Procedures:

Chair Stephens reviewed the public hearing procedures. Staff will present an overview followed by the applicant's presentation. There will be a staff report and public testimony, followed by rebuttal by the applicant, limited in scope to issues raised in opposition and sur-rebuttal by opponents, limited in scope to issues raised on rebuttal. The Commission may ask questions of staff, engage in

deliberations, and make a final decision. Any person interested in the agenda may offer relevant oral or written testimony. Please try not to repeat testimony offered by earlier speakers. It is sufficient to say you concur with earlier speakers without repeating their testimony. For those testifying this evening, please keep your comments brief and directed to the criteria upon which the decision is based.

Land use decisions are evaluated against applicable criteria from the Land Development Code and Comprehensive Plan. A list of the applicable criteria is contained in the staff report.

Persons testifying either orally or in writing may request a continuance to address additional documents or evidence submitted in favor of the application. If this request is made, please identify the new document or evidence during your testimony. Persons testifying may also request that the record remain open seven additional days to submit additional written evidence. Requests for allowing the record to remain open should be included within a person's testimony.

The Chair opened the public hearing.

B. Declarations by the Commission: Conflicts of Interest, Ex Parte Contacts, Site visits, or Objections on Jurisdictional Grounds

1. Conflicts of Interest - none
2. Ex Parte Contacts – Commissioner Keeney visited the site, and asked questions of a worker who pointed out where various elements of the remodel would be located.
3. Site Visits – by Commissioners Kelly, Harris, Wells, Robinson, Kerr, and Bertilson; who viewed it from either the street or sidewalk. Commissioner Keeney got on site and viewed the structure, as noted above. Commissioner Bertilson later added that previously she had done an estate sale at the site, but it had been with a different owner.
4. Rebuttal of disclosures - none
5. Objections on Jurisdictional Grounds – none

C. Staff Report:

Associate Planner Metz stated that the case before them was for the Hartman House (HPP 2016-000014).The subject structure is located at 135 NW 30th St., within the College Hill West National Historic District. The District's National Register Nomination Form inventory identifies the house as the Henry and Marie Hartman House, and describes it as a two-story home designed in the Colonial style built in 1937. The house is classified as a Historic/Non-Contributing resource within the district. The nomination form is not explicit but it appears Non-Contributing classification was likely a result of a substantial alteration made to the garage in 1979. Additionally, it is conceivable the subject 1983-era greenhouse may have also contributed to this classification as a Non-Contributing resource, though it is not discussed in the inventory.

Planner Metz showed slides of elevations of the existing house. He also showed a floor plan and section views as included in the staff report. The proposal is to replace the greenhouse structure with a sunroom. The greenhouse is currently wood-framed with primarily glass panels, along with some Plexiglas components. The windowed panels would be replaced with asphalt roofing on the sloped portion and glass windows mounted on a low wall along the east, west and south elevations. The east and west walls are angled into the south wall.

The applicant also requests permission to replace the existing double-hung window on the south wall of the main structure- which matches the other first floor windows of the main structure - with a single, windowed French door in order to provide access from the house to the sunroom. The greenhouse is currently only accessible through an exterior storm door.

The applicant has provided three options for consideration, with their preferred option as Option A. They wished to present a range of alternatives that would be viable from their perspective and give the Commission the opportunity to choose another if they felt it more appropriate. The various options

rearrange some of the components with some difference in window dimensions, but are essentially the same. The French door remains a constant with all options.

Staff is also recommending a fourth option – Option D – which is a combination of elements of Options B and C. This recommendation is offered as a means of better addressing the façades and pattern of window and door opening compatibility considerations. Planner Metz then showed slides of and described all four options, as provided in the staff report on pages 10-11. One chief consideration and difference for the various options was the location of the electric meter base. Option A has the electric meter on the west, or front façade, of the sunroom making it most accessible for electrical company personnel to access. Options B and D place the meter base on the south façade, which provides adequate accessibility; while Option C shows the base located on the east, or rear, façade, making it less convenient. Staff-proposed Option D would replace the two front panels with two single-hung aluminum clad wood windows as in Option C, with the south façade being similar to that proposed in Option B.

Planner Metz then summarized the review criteria and staff findings as presented on pages 7-10 of the staff report. On balance all options presented are complementary and meet the criteria. Options C and D include west façade windows with a larger upper sash that closely align horizontally with the lower sash of the adjacent window on the main structure. This provides a visual tie to the original building while also maintaining a clear differentiation between the original and the addition.

Staff recommends approval of the application, as conditioned. In staff's opinion, Option D better addresses the façades and patterns of window and door openings compatibility considerations, and is included as a recommended Condition 3.

In response to a question from Chair Stephens, Planner Metz said that Option C was not recommended simply because of the meter base being on the rear façade, and less accessible.

In response to a question from Commissioner Keeney, Planner Metz said that he had discussed staff's recommendation with the owner and that they might be proposing an adaptation of that recommendation during their presentation.

In response to a question from Commissioner Harris, Planner Metz said that the greenhouse had received a permit at the time it was built, but he did not know if it had been intended as a temporary or permanent addition.

In response to questions from Commissioner Bertilson, Planner Metz said that the location of the electric meter base was outside the HRC's usual purview. It is being considered simply because it impacts the architecture of the space in that windows have to be moved around to accommodate it. He further stated that it would be entirely appropriate for HRC to approve multiple options from which the applicant could then choose.

D. Legal Declaration:

Deputy City Attorney Daniel Miller stated that the Commission would consider the applicable criteria as outlined in the staff report, and he asked that citizens direct their testimony to the criteria in the staff report or other criteria that they feel are applicable. It is necessary at this time to raise all issues that are germane to this request. Failure to raise an issue, or failure to provide sufficient specificity to afford the decision-makers an opportunity to respond, precludes an appeal to the State Land Use Board of Appeals on that issue.

