

OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE

JEFF MORGAN
INTERIM DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 736
PARKS AND RECREATION DEPARTMENT

FILED
06/26/2020 4:36 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Revising state rules for National Register of Historic Places program in Oregon

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/14/2020 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.

CONTACT: Katie Gauthier
503-510-9678
katie.gauthier@oregon.gov

725 SUMMER ST NE
SALEM, OR 97301

Filed By:
Katie Gauthier
Rules Coordinator

HEARING(S)

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

DATE: 07/23/2020

DATE: 07/23/2020

TIME: 2:00 PM

TIME: 7:00 PM

OFFICER: staff

OFFICER: staff

ADDRESS:

ADDRESS:

CALL IN/ VIDEO MEETING

CALL IN/VIDEO MEETING

Salem, OR 97301

Salem, OR 97301

SPECIAL INSTRUCTIONS:

SPECIAL INSTRUCTIONS:

Following direction of the Gov/CDC public meetings are via conference call and video. The phone number and link to participate will be posted on the Oregon Parks and Recreation Department rulemaking website. Anyone needing a special accommodation to participate in the meeting please contact staff at least 72 hours prior to the meeting.

Following direction of the Gov/CDC public meetings are via conference call and video. The phone number and link to participate will be posted on the Oregon Parks and Recreation Department rulemaking website. Anyone needing a special accommodation to participate in the meeting please contact staff at least 72 hours prior to the meeting.

NEED FOR THE RULE(S):

In the last several years proponents nominated several high-profile, controversial properties to the federal National Register of Historic Places. These projects exposed discrepancies between federal and state laws and rules governing the National Register Program and gaps in administrative processes. Especially controversial is counting property owners and objections to establish owner consent as required by federal rule, specifically trusts, but also other ownership arrangements. The result of uncertainty is costly substantive process delays and legal proceedings. Revisions to the state rules guiding the procedures and responsibilities of staff and the State Advisory Committee on Historic Preservation (SACHP) for the National Register program are needed to align the federal and state processes and

provide general clarity.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

National Park Service, National Register of Historic Places Guidance,

<https://www.nps.gov/subjects/nationalregister/regulations.htm>

"The National Register of Historic Places Regulations (36 CFR Part 60): A Brief History and Annotated Guide," August 2012, available from the Oregon SHPO upon request.

"Historic Preservation Fund Grant Manual," June 2007, <https://www.nps.gov/preservation-grants/>

National Register Bulletin 15, "How to Apply the National Register Criteria for Evaluation," 1995 revision,

<https://www.nps.gov/subjects/nationalregister/publications.htm>

National Register Bulletin 16A, "How to Complete the National Register Form," 1997,

<https://www.nps.gov/subjects/nationalregister/publications.htm>

National Register Bulletin 16B, "How to Complete the National Register Multiple Documentation Form," 1999 revision,

<https://www.nps.gov/subjects/nationalregister/publications.htm>

National Register Bulletin 21 and 12, "Defining Boundaries for National Register Properties," 1997 revision,

<https://www.nps.gov/subjects/nationalregister/publications.htm>

FISCAL AND ECONOMIC IMPACT:

Reducing the uncertainty and process delays for National Register program nominations 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. Increased clarity around administrative requirements for program operation will raise program administration costs for the Oregon State Historic Preservation Office. However, it is expected that these costs will be offset over time because it is likely that legal costs associated with controversial nominations will be reduced or avoided in future nomination efforts.

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 State Historic Preservation Office 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. These additional processes will increase the cost of administering the program. 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. (c) There is no additional increase in costs for professional services, equipment supplies, labor or administration

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.

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

A small business owner with experience in preparing National Register of Historic Places was included on the Rule Advisory Committee as well as a representative from the Oregon Home Builders Association and the Oregon Farm Bureau, who both include small business owners in their membership.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

736-050-0220, 736-050-0230, 736-050-0240, 736-050-0250, 736-050-0260, 736-050-0270

AMEND: 736-050-0220

RULE SUMMARY: Adopts federal requirements for state historic preservation programs by reference.

CHANGES TO RULE:

736-050-0220

State Advisory Committee on Historic Preservation: Federal Requirements ¶

~~The National Historic Preservation Act of 1966, as amended, (16 U.S.C. SC 470 et seq.) (Act), specifies basic requirements for approval of state historic preservation programs. The requirements and responsibilities listed in the Act are incorporated into federal rule, 36 CFR Parts 60 (1994/2012 edition), and 36 CFR Part 61 (1999/8 edition), which are hereby adopted by reference into this administrative rule~~ OAR 736-050-0230, OAR 736-050-0240, OAR 736-050-0250, OAR 736-050-0260, and OAR 736-050-0270.

Statutory/Other Authority: ORS 358.617

Statutes/Other Implemented: ORS 358.605

AMEND: 736-050-0230

RULE SUMMARY: Defines terms used within specified rules in this division.

