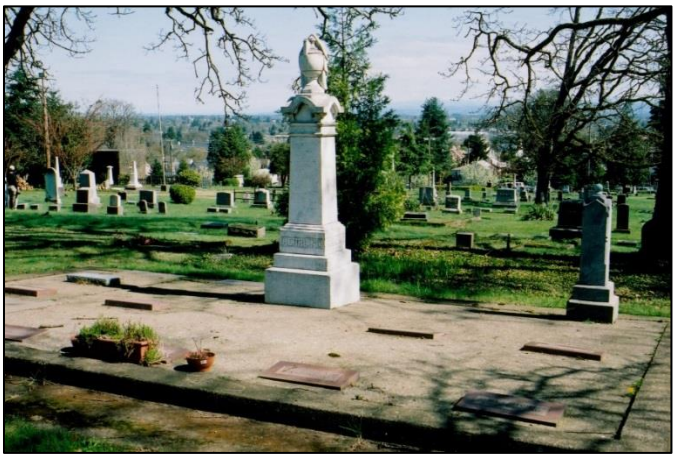
Planning For Historic Preservation in Oregon



A Guide to the Administrative Rule for Protecting Historic Resources under Statewide Planning Goal 5

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Staff from the Department of Land Conservation and Development and the Oregon Parks and Recreation Department, State Historic Preservation Office, contributed to this guide.

All photos are courtesy of Oregon Parks and Recreation Department, State Historic Preservation Office. Clockwise from upper right:

Egyptian Theatre, Coos Bay
Salem Pioneer Cemetery, Salem
Paul Bunyan Statue, Portland

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INTRODUCTION

Oregon's historic places connect us to our past by creating physical continuity through generations and space for public conversations about our values and identity. Economic development rooted in a community's unique character creates not just memorable, livable spaces and authentic experiences, but also jobs and tax revenue. Over 50 Oregon communities have leveraged their historic resources by establishing a local preservation program. To be successful, the ongoing process of identifying and interpreting a community's historic places must be a local one, driven by inclusive public participation. This guide describes that process under Oregon's Goal 5 rule.

Oregon's Statewide Planning Goals

The Oregon Land Conservation and Development Commission (LCDC) is charged by the Oregon Legislature with adopting, maintaining, and enforcing statewide planning goals to carry out the land use policies of the state. The first 14 planning goals adopted by LCDC became effective January 25, 1975. Goal 5 said that it is state policy: "To protect natural resources and conserve scenic and historic areas and open spaces." That goal has remained unchanged, although the specifics regarding how to achieve that goal have evolved.

Administrative Rules

LCDC has authority to adopt rules to implement the goals. The rules – called "Oregon Administrative Rules," and identified as "OAR" – provide authority and requirements for local government (i.e., city and county) comprehensive plans and zoning ordinances for a wide range of land use matters. The "Goal 5 rules" provide the requirements for protecting natural resources, scenic and historic areas, and open spaces. The original rules, in OAR chapter 660, division 16 (adopted in 1981) provided procedures that applied to local government planning and zoning for the full range of resources covered by Goal 5.

LCDC replaced most of division 16 with OAR chapter 660, division 23 in 1996, but this structure laid out in division 16 was largely maintained in division 23:

Definition
"Inventory" is a survey, map, or description of one or more resource sites that is prepared by a local government, state or federal agency, private citizen, or other organization and that includes information about the resource values and features associated with such sites. As a verb, "inventory" means to collect, prepare, compile, or refine information about one or more resource sites. (See resource list.)
(OAR 660-023-0010(4))

Definition
"Program" or **"program to achieve the goal"** is a plan or course of proceedings and action either to prohibit, limit, or allow uses that conflict with significant Goal 5 resources, adopted as part of the comprehensive plan and land use regulations (e.g., zoning standards, easements, cluster developments, preferential assessments, or acquisition of land or development rights).
(OAR 660-023-0010(6))

1. Identify (inventory) the locations where the resource exists
2. Decide whether the resource values inherent in the resource warrant protection through comprehensive plan policies and zoning regulations (determine significance)
3. Identify what other permitted uses could lead to degradation of the significant resource (identify conflicting uses)
4. Balance the economic, social, environmental, and energy (ESEE) consequences of protecting the significant resource versus allowing the conflicting use(s), and
5. Decide whether and how to protect the resource, and place the outcome (the program to achieve the goal) in the comprehensive plan and implementing regulations

The 1981 rules provided one decision-making structure for all Goal 5 resources, while the 1996 rules provided more-specific guidance and regulation tailored to the individual categories of resources (*e.g.*, wetlands, mineral and aggregate, historic resources).