The failure of the applicant to raise constitutional or other issues relating to proposed conditions of approval with sufficient specificity to allow the local government to respond to the issue precludes an action for damages in Circuit Court.

E. Applicant's Presentation:

Greg Giles, owner; and Chuck Noone, the Village Builder, introduced themselves. Chuck Noone thanked staff for their help and for putting together a good report. He gave some of the history of why three options were being presented. He referred to page A-25 in the packet which depicted the existing greenhouse which was in a deteriorated state. It did not make sense to rebuild it, and the owner suggested making it a sunroom. Option C was his first attempt at coming up with something that would mimic what was already there and yet change the function of the room. Currently, there is a gravel floor and the greenhouse is accessed by an exterior storm door on the west side, and has no entryway into the house. The electric meter base is an issue, and with Option C the intent was to relocate it from its existing location inside the greenhouse on the east end of the south wall to the exterior east wall of the proposed sunroom. This arrangement, however, requires the electrical lines to be strung across the entire south side of the house in front of the upper bedroom windows. In Option A, the meter base is shown located on the west façade, closest to the power lines and to the street. This option requires replacing the existing configuration of two windows in the west façade with just one. Option B was an attempt to put the meter base flush on the west end of the south façade, still close to the street, but not visible from the street. This option would reduce the number of windows on the south façade from five to four, which also gives this structure a bit more strength in that there is more wall space on each end of the south wall. He referred to page A-20, which shows the proposed windows on the east and west façades to be single windows as opposed to double windows, each 42" wide x 60" tall in size. This size is the same size as the windows on the south side. All six windows would be similar in size. Originally, he made the upper sash and the lower sash the same size, to maximize the amount of air coming into the house for cross ventilation.

In talking with Planner Metz, he indicated that staff liked the east and west windows as depicted in Option C, in that the upper sash is larger than the bottom, and the midrail of the windows line up with the windows on the west side of the main structure. For this reason, staff came up with Option D. The applicant also likes how the sashes line up, but would prefer to have one larger window on the west and east sides for air movement, as opposed to the two smaller windows depicted in both Options C and D. More air can come through one larger window than through two smaller windows. Therefore, Option D as proposed by staff but with just a single window on the east and west façades would be the preference.

He referred to attachment 3-C in the packet, and said that the inside of the sunroom would be mostly sheet rocked and would have a vaulted ceiling. Some of the siding on the original building would be replaced and they would propose to have the sided material be the same instead of sheet rocked.

He then referred to Attachment A-27, and explained how they wished to replace the glass panels on the sloping roof of the greenhouse/sunroom with the asphalt roof, so that anyone having to escape from a fire through the southwest bedroom window would not have to step out on to a glass panel.

In response to a question from Commissioner Kelly, Mr. Giles said that Option D was acceptable but their preference was to have just one larger window on the east and west façades. Mr. Noone said that they preferred to have whatever options that were acceptable to the Commission approved so that they could have some flexibility. Staff has indicated that all the options meet the criteria. Their least preferred option would be to have to place the meter base on the rear, or east, façade, as shown in Option C.

Planner Metz clarified that in subsequent conversations with the applicant after the staff report was written, the applicant indicated that they would like a combination of the front and rear façades with a single window as shown in Option B, but with a lower sash reduced in height to be similar to that shown in Option C. The window would not be quite as wide as shown in Option C, and the location of the meter base would be as shown in Option B.

Commissioner Keeney stated that it seemed fairly easy to combine Options C and B, by just changing the one window configuration.

In response to a question from Chair Stephens, Mr. Noone affirmed that they were not proposing divided-light windows.

In response to a suggestion from Commissioner Kerr that the structure might benefit from having the east and west walls stepped in, Mr. Noone said that they were using an existing foundation wall and wished to duplicate the existing footprint.

F. Public Testimony in favor of the application: None.

G. Public Testimony in opposition of the application: None.

H. Neutral testimony: None.

I. Additional Questions for Staff: None.

J. Rebuttal by Applicant: None.

K. Sur-rebuttal: None.

L. Additional time for applicant to submit final argument:

The applicant waived the right to submit additional testimony and there was not a request for a continuance or to hold the record open.

M. Close the public hearing:

MOTION: By unanimous consent, Chair Stephens closed the public hearing.

N. Discussion and Action by the Commission:

Commissioner Kelly asked for clarification where the meter base was in Option D since Attachment C-3 showed two locations. Planner Metz clarified that it was on the south wall.

Commissioner Bertilson suggested that commissioners weigh in on their preferences. She said she would prefer the lowered sash on the front window, and was fine with only one window as opposed to two. She was okay with any of the options, as long as in Option B the sash is lowered. Commissioner Keeney said Option B is fine, but with one window with a lowered sash. Commissioner Kelly said his opinion was that the applicant should get approval for all of the options. Commissioner Harris said her preference was to not have the meter base on the front of the house. Otherwise, she is okay with both Options B, as modified, and D. Commissioner Wells said that Option A was not acceptable because it changes the look of the window so much. Otherwise Options B, C, and D would be acceptable. Commissioner Robinson said he was alright with all four options, though his preference would be for B and D. Commissioner Kerr said she liked B and D as options, with the revised window sash.

Planner Metz again explained that installation and location of the meter base is an exempt activity and not necessarily germane; however it impacts aspects such as placement of windows, etc.

Commissioner Bertilson summarized by stating it seemed all were in agreement with the fact that the lowered sash on the front window makes it more historically compatible with the main structure.