CHANGES TO RULE:

736-050-0230

State Advisory Committee on Historic Preservation: Definitions ¶¶

~~(1) "Actual conflict of interest" (ORS 244.020(1)) – means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person's relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit~~
The following definitions apply to OAR 736-050-0220, OAR 736-050-0240, OAR 736-050-0250, OAR 736-050-0260, and OAR 736-050-0270: ¶¶

(1) "Act" means the National Historic Preservation Act of 1966, as amended, (16 USC 470 et seq.) that establishes the federal historic preservation program.¶¶

(2) "Associate Deputy SHPO" means the Associate Deputy State Historic Preservation Officer who serves under the delegated authority or detriment arises out of circumstances described in subsection (12) of this section of the Deputy State Historic Preservation Officer.¶¶

(23) "CLG" means Certified Local Government (CLG) – A, which is a city or county that has been government certified by the National Park Service, Department of the Interior PS to carry out the purposes of the National Historic Preservation Act, as amended. The CLG program is administered by the SHPO responsibilities under the Act. ¶¶

(4) "Chief elected official" has the meaning provided in 36 CFR 60.3(b).¶¶

~~(35) "Committee" – ¶¶ means the State Advisory Committee on Historic Preservation, a nine member body appointed by the Governor pursuant to as established in ORS 358.622.¶¶~~

(46) "Criteria for Evaluation" – ¶¶ means the National Register Criteria for Evaluation are those published criteria by which every proposed described in 36 CFR 60.4 by which the CLG, Committee, SHPO, and NPS judge every that is historic resource proposed for nomination to the National Register is judged.¶¶

(57) "Deputy SHPO" – ¶¶ means the Deputy State Historic Preservation Officer, who serves as SHPO staff manager under the delegated authority of the State Historic Preservation Officer.¶¶

(68) "Determination of Eligibility" – A decision by the U.S. Department of the Interior that a property meets the National Register criteria for evaluation although the property is not listed in the National Register. A determination of eligibility does not make the property eligible for grants or tax incentives for which listing in the National Register is a prerequisite means a finding by the NPS that a property either does or does not meet the criteria for evaluation.¶¶

(9) "Historic resource" means a building, district, object, site, or structure, as defined in 36 CFR 60.3(a), (d), (j), (l), and (p), or that that the NPS or SHPO finds is potentially eligible for listing in the National Register, but is not listed in the National Register.¶¶

(710) "Handbook" – Compiled by SHPO staff, the guide is a publication on how to prepare nominations to historic property" means a building, district, object, site, or structure that is listed in the National Register based on National Register Bulletin 16 of Historic Places.¶¶

(811) "Historic District" – A geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of historic sites, buildings, structures, or objects united by past events or visually by plan or physical development Local landmarks commission" means an advisory or quasi-judicial body responsible for carrying out responsibilities under the Act on behalf of a CLG.¶¶

(912) "Multiple Property Submission" – Includes all or a portion of the Register-eligible resources identified in a specific rural area, county, town, or section of a town or city, which are related to one another in a clearly distinguishable way. The resources may be of one building type or use, designed by a single architect, of a given National Register" means the National Register of Historic Places maintained by the United States Department of the Interior and administered by the NPS, which is the national list of historic properties significant in American

history, architecture, archaeological period, or all these, engineering, and culture. The Oregon SHPO coordinates to a single historical site the National Register at the state level.

(103) "NPS" means the National Park Service (NPS) – The federal agency, housed in the U.S. Department of the Interior, which oversees historic preservation programs enabled by the National Historic Preservation Act of 1966, as amended, the bureau of the United States Department of the Interior responsible for the administration of the Act.

(114) "National Register of Historic Places" – The national list of districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture, maintained by the Secretary of the Interior. The Keeper of the National Register of Historic Places is "nomination form" means the federal form as defined in 36 CFR § 60.3(i) approved by the NPS to nominate a historic resource for listing in the National Register or to amend or substantively revise a National Register nomination form previously accepted by the NPS for an historic property.

(15) "Oregon SHPO" means the Oregon State Historic Preservation Office, an official of the National Park Service Oregon Parks and Recreation Department.

(126) "Potential conflict of interest" (ORS 244.020(7)) – means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person's relative, or a business with which the person or person's relative is associated, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position. Owner:

(a) Includes "owner or owners" as defined in 36 CFR § 60.3(k), and means:

(A) The owner of fee simple absolute or fee simple defeasible estate title to a property as shown in the property tax records of the county where the property is located, including, but not limited to, trusts, limited liability corporations, and any other legal entity that can hold fee simple absolute or fee simple defeasible title to real property within the state of Oregon;

(B) The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or

(C) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner; and

(b) Does not include:

(bA) Any action in the person's official capacity which would affect to the same degree a class consisting of all public agencies holding easements or less than fee interests (including leaseholds) of any nature;

(B) The life tenants of the life estate, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person's relative or business with which the person or person's relative is associated, is a member or is engaged. The committee may by rule limit the minimum size of or otherwise establish criteria for or identify the smaller classes that qualify under this exception.

(c) Membership; and

(c) Means, for a single property, building, structure, site, object, with or without secondary historic resources, or historic district with multiple owners, a majority of owners as defined in (a) and (b).

(17) "Person" means individuals, corporations, associations, firms, business trusts, estates, trusts, partnerships, limited liability companies, joint ventures, public and municipal organizations, joint stock companies, federal agencies, tribes, public bodies as defined in ORS 174.109, or any other legal or commercial entity.

(18) "Proponent" means the person that submits a National Register nomination form to the Oregon SHPO.

(19) "Public comment period" means the opportunity for a person to comment on the National Register nomination form submitted for review by the Committee. The public comment period begins on the date of the meeting of the board of directors of a nonprofit corporation that is tax-exempt under Section 501(c) of the Internal Revenue Code.

(13) "SHPO" – From the date the Oregon SHPO notifies the proponent, owner, CLG, chief elected official, and tribes and ends the day that the NPS makes a final decision regarding listing a historic resource in the National Register.