Historic Resources Rule

The historic resources rule – OAR 660-023-0200 (Appendix A) – includes procedural requirements for considering whether and how to protect historic resources. The rule recognizes that "conflicting uses" (step 3 in the previous section) in the context of historic resources are comprised exclusively of proposals to demolish, relocate, or alter the resource – not activities on surrounding properties. The conflicting-use identification and balancing of ESEE consequences steps are therefore not required. Local jurisdictions may choose to regulate activities on surrounding properties to protect historic resources, but the rule does not require it.

A local government's historic preservation ordinance (the "program to achieve the goal") is not expected to be customized for individual sites or

historic districts, but, again, jurisdictions may choose to do so. A local government may establish its historic preservation ordinance any time during development of its historic protection plan element (although early in the process is encouraged). The rule does not prescribe any particular outcome for any resource – whether and how to protect is up to the local government.

The 1996 rule for historic resources made protection of most historic resources voluntary for local governments. The rule did not require a historic resource inventory. If a city or county chose to inventory historic resources, it was encouraged by the rule to complete the significance determination, and, if significant resources were identified, designation of the resource for protection was encouraged. There were two exceptions to this general scheme.

Antelope Creek Covered Bridge, Jackson County

First, a property owner was allowed to prevent its property from being designated for protection. Consequently, a local government may have been precluded from protecting a significant historic resource if the property owner withheld consent.

Second, LCDC found that it was in the state's interest to protect all historic resources listed by the National Park Service in the National Register of Historic Places. Therefore, a component of rule was not voluntary.

2017 Rule Amendments

After 20 years of experience with division 23, LCDC identified a need to update the rule to make it more clear and useable. The policies underpinning the 1996 rule (*e.g.*, voluntary application except for National Register resources; suggested rather than required criteria) remain largely unchanged. The updates include new and amended definitions, clearer distinction between procedural steps, and more detail regarding review of applications to demolish or relocate National Register resources. Some procedural requirements have been added or removed. Unclear sections have been clarified. The entire rule is included in Appendix A.

The remaining sections of this guide explain the rule as amended in 2017 and how LCDC intends for it to operate. Rather than proceeding sequentially through the rule, the guide provides direction on how to navigate the rule depending on what the local government is trying to accomplish. Appendix C provides a chart of the process.

Please pay particular attention to the section "Protecting National Register Resources" (page 14). It includes provisions that are directly applicable to local land use decisions, so a local government must comply with those parts of the rule regardless of what its regulations provide.

Using this Guide

The following chapter, "Protecting Locally Identified Historic Resources," explains the Goal 5 process as it applies to resources identified by a local government as historic. It provides requirements and guidance to assist local governments as they decide whether and how to protect their historic assets.

Dee Wright Observatory, McKenzie Highway, Deschutes County

The chapter "Removing a Resource from the Resource List" also applies to locally identified historic resources and not to those resources listed on the National Register of Historic Places. Federal regulations control removal of a resource from the National Register.

The "Protecting National Register Resources" chapter explains the administrative rule requirements for local protection of resources listed in the National Register of Historic Places. The Goal 5 process for these resources is significantly different than that for locally identified resources.

PROTECTING LOCALLY IDENTIFIED HISTORIC RESOURCES

As stated in the introduction, protecting most historic resources is voluntary for local governments. This is made clear in OAR 660-023-0200(2)(a):

> *Local governments are not required to amend acknowledged plans or land use regulations* in order to provide new or amended inventories, resource lists or programs regarding historic resources, except as specified in section (8) [for National Register resources]. Local governments are encouraged to inventory and designate historic resources and must adopt historic preservation regulations to protect significant historic resources.

Definition
"Resource list" includes the description, maps, and other information about significant Goal 5 resource sites within a jurisdiction, adopted by a local government as a part of the comprehensive plan or as a land use regulation.
(OAR 660-023-0010(9))

If a city or county chooses to protect its historic resources, it must do so in conformity with the rule, as provided in OAR 660-023-0200(2)(b):

> The requirements of the standard Goal 5 process in OAR 660-023-0030 through 660-023-0050, in conjunction with the requirements of the Historic Resources rule, apply when a local government chooses to amend acknowledged historic preservation plans and regulations.