MOTION: Commissioner moved to approve the Hartman House Historic Preservation Permit application (HPP16-00014), conditions 1 and 2 in the August 9, 2016, staff report to the Historic Resources Commission; and a condition 3 as revised by the Commission as follows:

3. Approved Sunroom Options – Development shall be consistent with any of the options described below:
   a. Sunroom Option B Modified – Development consistent with Option B as described in the August 9, 2016, staff report to the HRC, and depicted in Attachment HRC-A of the August 9, 2016, staff report to the HRC, except that the SW and SE-facing windows (labeled as window "E") shall have reduced lower sash heights similar to those depicted in Option C as window "B,"; or
   b. Sunroom Option C – Development consistent with Option C as described in the August 9, 2016, staff report to the HRC, and depicted in Attachment HRC-A of the August 9, 2016, staff report to the HRC; or
   c. Sunroom Option D – Development consistent with Option D as described in the August 9, 2016, staff report to the HRC, and depicted in Attachment HRC-C of the August 9, 2016, staff report to the HRC.

This motion is based on findings in support of the application presented in the August 9, 2016, staff report to the Commission, and findings in support of the application made by the Commission during deliberations on the request. Commissioner Kerr seconded the motion.

Commissioner Kelly asked why Option A was not acceptable. Commissioner Bertilson said it was because of the placement of the west façade window so close to the south wall in order to accommodate the meter base.

The motion **passed** unanimously.

(Commissioner Harris left the meeting.)

O. Appeal Period:

Chair Stephens stated that any participant not satisfied with this decision may appeal to the City Council within 12 days of the date that the Notice of Disposition is signed.

III. MINUTES REVIEW.

A. June 14, 2016:

MOTION: Commissioner Kelly moved and Commissioner Wells seconded to accept the minutes as presented; motion **passed** unanimously.

IV. OTHER BUSINESS/INFORMATION SHARING.

A. Goal 5 Rule Revision Overview:

Using a PowerPoint presentation for reference **(Attachment A)** Planner Metz gave an overview of action taken by Department of Land Conservation and Development to initiate consideration of proposed amendments to OAR 660-023-0200, "Historic Resources." This rule implements the portion of Statewide Planning Goal 5, "Natural Resources, Scenic and Historic Areas, and Open Spaces," relating to historic resource sites. The intent is to make some changes to the Goal 5 rules and how it applies to local jurisdictions in order to be in compliance. He referred to the documents distributed to the HRC as 1) memo dated July 7, 2016, to Land Conservation and Development Commission from Jim Rue, Director et al **(Attachment B)**; and 2) a document entitled "Proposed Amendments to the Goal 5 Rule for Historic Resources. **(Attachment C)**

One of the issues is that there are local jurisdictions that do not have a base level of protection for historic resources and fall short of meeting Goal 5. This would establish a minimum level of protection standard for National Register resources, without requiring a local jurisdiction to adopt a local standard. Corvallis has adopted its own local standard, but for any new National Register resources added this base level of protection standard would apply. Planner Metz then reviewed some of the other changes to definitions, etc. as outlined in his presentation.

He explained that a Rulemaking Advisory Committee would be formed and would be meeting through October to review the proposed amendments. Benton County would be well represented since Chris Bentley, Benton County Planner, will be appointed. In addition, local advocate B.A. Beierle will also participate as one of the citizens on the Committee. LCDC will hold a public hearing, with possible adoption in November. If needed, an additional hearing will be held in January 2017. The State Historic Preservation Office will be providing updates, and he would forward those updates on to the commissioners as he receives them.

There are implications for Corvallis, but they will become clearer once final language is adopted. Possibly, the City will want to consider options for local designation for future National Register resources.

In response to a question from Commissioner Keeney, Planner Metz said there are only three individually listed National Register resources that are not also locally listed: the Gorman House, the Poultry Building and the Bexell House.

B. Lake Oswego Case:

Planner Metz said that the Oregon Supreme Court reversed the Circuit Court decision and confirmed LUBA's statement that as far as owner consent is concerned, it does not carry forward to subsequent owners. The owner with standing to object to local designation is the owner at the time of the designation.

C. Chair Stephens read an email from Council Liaison Bull regarding the King Legacy Advisory Board taking up consideration of naming and/or renaming public buildings, streets and parks, etc. She asked that commissioners share any thoughts with her relating to this undertaking.

D. **Historic Preservation Plan Update:**

Planner Metz said that staff members have been working with the consultant to establish a core, base document relating to Corvallis' history, historic preservation regulatory framework, and description of other organizations that are involved in preservation. The next step will be the public participation component, and all the feedback received will generate goals and objectives, with action items to implement them. An advisory committee will be convened with representation from HRC. This committee will undertake stakeholder outreach, and will likely meet with HRC in late September.

V. ADJOURNMENT: The meeting was adjourned at 8:25pm.

OREGON STATEWIDE PLANNING GOAL 5 AMENDMENT

OVERVIEW

- Statewide Planning Goal 5 addresses Natural Resources, Scenic and Historic Areas, and Open Spaces
- "Local governments shall adopt programs that will protect natural resources and conserve scenic, historic, and open space resources for present and future generations. These resources promote a healthy environment and natural landscape that contributes to Oregon's livability."
- OAR 660-023 contains procedures and requirement for complying with Goal 5
- Includes requirements for inventorying and protecting historic resources

OVERVIEW

- Land Conservation and Development Commission (LCDC) voted to initiate amendments to the "Historic Rules" of Statewide Planning Goal 5 at July 22, 2016 meeting
- Purpose of amendments:
  - Establish a minimum level of protection for National Register resources
  - Clarify applicability of ORS owner consent provisions to National Register resources
  - Better explain relationship of Goal 5 standards and the Secretary's Standards
  - Clarify who has standing under owner consent provisions