¶

(20) "SHPO" means the Director of the Oregon Parks and Recreation Department and the State Historic Preservation Officer appointed by the Governor pursuant to ORS 358.565 and 36 CFR 61.4 in ORS 358.565.¶

(21) "Substantive revision" means:¶

(a) Also used to mean State Historic Preservation Office.¶

(14) "Special Assessment" - A state sponsor request submitted to the NPS to remove a still extant listed historic property from the National Register; ¶

(b) A National Register nomination form is edited to increase or decrease the boundary of a historic resource nominated to or historic property listed financial incentive program (ORS 358.425 et seq.) which provides for a fifteen year "freeze" in the true cash value of National Register properties the National Register; ¶

(c) A National Register nomination form is edited to add one or more National Register Criteria or Criteria Considerations;¶

(d) a National Register nomination form is edited to the extent that the SHPO finds that the revisions require additional review; or¶

(e) Any combination of (a), (b), (c), or (d). ¶

(f) Does not mean adding a National Register Criteria or Criteria Consideration when the SHPO or Committee determine that the narrative portions of the National Register nomination form as written sufficiently justify the addition.¶

(22) "Tribe" means one or more of the nine federally-recognized Indian tribes in Oregon.¶

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ORS 358.617

Statutes/Other Implemented: ORS 358.617

AMEND: 736-050-0240

RULE SUMMARY: Describes the governing structure and responsibilities for the State Advisory Committee on Historic Preservation.

CHANGES TO RULE:

736-050-0240

State Advisory Committee on Historic Preservation: Organization and Duties ¶

- ~~(1) Members of the~~The Governor appoints committee members as described in ORS 358.622.¶
- ~~(2) Committee members~~ appointed to fill unexpired terms ~~shall~~may serve for the remainder of the term of the vacating member.¶
- ~~(23) Unless the policy is waived by the Governor under extenuating circumstances (e.g., lack of qualified professionals to represent a required discipline), a C~~Committee members may serve no more than two consecutive terms of appointment unless the Governor approves another consecutive term. A committee member appointed under section (2) may be considered for reappointment as provided in this section. A committee member may serve ~~no more than~~beyond two consecutive terms of appointment in his or her own right. If the member's original appointment fulfilled the unexpired term of another, he or she may be considered for reappointment ~~twice in succession thereafter~~until the Governor appoints a replacement.¶
- ~~(4) The SHPO must nominate a chairperson and vice chairperson to the Governor for consideration. The Governor selects the chairperson and vice chairperson for a two-year term. The chairperson and vice chairperson may serve consecutively in either role through their terms.¶~~
- ~~(35) Each member shall sign an affidavit acknowledging that he or sh~~The chairperson conducts Committee meetings. The vice chairperson must fulfill this role when the chairperson is unavailable. The SHPO must appoint a committee member to conduct the meeting when the chairperson and vice ~~chairperson~~ has read applicable conflict-of-interest provisions in state and federal rules. Affidavits are maintained by the nominations coordinator ~~or person~~ are both unavailable.¶
- ~~(6) The Committee may define additional responsibilities for the chairperson and vice chairperson.¶~~
- ~~(7) The SHPO must request that the Governor remove committee members absent for two consecutive meetings without the prior permission of the chairperson or, in the absence of the chairperson, the vice chairperson.¶~~
- ~~(48) Pursuant to~~The Committee must carry out the duties described under 36 CFR ¶ 61.4(f)(6) and ORS 358.622. ~~the Committee shall:¶~~
- ~~(a) Review all proposed nominations to the National Register of Historic Places to determine whether or not the property meets the criteria; and¶~~
- ~~(a) Meet at least three times annually;¶~~
- ~~(b) Review National Register nomination forms submitted to the Committee by the SHPO for reevaluation~~view as provided in OAR 736-050-0260;¶
- ~~(bc) P~~May participate in the review of appeals to the Keeper of the NPS of National Register of nomination forms rejected by the SHPO, and provide written opinions on the significance of the properties or the NPS;¶
- ~~(ed) Periodically r~~Review and make recommendations to the SHPO on amendments to the Oregon State Historic Preservation Plan, and provide advice on comprehensive historic preservation planning processes;¶
- ~~(de) Provide advice, guidance, and professional recommendations to the SHPO on matters relating to federal and state historic~~Create advisory committees or subcommittees necessary to carry out the Committee's functions;¶
- ~~(f) Appoint committee members to serve as represervntation programs, policies and budgets, includves to another body in the interest of carrying bout not lithe Committed to grant applications, annual staff work programs, and matters relating to the special assessment of historic property under provisions of ORS 358.475 et seqe's duties;¶~~
- ~~(g) Adopt standard practices to carry out the duties of the Committee as necessary; and¶~~
- ~~(h) Perform other duties as requested by the SHPO.~~

Statutory/Other Authority: ORS 358.617

Statutes/Other Implemented: ORS 358.622

AMEND: 736-050-0250

RULE SUMMARY: Outlines staff process in administering the National Register program.