NATIONAL REGISTER PROTECTIONS

- Primarily geared toward addressing local jurisdictions who have not established local protection measures
- Amendments:
  - Establish minimum protection standards for National Register-listed resources
  - Protections beyond this minimum would require local designation
  - Remove definition of "Historic Areas" - *unused*
  - Replace term "Historic Resources of Statewide Significance" with "Historic Resources of Statewide Interest" – definition would not be changed
  - Add the delay of permits for demolition, relocation, or major exterior alteration of a historic resource to the definition of "Protect"
  - Add definition of "Property Owner"

OWNER CONSENT: DEFINITION

- Property Owner would be defined to clarify that public owners and some "owners of interest" are entitled to owner consent requirements for local protection measures
- Clarifies confusions caused by how Oregon views ownership and how NPS defines it for purposes of National Register listing

GOAL 5 STANDARD PROCESS & SECRETARY OF INTERIOR'S STANDARDS

- Explain how the standard Goal 5 process is augmented by the Secretary of Interior's Standards and Guidelines for Archeology and Historic Preservation
- Use of Federal standards is generally preferred but is voluntary for local governments so rules are difficult to follow
- Unclear which standard processes are superseded by historic-specific provisions

GOAL 5 STANDARD PROCESS & SECRETARY OF INTERIOR'S STANDARDS

- Amendments:
  - Use national guidance to inform protection measures for National Register resources
  - Specify which aspects of the standard process are being superseded
  - Specify the this section only applies to local program designations
  - Clarify that local protection measures should be adopted before locally significant resources are identified
  - Place more emphasis on the need for a "local historic context" as a basis for local protection

OWNER CONSENT: STANDING AND DELISTING

- Amendments:
  - Clarify what it means to have a local historic designation "imposed" upon a property owner
  - Provide a path for removing a local designation consistent with federal guidance
    - Value of resource has diminished since its listing, or
    - Conflicting priorities that supersede the value of maintaining the designation

RULEMAKING ADVISORY COMMITTEE

- Rulemaking Advisory Committee (RAC) will be established made up of:
  - Local government planners (2 City, 1 County)
  - Statewide advocacy organization rep
  - Citizens (3)
  - State Advisory Committee on Historic Preservation member
  - Historic preservation consultant
  - Tribal rep(s)
  - LCDC Member

PUBLIC PROCESS

- Tentative Schedule
  - RAC meetings through October 2016
  - LCDC public hearing and possible adoption in November 2016, with possible additional hearing in January 2017
- Oregon SHPO will continue to provide updates

LEVI HENKLE HOUSE

DANGEROUS BUILDING DECLARATION

- A violation inquiry RE: general safety of the site and structure was submitted on June 14, 2016
- A site inspection was conducted on July 5, 2016, though access was not provided into the structure
- The inspector found:
  - Dangerous structural conditions (porch and rear addition)
  - Unsecured access to the structure resulting in a public nuisance
- These conditions qualify as "dangerous"
- Notice of this declaration was made August 5, 2016

502
DO NOT
ENTER

NEXT STEPS

- The site is to be fenced by August 18, 2016
- Three options available to the owner:
  1. Repair the structure sufficiently to address violations
  2. Demolish the structure
  3. Provide an engineer's report of its structural integrity. This may be for a portion of the structure if the other portions are to be repaired and/or demolished
- Any action by the property owner will likely require an HRC-level HPP

Oregon
Kate Brown, Governor

Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, Oregon 97301-2540
Phone: (503) 373-0050
Fax: (503) 378-5518
www.oregon.gov/LCD

July 7, 2016

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director
Rob Hallyburton, Community Services Division Manager
Amanda Punton, Natural Resources Specialist

SUBJECT: **Agenda Item 12, July 21-22, 2016, LCDC Meeting**

INITIATION OF RULEMAKING REGARDING PROTECTION OF HISTORICE RESOURCE SITES UNDER STATEWIDE PLANNING GOAL 5

I. AGENDA ITEM SUMMARY

This agenda item is for the Land Conservation and Development Commission (commission or LCDC) to initiate rulemaking to amend OAR 660-023-0200, "Historic Resources." This rule implements the portion of Statewide Planning Goal 5, "Natural Resources, Scenic and Historic Areas, and Open Spaces," relating to historic resource sites. The purposes of the proposed amendments are to:

1. Achieve a well-articulated base level of protection for historic resources listed in the National Register of Historic Places (National Register) that can be applied directly without the need to amend local codes.

2. Clarify the circumstances under which the owner consent provisions in ORS 197.772(1) apply to resources listed in the National Register.

3. Better explain how the standard Goal 5 process described in OAR 660-023-0030 through 0050 is augmented by the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, published by the National Park Service (NPS).

4. Clarify who has standing under the owner consent provisions of ORS 197.772(2) and highlight an alternate path for removing a local historic designation.

The Department of Land Conservation and Development (DLCD or department) proposes that the commission initiate rulemaking at its July 2016 meeting, with a first public hearing and possible adoption in November 2016.

For further information, please contact Rob Hallyburton, Community Services Division Manager, at 503-934-0018 or rob.hallyburton@state.or.us.

II. BACKGROUND

Advisory committee and work group recommendations, staff reports, and draft rules leading to the September 1996 adoption of OAR chapter 660, division 23 (the "Goal 5 rule") indicate that a fundamental premise of the rulemaking process was that the commission should determine the state's interest in each resource category in order to guide rule making, and the revised Goal 5 process should reflect these stated interests. For historic resources, this led to a "must-protect" standard for properties listed in the National Register and a "may-protect" standard for locally designated historic resources.

When the Goal 5 rule was adopted by LCDC, the commission assumed that all cities and counties would come into compliance with the rule through statutorily mandated periodic review.[1] Due to statutory changes that have exempted most cities and all counties from the requirement to complete periodic review, this has not come to be. For cities that still go through periodic review, the required scope of review has narrowed such that historic preservation is unlikely to be addressed. Because OAR 660-023-0200 (the historic resources protection rule) provides local governments considerable flexibility in how they implement historic preservation programs, combined with the loss of periodic review, local implementation varies widely. Some communities have a fully developed historic preservation program that automatically applies to sites listed in the National Register. Others offer little or no protection.

A. The current rule

The Goal 5 historic rule makes a distinction between "historic resources of statewide significance" and other historic resources. It defines "historic resources of statewide significance" as buildings, structures, objects, sites, and districts listed in the National Register of Historic Places, and within approved National Register.[2] It requires local governments to protect all historic resources of statewide significance through local historic protection regulations, regardless of whether these resources are "designated" in the local plan. The rule, however, only describes one approach for designing a local historic preservation program and selecting local protection measures. The description provides guidance rather than standards, and initiation of a

[1] "Periodic review" is a scheduled update of a local government's comprehensive plan and land use regulations.

[2] The terms "statewide significance" and "local significance" mean different things for the state and federal programs. The National Park Service's historic preservation program recognizes sites of local, state, regional, and national significance. These classifications refer to the nature of the site and the historic events, or architectural themes that contribute to a site's significance. For example, a site classified as "locally significant" can be listed in the National Register of Historic Places. The Goal 5 rule uses the term "historic resource of statewide significance" to mean sites the State of Oregon has decided are worth protecting (all sites listed in the National Register), while "locally significant sites" refers to sites a local government has decided are worth protecting.

program is easily interpreted as optional. Aside from a general definition of "protect," the rule does not set standards for implementing the "shall protect" directive for National Register sites.

The decision to rely on a voluntary, incentive-based federal program to identify properties that must be protected by local historic resource protection programs has resulted in unforeseen consequences. As written and applied, OAR 660-023-0200 discourages participation in the National Register program. The application of local review criteria can be perceived as costly and burdensome by some property owners. The State Historic Preservation Office (SHPO) has found property owners and local jurisdictions reluctant to participate in the federal program because they do not want to trigger state or local Goal 5 requirements. The disincentive to participate in the federal program is particularly evident in discussions surrounding listing historic districts in the National Register.

B. Status of local programs

A SHPO survey of local jurisdictions in March 2016 revealed great variation in how National Register sites are addressed under local Goal 5 historic resources programs. Some jurisdictions provide no review of the intended demolition or significant alteration of properties listed in the National Register. Some jurisdictions incorporate National Register properties into the same review process they apply to locally designated resources, and some have a separate review process for National Register properties.

C. Rulemaking

The department expects considerable interest in this rulemaking by stakeholders. One motive for this proposed rulemaking to formulate a solution acceptable to stakeholders so that historic preservation does not become an issue at the next legislative session. While agreement may not be easily achievable, the commission is the better setting for correcting land use policy.

The department proposes to initiate rulemaking at the July 2016 meeting and convene the rulemaking advisory committee as soon as possible. The rule project will take approximately three months, with a first public hearing and possible adoption in November 2016, and a potential second hearing date (if necessary) in January 2017. If a solution proves elusive during this timeframe, the department may recommend terminating the rulemaking project.

III. DEPARTMENT RECOMMENDATION AND DRAFT MOTION

The department recommends that the commission formally initiate the rulemaking process and delegate appointment of a rulemaking advisory committee (RAC) to the director. The department is working with SHPO to introduce the proposed rule amendment concepts to stakeholders. Inquiries regarding interest in RAC membership will be made during the introductory meetings. These meetings have not commenced at the time of this report, and RAC formulation likely will not be complete by the July commission meeting. The department will also seek a member of the commission for the RAC. The department recommends that the commission approve the following positions for the RAC:

- Local government planners (two city, one county)
- Statewide advocacy organization representative
- Citizens (three)
- State Advisory Committee on Historic Preservation member
- Consultant experienced in National Register nominations
- Tribal representative(s)
- Commission member

Recommended motion: I move the commission initiate rulemaking to amend OAR 660-023-0200 and approve positions for a rulemaking advisory committee as recommended by the department.

IV. PUBLIC INVOLVEMENT

The procedures for public involvement under the commission's "Citizen Involvement Guidelines for Policy Development" (the CIG) are being followed in this process. This includes: (1) consultation with the Citizen Involvement Advisory Committee (CIAC) during the process; (2) establishing and publicizing a schedule of RAC meetings and LCDC meetings to provide opportunities for participation by the public; (3) having rulemaking information available in paper form and on the department's website; and (4) providing opportunities for members of the public to comment directly to the department and commission. The procedures for public involvement will be utilized when the workgroup meets and when the commission engages the public in the rule amendment process.

An electronic mailing list is being created by the department to provide information and to notify interested persons of RAC meetings and commission hearings. Information will be available on the department's website. Persons interested in being included on the mailing list should contact Casaria Taylor at 503-934-0065 or by email at casaria.taylor@state.or.us.

Proposed Amendments to the Goal 5 Rule for Historic Resources

The Department of Land Conservation and Development (DLCD), with the input and advice of the State Historic Preservation Office (SHPO), proposes to address four priority issues with amendments to the Goal 5 rule for historic resources (OAR 660-023-0200):

1. Achieve a well-articulated base level of protection for historic resources listed in the National Register of Historic Places (National Register) that can be applied directly without the need to amend local codes.
2. Clarify the circumstances under which the owner consent provisions in ORS 197.772(1) apply to historic resources listed in the National Register.
3. Better explain how the standard Goal 5 process described in OAR 660-023-0030 through 0050 is augmented by the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, published by the National Park Service (NPS).
4. Clarify who has standing under the owner consent provisions of ORS 197.772(2) highlight an alternate path for removing a local historic designation.