CHANGES TO RULE:

736-050-0250

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

- ~~(1) Pursuant to ORS 358.565, the SHPO may delegate authority under this division to the Deputy SHPO, the Associate Deputy SHPO, the National Register Program Coordinator, or other staff.¶~~
- ~~(2) The SHPO must appoints the National Register Nominations Coordinator as the staff professional who is qualified to coordinate a National Register Program Coordinator to administer the state's National Register of Historic Places program.¶~~
- ~~(3) A proponent may nominate a historic resource to the National Register regardless of ownership status by submitting a complete National Register nomination form to the SHPO.¶~~
- ~~(4) The SHPO must evaluate the National Register nomination form and provide a written response to the proponent within 60 calendar days of receipt stating whether their submittal:¶~~
- ~~(a) Is adequately documented;¶~~
- ~~(b) Is technically and professionally correct and sufficient; and¶~~
- ~~(c) Demonstrates that the nominated historic resource meets the National Register criteria for evaluation.¶~~
- ~~(5) A proponent may withdraw the national register nomination form they state's National Register nominations program, including serving as staff to the State Advisory Committee on Historic Preservation.¶~~
- ~~(2) Notification letters must be issued to property owners and affected public officials submitted r at any time during the public comment period by submitting a written request to the SHPO.¶~~
- ~~(6) The Oregon SHPO may keep all or qualifying portions of a National Register nomination form confidential and conditionally exempt from public disclosure under the conditions established in ORS 192.345. SHPO staff must establish a procedure for applying the conditions of ORS 192.355(4) to submitted National Register nomination forms.¶~~
- ~~(7) The Oregon SHPO may keep all or qualifying portions of a National Register nomination form submitted for review confidential and exempt from public disclosure under the provisions of section 304 of the Act. SHPO staff must establish a procedure for applying the conditions of section 304 of the Act to submitted National Register nomination forms.¶~~
- ~~(8) The SHPO must provide a public comment period for each National Register nomination form considered by the Committee. The copy provided for public comment may be redacted as provided for under subsections (6) and (7) as applicable. The SHPO must:¶~~
- ~~(a) Open the public comment period not less than 30 calendar days nor more than 75 calendar days in advance of the nomination review date a scheduled committee meeting.¶~~
- ~~(b) Include in the public comment period notice the date and location of the scheduled committee meeting and the process for submitting comments on the National Register nomination form.¶~~
- ~~(3c) Individuals, Mail a written public comment period notice to the proponent, owner, CLG, chief elected official, and tribes. The SHPO may coordinate with local governments officials, landmark commissions, or CLGs on the format, content, and distribution of the public comment period notice.¶~~
- ~~(d) May publish a public comment period notice in one or more local newspapers of general circulation in the area where the historic resource is located.¶~~
- ~~(e) Identify owners using county property tax records obtained within 90 calendar days provide comments on the proposed nomination to the SHPO, Deputy SHPO, or nominations coordinator in advance of the meeting. Written or oral comments must be received not later than the announced date or to the beginning of the public comment period.¶~~
- ~~(f) Take additional actions to inform the public and interested parties of the nomination of a historic resource to the National Register or substantive revision of a National Register form for a historic property if the SHPO~~

believes that such an action is in the public interest.

(g) Make available to the public, proponent, owner, CLG, chief elected official, and tribes a complete copy of the National Register nomination form during the public comment period except when a portion or the entirety of the National Register nomination form is redacted as provided in sections (6) and (7).

(9) Any person may provide comments 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. Any written comments received after this time but before the meeting will be included in the public record, but the Oregon SHPO will not provide the comments to the Committee, except as provided for CLGs in section 10.

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

(c) The period for public comment shall not be less than 30 days. For properties located Committee will only consider written and oral comment submitted during the public comment period that address:

(A) substantive requirements for complete nominations described in section (4), or

(B) procedural requirements under state and federal rule and law.

(d) All comments received in any format are public records.

(10) A CLG may object to nominating a historic resource within their jurisdiction of a CLG, and for properties in public ownership, the period for public comment shall not be less than 60 days. Objections to the National Register or the substantive revision of a National Register nomination form for a historic property as described in 54 USC § 302504 (2014).

(a) To be valid, an objection must meet the following requirements:

(A) Be submitted in writing and received by the SHPO within 60 calendar days following notice provided by the SHPO as described in 736-050-0250(8);

(B) The chief elected official acting in their official capacity representing the majority opinion of the local government's legislative body recommends that the historic resource not be nominated to the National Register or that the form for a historic property not be substantially revised;

(C) The local landmarks commission recommends by majority opinion that the historic resource not be nominated to the National Register, or that the form for a historic property not be substantially revised. The local landmarks commission recommendation must include a report as to whether the property meets the National Register criteria described in OAR 736-050-0250(4). The local landmarks commission may find that the historic resource is eligible for listing in the National Register by the owners of private property must be in the form of a notarized written statement certifying the commission does not recommend that it be nominated to the National Register; and

(D) The public has a reasonable opportunity to comment.

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

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

(B) Take necessary actions to close the administrative process; and

(C) Provide written notice to the proponent's, ownership interest and the basis for objection. The coordinator will acknowledge receipt of written comments by form letter. Statements of objection on the part of own(s), CLG, chief elected official, and tribes within 10 calendar days of the action.

(c) Any person may appeal a CLG's objection by submitting a written appeal to the Oregon SHPO within 30 calendar days after the date the SHPO received the CLG's objection. The SHPO must submit the National Register nomination form for Committee consideration at the next regularly-scheduled committee meeting.

(d) A CLG may object each time a National Register nomination form is substantively revised under the provisions of this section.

(11) State government as defined in ORS 174.111 and political subdivisions of state government may comment on the National Register nomination form. State government and political subdivisions of state government may object to listing a historic resource in the National Register, but the SHPO must not count the objection toward the total numbers of public/private property which the Committee finds to meet criteria of the National Register

will be forwarded for consideration by the Keeper of the National Register. However, under federal rule, a statement of objection will not automatically preclude listing in the National Register of a property that is in public ownership unless the owner(s) needed to prevent the historic resource from being listed in the National Register as prohibited by the provisions of 36 CFR § 60.6(g) (2011). As used in this section, "political subdivision" includes counties, cities, taxing districts and any other governmental unit within the state of Oregon.