A new section would be added to the rule to address the first two issues. The new section would describe a protection standard for properties listed in the National Register; require the standard be applied directly to sites listed in the National Register after the date of rule amendments; and require that additional protection measures be applied through a local designation process subject to owner consent, also after the date of rule amendments. The addition of a definition for "property owner" would clarify that public owners and some "owners of interest" are entitled to consideration under ORS 197.772(1) (owner consent).

The third issue would be addressed by amending existing provisions of sections (3) through (5) of the rule. The intent of the rule would not be changed, but amendments would clarify how guidance provided by NPS regarding the treatment of properties listed in the National Register informs local Goal 5 historic protection plans and local inventories of designated historic sites.

The fourth issue relates to ORS 197.772(2) and the Carmon house case, currently under consideration by the Oregon Supreme Court. A survey conducted by SHPO identified jurisdictions that misapplied the statute, which requires local historic designations to be removed from a property if it was is imposed without owner consent. Rule amendments would describe standing under ORS 197.772(2).

Base level protection for sites listed on the National Register of Historic Places

History

Advisory committee and work group recommendations, staff reports, and draft rules leading to the September 1996 adoption of OAR chapter 660, division 23 (the "Goal 5 rule") indicate that a fundamental premise of the rulemaking process was that the Land Conservation and Development Commission (LCDC) should determine the state's interest in each resource category in order to guide rule making, and the revised Goal 5 process should reflect these stated interests. For historic resources, this led to a "must-protect" standard for properties listed in the National Register and a "may-protect" standard for locally-designated historic resources.

When the Goal 5 rule was adopted by LCDC, the commission assumed that all cities and counties would come into compliance with the rule through statutorily mandated periodic review.[1] Due to statutory changes that have exempted most cities and all counties from the requirement to complete periodic review, this has not come to be. For cities that still go through periodic review, the required scope of review has narrowed such that historic preservation is unlikely to be addressed. Because OAR 660-023-0200 (the historic resources protection rule) provides local governments considerable flexibility in how they implement historic preservation programs, combined with the loss of periodic review, local implementation varies widely. Some communities have a fully developed historic preservation program that automatically applies to sites listed in the National Register. Others offer little or no protection.

The current rule

The Goal 5 historic rule makes a distinction between "historic resources of statewide significance" and other historic resources. It defines "historic resources of statewide significance" as buildings, structures, objects, sites, and districts listed in the National Register, pursuant to the National Historic Preservation Act of 1966, as amended.[2] It requires local governments to protect all historic resources of statewide significance through local historic protection regulations, regardless of whether these resources are "designated" in the local plan. The rule, however, only describes one approach for

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[1] "Periodic review" is a scheduled update of a local government's comprehensive plan and land use regulations.

[2] The terms "statewide significance" and "local significance" mean different things for the state and federal programs. The National Park Service's historic preservation program recognizes sites of local, state, regional, and national significance. These classifications refer to the nature of the site and the historic events, or architectural themes that contribute to a site's significance. For example, a site classified as "locally significant" can be listed in the National Register of Historic Places. The Goal 5 rule uses the term "historic resource of statewide significance" to mean sites the State of Oregon has decided are worth protecting (all sites listed in the National Register), while "locally significant sites" refers to sites a local government has decided are worth protecting.

designing a local historic preservation program and selecting local protection measures. The description provides guidance rather than standards, and initiation of a program is easily interpreted as optional. Aside from a general definition of "protect," the rule does not set standards for implementing the "shall protect" directive for National Register properties.

The decision to rely on a voluntary, incentive-based federal program to identify properties that must be protected by local historic resource protection programs has resulted in unforeseen consequences. As written and applied, OAR 660-023-0200 discourages participation in the National Register program. The application of local review criteria can be perceived as costly and burdensome by some property owners. SHPO has found property owners and local jurisdictions reluctant to participate in the federal program because they do not want to trigger state or local Goal 5 requirements. The disincentive to participate in the federal program is particularly evident in discussions surrounding listing historic districts in the National Register.

Status of local programs

A SHPO survey of local jurisdictions in March 2016 revealed great variation in how National Register sites are addressed under local Goal 5 historic resources programs. Some jurisdictions provide no review of the intended demolition or significant alteration of properties listed in the National Register. Some jurisdictions incorporate National Register properties into the same review process they apply to locally designated resources, and some have a separate review process for National Register properties

Proposed amendments

Amend Section (1)

- Remove the definition for "historic areas" (the term was not used in the rule).
- Replace the term "historic resources of statewide significance" with the term "historic resources of statewide interest." The definition would not be changed.
- Add the delay of permits for demolition, relocation, or major exterior alteration of a historic resource to the definition of "protect." This would become the minimum standard for a local protection program.
- Add a definition for "property owner."

New section

- Explain how this rule supersedes the standard Goal 5 process described in OAR 660-23-0030 through 0050 for sites of statewide significance;
- Set baseline protection standards that apply directly to National Register sites until they are incorporated into a jurisdiction's comprehensive plan and code.

- For properties listed after the effective date of rule amendments, require that a National Register property be locally designated as a significant resource in order to apply additional local protection standards.

Owner consent provision in ORS 197.772(1) and its application to sites listed on the National Register of Historic Places

History

ORS 197.772 is the codification of Senate Bill 588 from the 1995 legislative session. Section (1) allows a property owner to withhold consent to any form of historic property designation. When SB 588 was being deliberated by the Legislature, language was inserted to preserve Oregon's ability to participate in NPS' historic preservation program. SHPO operates with technical and financial support from NPS. SHPO also administers a program that distributes NPS grant funds to Certified Local Governments and property owners. These grants enabled preservation projects that might not otherwise proceed.

Both state law and the National Register program include a provision for owner consent. However, the National Register has a very narrow definition of owner and a process for determining owner consent in the case of a historic district nomination, neither of which exist in state law. The National Register defines "owner" as those with a "fee simple interest" and prohibits public entities from preventing a nomination. This means that public entities, including service districts, have no standing when a property or resource in their ownership is considered for listing in the National Register. Additionally, a district listing may only be prevented when the majority of the owners object to listing. There is no individual right to opt out of listing within a National Register-listed Historic District. Once listed, NPS does not require local protections for a National Register listed property. NPS assumes that state and local governments will incorporate federal listings into local voluntary, incentive-based preservation programs; however, this is not the case in Oregon.

Consistent with federal laws, ORS 197.772(1) explicitly states that owner consent is not required for the consideration and nomination of a property to the National Register. Once a property is listed on the National Register, provisions in OAR 660-012-0200 apply. In some cases local governments have developed Goal 5 historic resource programs that apply local protections to National Register properties without the expressed consent of the owner. If there was an intent by LCDC when drafting the rule to rely on the federal owner consent provisions for nomination and listing to satisfy Oregon's statutory requirements for owner consent, it is not discussed in records left by the Goal 5 subcommittee or the Historic Resource Working Group. Furthermore, ORS 197.772 does not limit consent to a particular legal construct of ownership, while the

federal program has a detailed definition for what type of owner can interrupt a listing process due to lack of consent.

The current rule

OAR 660-023-0200 conflates designating a property with protecting a property. This is different from the process required for other Goal 5 resources, where the decision of whether to protect a resource comes after it is determined to be significant. The rule gives local governments considerable latitude in devising protection standards. They are encouraged to follow federal guidance, but are not required to do so. They are also excused from making findings on the economic, social, environmental and energy consequences of protecting designated resources (an "ESEE analysis") to support their selected strategy. Section (8) of the rule requires protection of National Register sites, yet does not require protection to be applied through a local adoption process. The rule also does not have a definition of "owner." The result is that properties owned by public entities, and properties in which a public or private entity has an interest not recognized by NPS, can have restrictions placed on them without consideration of the consequences it will have for the owner. Jurisdictions that automatically apply local protections to federally-listed properties compromise their own ability to weigh the pros and cons of imposing standards that complicate efforts to maintain and upgrade structures, utilities or districts serving the public.

Status of local programs

A SHPO survey of Oregon cities and counties found that a majority respondents add individual properties listed in the National Register to their local landmark lists. Of these communities, some did so automatically while most used a local designation process. This also seems to be a common approach for historic districts. About one third of the respondents stated they did not add properties listed in the National Register to their Goal 5 designated resource list. Some of these communities did not apply any protections to National Register properties, some applied the same protection measures applied to locally designated properties, and three respondents said the review standards they apply to National Register properties are different from the standards they apply to locally-designated properties. In some cases stringent local protection standards have been automatically applied to National Register properties without consent of owners who would otherwise have standing under Oregon's owner consent law.

Proposed amendments

Amend Section (1)

- Add definition of "property owner."

Explanation of how the standard Goal 5 process is augmented by the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation

History

The Goal 5 rule includes a description of the standard Goal 5 process, to "guide local planning for all Goal 5 resource categories." The "standard process" is described OAR 660-23-0030 through 0050. The Goal 5 rule also includes a separate rule for each resource category. These resource-specific rules do one or more of the following:

- Provide specifics to augment the standard process; require process steps that supersede the standard process
- Mandate specific sources be used when gathering inventory data
- Mandate a specific threshold for determining significance of a resource, or
- Offer local governments the option of using a state-identified threshold for significance or protection in order to reduce the time and cost of determining appropriate local thresholds and protection measures.

When drafting the Goal 5 rule for historic resources, LCDC followed the recommendation of the Goal 5 advisory committee and the Historic Resource Working Group, which favored the standards and procedures recommended by the U.S. Secretary of Interior over the standard Goal 5 process. The federal program, however, is a voluntary one, and LCDC needed to incorporate some requirements into the rule. The blending of federal guidance and state requirements resulted in a rule that is difficult to follow.

The current rule

OAR 660-23-0200 allows local governments to choose whether to develop a local historic preservation program. It requires some specific process steps for conducting an inventory; recommends against requiring an ESEE analysis; and requires lists of designated historic resources to be adopted as land use regulations, not as comprehensive plan elements. The rule is not specific about the relationship of the comprehensive plan to other local historic preservation program elements. The rule does not do a good job explaining, for each directive, which specific part of the standard process is being superseded, and which parts still apply.

Status of local programs

Many jurisdictions participate in the federal Certified Local Government program, which is a partnership between the NPS, SHPO, and the local government that provides federal pass-through grant funds for program administration and resource designation and protection, among other activities. Participating communities must have a preservation program in place that conforms to federal and state guidelines, but the requirements are largely procedural and allow for a high degree of local autonomy.

Participants in the Certified Local Government program generally have more-developed resource protection programs, and the benefits and restrictions these local programs place on owners of historic resources vary widely.

Proposed amendments

New Section

- Use protection measures that are recommended in national guidance and specify how they shall apply to resources listed in the National Register.
- Specify which aspects of the standard process are to be superseded in order to provide this base level of protection to National Register properties.

Amend Section (2)

- Specify that the section only applies to local program decisions to inventory, designate and protect locally designated resources.
- Delete confusing language. The intent of the deleted language would be addressed by adding clarity to other sections.

Amend Section (3)

- Clarify that, rather than following the order of the Goal 5 process described in OAR 660-023-0030 through 0050, jurisdictions should adopt local protection codes *before* locally significant resources are identified.