(12) The SHPO must determine if the majority of owner(s) object to listing a nominated historic resource in the National Register by comparing the total number of owners identified on the property owner list to the number of notarized statements that object to listing the historic resource.

(a) The SHPO must create a property owner list that includes each owner within the boundary of a historic resource nominated for listing in the National Register using county property tax records obtained as provided in subsection (8)(e). That property owner list is the official list of property owners throughout the public comment period.

(A) The SHPO must take reasonable steps to correctly identify the total number of owners.

(B) The SHPO must assume that the property tax records provided by the county assessor are accurate when counting owners.

(C) The SHPO must 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, the SHPO will compare the name and mailing addresses to determine if there are one or more owners. Jane Doe and Jane S. Doe must be considered 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) The SHPO must 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.

(4E) The coordinator shall conduct a substantive review of all proposed nominations and prepare written summary comments for presentation to the Committee. This review shall apply the National Register Criteria for Evaluation to the nomination, focusing on physical characteristics, integrity, the applicable criteria and context for evaluation. The coordinator shall make recommendations concerning the eligibility of properties proposed for nomination. These comments shall be retained in individual nomination files.

(5) Notification letters to property owners/proponents shall be prepared to confirm SHPO must count a trust as a single owner when multiple trustees are named, but no trust is identified.

(G) The SHPO must 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.

(H) The SHPO must add or remove an owner from the property owner list upon submission of a notarized statement from the current property owner when the notarized statement meets the requirements of subsection (c).

(b) At any time during the public comment period, an owner may take the following actions by submitting a notarized statement. An owner may object only once regardless of how many historic resources or what portion of a historic resource the owner owns:

(A) Object to listing a historic resource in the National Register;

(B) Withdraw their own previous objection;

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

(D) Assert ownership of a historic resource within the nominated area when the property owner list does not include the owner or property; or

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

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

(A) An owner must submit an original, notarized statement on a form provided by the SHPO;

(B) The notarized statement must identify private real property within the boundary of the nominated area;

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

(D) The owner must identify both the name they were previously known by and listed in the county property tax records and their current legal name as applicable.

(E) The notarized statement must clearly identify the nature of the owner's property right.

(F) The owner must sign and date the notarized statement; and

(G) A notary public must confirm, or "attest," the identity of the individual signing the notarized statement.

(d) The SHPO must consider only the most recent valid notarized statement when determining the total number of owners on the property owner list and objections.

(e) The SHPO will not consider an objection provided in any other manner, written or oral, or a notarized statement that does not meet the requirements of OAR 736-050-0250(12)(c), is incomplete, or is illegible.

(f) The legal representative of an owner may submit a notarized statement on an owner's behalf. 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 (12)(a) and submitting a notarized statement must submit documentation demonstrating that they meet the definition of owner as described in this rule, including instruments used to create legal entities under Oregon State law such as trusts, limited liability corporations, and other legal entities.

(h) When removing the objection of a previous owner under subsection (b), 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 as described in this rule.

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

(j) The SHPO will not recognize the authority of third parties to represent the intent of an owner whom the third party does not demonstrate that they legally represent as provided in subsection (e).

(k) All notarized statements and accompanying documentation are public records.

(l) The SHPO must acknowledge persons in writing within 30 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 subsection (c) and if not valid, describe why and how to correct the error.

(m) The public comment period must remain open when the Committee defers making a recommendation under the provisions of OAR 736-050-0260(11).

(13) The SHPO may examine the property owner list and notarized statements to determine the accuracy of the property owner list and validity of notarized statements. This may occur when the SHPO determines that the reasonably possible outcome of identifying potential error(s) may change the total number of owners on the property owner list or objections to the extent that the outcome would determine if the nominated historic resource is or is not listed in the Naction taken by the Committee on the review date. Separate form letters for approval, deferral, or denial shall be used. Approval letters may be accompanied by a list of needed supplemental documentation. Deferral or denial letters shall be accompanied by an explanation of why the action was deferred or denied and what steps might be taken to make a valid re-submission of the nomination, if any.

(6) Once forwarded to the Keeper of the National Register, nominations may be returned to the SHPO for additional information, or can be subject to a supplementary listing record that provides for minor technical corrections without return of the registration form.

(a) Any person may request that the SHPO carry out an examination of the property owner list or submitted notarized statements under this section. Such a request must be in writing, and identify and document with evidence to establish one or more of the following:

(A) Factual inaccuracy;

(B) Error in the way SHPO prepared the property owner list; or

(C) Error in the tally of notarized statements.

(b) In determining whether to undertake an examination under subsection (a), SHPO may consider whether such an examination could reasonably affect the outcome of the process.