Amend Sections (4) and (7)

- Clarify how the steps described in OAR 660-023-0030 are supplemented or superseded when developing a local inventory of historic resources and making a determination of significance.
- Place more emphasis on the need for a "local historic context" as a basis for local protection standards.

New Section

- Clarify that inventories of significant historic resources sites shall reside in land use regulations. (OAR 660-023-0030(5) allows resource lists to reside in comprehensive plans or in land use regulations.)

Clarify standing under the owner consent provisions of ORS 197.772(2) and describe an alternate path for removing a local historic designation

History

ORS 197.772(2) requires local governments to remove a historic designation from a property if it was imposed on the property without consent and the owner with standing under ORS 197.772 requests that the designation be removed. (The meaning of "imposed" and the question of who has standing to request removal of a designation that was imposed is currently under consideration by the Oregon Supreme Court.)

The federal program does not allow properties to be removed from the National Register because an owner who granted consent changes their mind or a subsequent owner objects to the listing. Properties can have the federal designation removed if NPS finds that the resource no longer meets the standard for listing. Properties listed after December 12, 1980, may be removed for the same reason or if there is an error in procedure or professional judgement as prescribed by federal regulations.

The current rule

The rule addresses removing a local historic designation from a property in the case of a designation being imposed on a property owner. No further clarification is provided for discerning when the local designation has been imposed. The rule does not describe requirements or options for reasons unrelated to owner consent.

Status of local programs

Some jurisdictions misapply the owner consent provisions by allowing an owner who originally consented to designation or a subsequent owner of a designated resource to delist a site without consideration of the historic resource qualities for which it was originally listed

Proposed amendments

Amend Section (6)

- Clarify what it means to have a local historic designation "imposed" without owner consent, based on Oregon Supreme Court ruling.
- Provide a path for removing a local designation, consistent with federal guidance, based on findings that the value of a resource has diminished since its listing, or based on conflicting priorities that supersede the value of maintaining the designation.

Amend Section (9)

- Make the wording of this section, as it applies to permit delays, consistent with the definition of "protect."

OAR 660-023-0200
Historic Resources

(1) For purposes of this rule, the following definitions apply:

(a) "Designation" is a decision by a local government declaring that a historic resource is "significant" and including the resource on the list of significant historic resources.

(b) "Historic areas" are lands with buildings, structures, objects, sites, or districts that have local, regional, statewide, or national historic significance.

(c) "Historic resources" are those buildings, structures, objects, sites, or districts that have a relationship to events or conditions of the human past.

(d) "Historic resources of statewide significance" are buildings, structures, objects, sites, or districts listed in the National Register of Historic Places, and within approved national register historic districts pursuant to the National Historic Preservation Act of 1966 (PL 89-665; 16 U.S.C. 470).

(e) "Protect" means to require local government review of applications for demolition, removal, or major exterior alteration of a historic resource.

(2) Local governments are not required to amend acknowledged plans or land use regulations in order to provide new or amended inventories or programs regarding historic resources, except as specified in this rule. The requirements of the standard Goal 5 process (see OAR 660-023-0030 through 660-023-0050) in conjunction with the requirements of this rule apply when local governments choose to amend acknowledged historic preservation plans and regulations. However, the sequence of steps in the standard process is not recommended, as per section (3) of this rule. The provisions in section (3) of this rule are advisory only. Sections (4) through (9) of this rule are mandatory for all local governments, except where the rule provides recommended or optional criteria.

(3) Local comprehensive plans should foster and encourage the preservation, management, and enhancement of structures, resources, and objects of historic significance within the jurisdiction in a manner conforming with, but not limited by, the provisions of ORS 358.605. In developing local historic preservation programs, local governments should follow the recommendations in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. Where possible, local governments should develop a local historic context statement and adopt a historic preservation plan and a historic preservation ordinance before commencement of local historic inventories.

(4) Local governments shall provide broad public notice prior to the collection of information about historic resources. Local governments shall notify landowners about opportunities to participate in the inventory process. Local governments may delegate

the determination of significant historic sites to a local planning commission or historic resources commission. The determination of significance should be based on the National Register Criteria for Evaluation or the Secretary of the Interior's Standards for Evaluation.

(5) Local governments shall adopt or amend the list of significant historic resource sites (i.e., "designate" such sites) as a land use regulation. Local governments shall allow owners of inventoried historic resources to refuse historic resource designation at any time prior to adoption of the designation and shall not include a site on a list of significant historic resources if the owner of the property objects to its designation.

(6) The local government shall allow a property owner to remove from the property a historic property designation that was imposed on the property by the local government.

(7) Local governments are not required to apply the ESEE process in order to determine a program to protect historic resources. Rather, local governments are encouraged to adopt historic preservation regulations regarding the demolition, removal, or major exterior alteration of all designated historic resources. Historic protection ordinances should be consistent with standards and guidelines recommended in the Standards and Guidelines for Archeology and Historic Preservation published by the U.S. Secretary of the Interior.

(8) Local governments shall protect all historic resources of statewide significance through local historic protection regulations, regardless of whether these resources are "designated" in the local plan.

(9) A local government shall not issue a permit for demolition or modification of a historic resource described under subsection (6) of this rule for at least 120 days from the date a property owner requests removal of historic resource designation from the property.

ORS 197.772 Consent for designation as historic property. (1) Notwithstanding any other provision of law, a local government shall allow a property owner to refuse to consent to any form of historic property designation at any point during the designation process. Such refusal to consent shall remove the property from any form of consideration for historic property designation under ORS 358.480 to 358.545 or other law except for consideration or nomination to the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.).

(2) No permit for the demolition or modification of property removed from consideration for historic property designation under subsection (1) of this section shall be issued during the 120-day period following the date of the property owner’s refusal to consent.

(3) A local government shall allow a property owner to remove from the property a historic property designation that was imposed on the property by the local government.