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

- (d) 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. ¶
- (e) The SHPO may choose to re-examine the property owner list and notarized statements against current property tax assessor records, the results of a title search, and any public record and make decisions based on these sources. ¶
- (f) The SHPO may require that owners submit documentation to prove their ownership status or the validity of their submitted notarized statements. The SHPO will not acknowledge persons who are unable or refuse to submit documentation as required by this rule as owners for the purposes of this rule.¶
- (g) The SHPO must independently verify that documents provided by third parties that do not legally represent an owner as defined in this rule and under Oregon State law are valid and are themselves enough evidence before editing the property owner list or confirm or refute the validity of a notarized statement. The SHPO must notify the third party and the subject person of the SHPOs determination and provide the person an opportunity to provide additional documentation to demonstrate that they are an owner as defined in OAR 736-050-0230(16).¶
- (h) The SHPO may determine that a person not counted as an owner on the property owner list created under subsection (12)(a) is an owner as defined in OAR 736-050-0230(16) and correct the property owner list as described in this rule and accept the owner's notarized statement.¶
- (i) The SHPO may remove a person from the property owner list or invalidate notarized statements upon completion of an examination. The SHPO must inform a person in writing within 30 days of removing a person from the property owner list or invalidating the person's submitted notarized statement and the reason the SHPO took the action. A person may appeal their removal from the property owner list by submitting documentation as described in this rule.¶
- (j) An examination is complete once the SHPO determines that further identification and correction of errors will not determine if the historic resource will or will not be listed in the National Register.¶
- (14) The SHPO must make a copy of the National Register nomination form as provided to the NPS available to the public, subject to the provisions of sections (6) and (7). The SHPO shall provide notice of this action to proponent, owner, CLG, chief elected official, and tribes. The SHPO may provide notice to owners by public press release or other means in place of written notice.¶
- (15) The NPS may correct a submitted National Register nomination form, require that the SHPO correct a submitted National Register nomination form, or deny listing a historic resource in the National Register.¶
- (a) The NPS may correct a submitted National Register form and list the historic resource in the National Register.¶
- (b) The SHPO must notify the Committee, proponent, owner(s), CLG, chief elected official, and tribes that the NPS returned the National Register nomination form, the reasons for the return, and whether the SHPO will resubmit the National Register nomination form to the Committee or the NPS.¶
- (A) The SHPO may resubmit a National Register nomination form not requiring substantial revisions to the NPS without Committee review.¶
- (B) The SHPO may choose to resubmit a National Register nomination form returned by the NPS for amendment or substantive revision by the SHPO or denied listing in the National Register to the Committee. The SHPO must address the reasons the NPS returned the National Register nomination form before resubmission to the Committee.¶
- (c) The SHPO may require that the proponent complete identified revisions before resubmission of the National Register nomination form to the Committee or the NPS. The SHPO may complete needed revisions itself.¶
- (d) If a historic resource is not listed in the National Register within two years from the date the NPS first returns the National Register nomination for correction the SHPO must decide whether to resubmit the National Register nomination form to the Committee or the NPS as described in this rule or end the National Register nomination process. If the SHPO does not resubmit a National Register nomination form to the Committee or the NPS as described in this rule, the public comment period and the nomination process are ended. The SHPO must consult with the proponent and consider their opinion before making a final decision. A written decision shall be provided

to the proponent, owner, CLG, chief elected official, and tribes. The SHPO may provide notice to owners by public press release or other means.

(e) The SHPO must complete the following to continue with the National Register process after the NPS returns a National Register form:

(A) Review the National Register form as described in OAR 736-050-0250(4).

(7B) ~~Formal notification of listing is sent to the affected property owner, with copies to the appropriate public officials and landmarks commissions. Notices are mailed to each owner of~~ If the SHPO determines that the National Register nomination form requires substantive revision or if it is in the public interest the public comment period must close and the nomination process must stop. A proponent may revise the National Register nomination form and submit the form for a consideration at a future committee meeting as described in this rule.

(C) Provide a public comment period notice as described in OAR 736-050-0250(c)(d)(f) and (g).

(D) Create a new property owner list as described in section (12); and

(E) Compare notarized statements received throughout the public comment period and remove those persons not on the property owner list created in section (12). The SHPO must not tally the notarized statements from persons removed from the property owner list in this manner. The SHPO must notify persons removed in this manner in writing using their last indicated mailing address on the original property owner list created during the public comment period for the prior submission. A person may appeal their removal from the property owner list by submitting documentation as described in this rule. Owners may submit notarized documents as described in section 12.

(16) The SHPO must consider the Committee's comments and recommendation and comments received during the public comment period when making an independent recommendation under the provisions of 36 CFR 60.6(o) and (p) regarding the eligibility of an historic resource for listing in the National Register.

(17) The SHPO may make a recommendation to the NPS contrary to the Committee's recommendation. The SHPO must inform the Committee if making a recommendation to the NPS contrary to the Committee's recommendation at the next committee meeting following the SHPO's action.

(18) The SHPO may petition the NPS to take the following actions without review by the Committee. The SHPO must notify the Committee of these actions at the next committee meeting following the SHPO's action:

(a) Petition the NPS to remove a razed historic property from the National Register;

(b) Amend a National Register nomination form for a historic property when the amendments are not substantive revisions;

(c) Change the contributing status of an individual historic property within a historic districts ~~or in multiple property submissions~~ listed in the National Register;

(d) Change the contributing status of a secondary historic property, such as a garage, shed, or other small-scale building, structure, object or site 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 (a), (b), (c) and (d).

(19) Any person may appeal directly to the NPS any SHPO decision regarding the nomination of a historic resource to the National Register or amendments to National Register forms for historic properties under the provisions of 36 CFR 60.12.

(20) The SHPO may refer a nomination submitted pursuant to section (3) 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. 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 objects as provided in section (12); and

(b) The determination of the accuracy of the property owner list and validity of notarized statements as provided in section (13).

Statutory/Other Authority: ORS 358.617

Statutes/Other Implemented: ORS 358.565(3)

AMEND: 736-050-0260

RULE SUMMARY: Outlines the process for the State Advisory Committee on Historic Preservation to consider nominations.

CHANGES TO RULE:

736-050-0260

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

(1) The Committee shall ~~must~~ review all National Register nominations ~~meeting the documentation requirements of the National Park Service and shall forms except for those prepared under OAR 736-050-0250(18).~~ ¶

(2) ~~The Committee must make a recommendation to the SHPO whether or not each~~ the National Register nomination form meets the National Register Criteria for Evaluation following criteria: ¶

(a) ~~All procedural requirements are met;~~ ¶

(2b) ~~Due~~ The dates for receipt of nominations are not less than 80 days prior to a scheduled meeting and are published in the Handbook; ~~ional Register nomination form is adequately documented;~~ ¶

(3c) ~~Neither the SHPO nor the Committee chairman shall entertain a request to add a nomination proposal to a closed agenda unless both the property owner(s) and head of the affected local jurisdiction(s) waive the normal commenting period.~~ The National Register nomination form is technically and professionally correct and sufficient; and ¶

(4d) ~~During Committee meetings, the nominations coordinator or other SHPO staff shall present a summary statement to introduce the nomination proposal, using slides for illustration and noting any writ~~ The National Register nomination form demonstrates that the nominated historic resource meets the National Register c ~~omments received prior to the meeting. Staff shall recite the criteria under which the nomination proposal is appropriately evaluated and shall provide recommendations concerning eligibility of the nominated property.~~ ¶

(5) ~~Members of the Committee shall disclose and act upon actual or potential conflicts of interest in accordance with state law, and shall avoid even the appearance of conflict of interest. Conflict of interest is described as any action taken by a Committee member in the course of Committee business that results in, or might result in a direct pecuniary benefit or detriment to the Committee member, to a member of the Committee member's household, or to the Committee member's business as defined by statute (ORS 244). As this relates to meetings of the Committee the following applies:~~ ¶

(a) ~~A member shall publicly announce an~~ criteria for evaluation. ¶

(3) ~~Neither the SHPO nor the Committee chairperson or vice chairperson will consider a National Register nomination form submitted after the opening of the public comment period.~~ ¶

(4) ~~The owner(s) and chief elected official may waive the CLG comment opportunity described in OAR 736-050-0250(10) by submitting a written statement to the SHPO at least 15 calendar days before a scheduled committee meeting. The remaining provisions of OAR 736-050-0250 must be met.~~ ¶

(5) ~~Committee members must disclose actual or and potential conflict-s of-interest prior to any Committee action on the matter in conflict but need not disclose any monetary value involved. The member shall disclose the nature of the conflict. Each member is responsible for ascertaining and disclosing his or her respective actual or in~~ accordance with state law. ¶

(6) ~~Committee members will not recuse themselves for a potential conflicts-of-interest, but not conflicts of other members;~~ ¶

(b) ~~In order to avoid even the appearance of conflict of interest in the conduct of t.~~ ¶

(7) ~~A quorum of five~~ (5) Committee members are required to conduct business. The Committee's affairs, each member shall publicly announce the existence of any circumstances that might appear to a reasonable person to pose an actual or potenti ~~retains a quorum if by the removal of committee members for declared actual conflict-s of-interest as that term is defined in this rule. Upon such disclosure, the remaining members shall determine on a case-by-case basis by a majority vote whether the appearance of a conflict exists;~~ ¶

~~(c) A member having an actual or potential conflict of interest, as confirmed by vote of the Committee, may not vote concerning the matter in conflict and must absent himself or herself from the meeting during the discussion, review, scoring of, and voting of the Committee falls below five present voting committee members.¶¶~~

~~(8) For each historic resource nominated to the National Register, the National Register Program Coordinator must present the Committee a summary of:¶¶~~

~~(a) The argument presented in the matter in apparent conflict. If removal of a member(s) from discussion and voting would result in loss of a quorumal Register nomination forum, as defined by statute, the members(s) shall not withdraw and shall vote. If a quorum is present, a majority vote of the five-member quorum or a majority vote of the remaining members voting, whichever is greater, shall be required to approve an action;nd¶¶~~

~~(b) Public comment received prior to the Committee meeting pursuant to OAR 736-050-0250(9)(a).¶¶~~

~~(d) The nature of any actual, potential, or apparent conflict of interest disclosed by a committee member and the disposition of the matter in conflict by the committee shall be recorded in the meeting's minutes.¶¶~~

~~(6) In order to avoid even the appearance of conflict of interest chairperson must call for comments from the proponent(s), opponents, and other interested parties present following the conduct of the Committee's affairs, a member shall not:¶¶~~

~~(a) State or imply that he or she is able to influence any action by the Committee;¶¶~~

~~(b) Accept anything of value from any person when the member knows or should know, or that it may be perceived by the public, that it is for the purpose of influencing his or her action as a Committee member;¶¶~~

~~(7) Failure to observe conflict of interest provisions of this rule shall be considered due cause for the State Historic Preservation Officer to recommend the Governor's request for a member's resignation.¶¶~~

~~(8) In regard to historic district or multiple property submissions, the following applies:¶¶~~

~~(a) The chairman may, at his or her option, assign a Committee member to monitor the progress of each historic district or multiple property nomination. Members responsibilities in this regard can include: Meeting with the proponents or consultants, inspecting properties (with owner consent) and proposed boundaries, or review of draft nomination documents;¶¶~~

~~(b) The proponent shall present a draft of the nomination to the Committee at a regularly scheduled meeting of the Committee. At that time, the proponent shall provide the justificationNational Register Program Coordinator's presentation. The total time allowed for comments must be determined by the chairperson or by procedures adopted by the Committee.¶¶~~

~~(10) The SHPO, Deputy SHPO, Associate DSHPO, and Oregon SHPO staff may participate in committee discussions, but are not voting committee members.¶¶~~

~~(11) The Committee must take one of the following actions when considering a National Register nomination form based on the Committee's deliberation for s and geographic scope of the proposed nomination and an overview of the contributing and non-contributing resources with comments received during the district or property group using slides for illustration. The proponent may report on such other aspects of the work in progress as may be appropriate or called for by the Committee;¶¶~~

~~(c) The Committee may approve a district or multiple property nomination at its first reading, or choose to hold over the district or multiple property nomination to a subsequent meeting.¶¶~~

~~(9) Once staff has presented a nomination, the chairman shall call for comments from the proponent, opponent or other interested parties present. The total time allowed for testimony shall be determined by the chair.¶¶~~

~~(10) Tpublic comment period:¶¶~~

~~(a) Recommend that the SHPO find that the National Register nomination form meets the criteria in subsections (2)-(d) as presented to the Committee with no revisions;¶¶~~

~~(b) Recommend that the SHPO afind DSHPO may participate in discussion of a nomination, but shall not be voting members of the Committee.¶¶~~

~~(11) Members of the Committee should not abstain from voting except on a matter involving conflict of interest, in which case the reason for abstention will have been disclosed.¶¶~~

~~(12) A nomination for which approval has been denied may be reconsidered by ththat the National Register nomination form meets the criteria in subsections (2)(a)-(d) after making less than substantive revisions to the~~

National Register nomination form; or

(c) Defer making a recommendation until a future committee at a later meeting if meeting to allow the proponent has resolved the objections or deficiencies in a revised nomination. To make revision(s) or for any other reason(s) for the Committee's vote to deny approval can be explained or reviewed for the proponent at the meeting, or deemed appropriate by the Committee relayed to the proponent in writing after the meeting.

(13) Pursuant to 36 CFR 60.12, a proponent or local government may appeal directly to the Keeper of criteria in subsections (2)(a)-(d).

(d) Recommend that the SHPO find that the National Register to evaluate a nomination for which a recommendation has been denied by vote of nomination form does not meet the Committee. An appeal to the Keeper also may be made, for any Committee-recommended property which the State Historic Preservation Officer has failed to nominate to the National Register.

(14) If criteria in subsections (2)(a)-. The Committee must provide reasons for the recommendation. The Committee has may re-commended nomin consider a recommendation of at a property and the property owner (or majority of ow later meeting after the SHPO determiners of property within a district or multiple property group) has object that the proponent resolved to the nComination by notarized statement pursuant to 36 CFR 60.6(s), the registration form nonetheless should be forwarded to thmittee's objections.

(12) The Committee must defer making a recommendation until a future committee Kmeeper otng if the National Register for a Determination of Eligibility. A property determined eligible is not listed in the National Register, and the property may not be listed until the Keeper receives a notarized statement from the property owner(s) that he or she (or they) no longer objects to listing.

(15) Nominations of federally-owned property which are submitted to the State Historic Preservation Officer for a signature of concurrence in accordance with federal Executive Order 11593 may be reviewed by the Committee following normal procedures or may be deferred to the next regular meeting. In such cases, the Committee shall vote on whether or not the property meets the criteria of the National Register and the nomination should have the State Historic Preservation Officer's signature of concurrence nomination form requires substantive revisions.

(13) The Committee may provide courtesy comments on National Register nomination forms submitted to the SHPO for historic resources on lands held in trust by the United States of America on behalf of a tribe or an individual allotment held by a tribal member or administered by a U.S. federal agency. SHPO staff must establish a procedure for applying the conditions of this subsection.

Statutory/Other Authority: ORS 358.617

Statutes/Other Implemented: ORS 358.622(2)

ADOPT: 736-050-0270

RULE SUMMARY: Establishes the effective date of the rules and outlines publications used in the division.

CHANGES TO RULE:

736-050-0270

State Advisory Committee on Preservation: Incorporation of Publications by Reference and Effective Date of Rule

(1) The publication(s) referred to or incorporated by reference in OAR 736-050-0220 through OAR 736-050-0270 are available from the Oregon State Historic Preservation Office, Oregon Parks and Recreation Department.

(2) This Division adopts by reference the following publications of the National Park Service: "The National Register of Historic Places Regulations (36 CFR Part 60): A Brief History and Annotated Guide," August 2012; "Historic Preservation Fund Grant Manual," June 2007; National Register Bulletin 15, "How to Apply the National Register Criteria for Evaluation," 1995 revision; National Register Bulletin 16A, "How to Complete the National Register Form," 1997; National Register Bulletin 16B, "How to Complete the National Register Multiple Documentation Form," 1999 revision; and National Register Bulletin 21 and 12, "Defining Boundaries for National Register Properties," 1997 revision.

(3) OAR 736-050-0220 through OAR 736-050-0270 are effective upon filing of the rule with the Secretary of State.

(4) OAR 736-050-0250(15)(d) and 736-050-0250(15)(e)(B) are not applicable to National Register forms submitted before the effective date of this Division.

Statutory/Other Authority: ORS 358.617

Statutes/Other Implemented: ORS 358.605