Definition
"Historic preservation plan" is an element of a comprehensive plan that contains the local government's goals and policies for historic resource preservation and the processes for creating and amending the program to achieve the goal.
(OAR 660-023-0200(1)(d))

Rule Applicability

The 2017 updates to the rule sections guiding the Goal 5 process for protection of locally identified historic resources (OAR 660-023-0200(3)–(7)) do not apply immediately. OAR 660-023-0250(3), the general applicability section of the Goal 5 rules, provides that rule amendments apply when a local government "creates or amends" a "plan or land use regulation" to protect a significant Goal 5 resource or to address specific requirements of Goal 5.

If the local government already has a program to protect historic resources in its plan and land use regulations, it is not required to update those existing provisions in order use them when reviewing applications for demolition, relocation, or alteration of a historic resource. A local government is required to comply with the rule at the time it amends the resource list, but few substantive requirements have been changed, so the

local government should assess whether its existing provisions conflict with rule requirements if a proposal to amend the resource list arises. This guide will assist that analysis.

Comprehensive Plan

Once a local government has decided there is value in protecting the community's historic resources, the first step will be to decide how to go about it. The historic resources rule provides guidance and includes a few requirements.

Typically, the comprehensive plan for a jurisdiction will include a description of the importance of historic resources within the community. This description is followed by a goal or policies, or both, providing the purpose of and the approach to protection. The rule calls this the "historic preservation plan." A local government may decide to include additional information beyond a minimal description. The State Historic Preservation Office can provide assistance, including grants, in preparation of a historic preservation plan.

Example Goals

- To protect historic resources and utilize and enhance those resources for residents and visitors.
- To preserve the integrity of the past while guiding the evolution of the future.

Example Policies

- Maintain survey information that accurately reflects the historic characteristics and quality of each historic structure.
- Establish design standards to ensure compatibility of new development with existing resources.
- Maintain historic review ordinances for historic structures and districts that ensure exterior alterations of historic structures maintain the historic value of the structure.

The comprehensive plan typically has one or a few goals that provide the overarching direction for the historic protection program. The policies typically provide more detail on outcomes and how the program will be carried out, but the policies are not regulations – that is what the historic preservation ordinance is for (the ordinance is discussed in the next section).

The rule, at OAR 660-023-0200(3), encourages comprehensive plans to be developed in a manner consistent with ORS 358.605 (the state policy on historic preservation; see Appendix B) and following the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, produced by the National Park Service. These are suggestions, but they provide cities and counties with established, credible resources to draw from when developing a local program to protect historic resources.

The rule encourages communities to include a "historic context statement" in the comprehensive plan. The historic context statement describes the broad historical development patterns in a community and identifies the historic resources associated with that story. The statement will provide important information for the community as it proceeds through the process of evaluating the historic significance of resources.

Definition
"Historic context statement" is an element of a comprehensive plan that describes the important broad patterns of historical development in a community and its region during a specified time period. It also identifies historic resources that are representative of the important broad patterns of historical development. (OAR 660-023-0200(1)(c))

Historic Preservation Ordinance

The historic preservation ordinance, or local landmark ordinance, is the vehicle a local government uses to implement the historic resource protection policies contained in the comprehensive plan. The rule, at OAR 660-023-0200(3), encourages local governments to develop the ordinance, "in conjunction with inventorying historic resources." The rule suggests that the inventory and ordinance be completed together because property owners will need to understand what types of regulations will be put in place to protect historic resources so they can make informed decisions regarding designation later in the process.

The ordinance will contain local regulations needed to carry out the policies of the comprehensive plan. This will include criteria that apply to designation of historic resources; review of requests for demolition, relocation, and modification; and other tools for historic preservation the local government chooses to include. The ordinance will also include the procedural requirements such as the contents of an application, whether a proposal is subject to a hearing, and who conducts a hearing when one is required. Some local governments have chosen to include designation criteria and the resource list in the plan while others place it in the ordinance. The rule allows either. If the resource list is included by reference in the comprehensive plan or code, amending the list by adding or removing resources must be processed like a plan or code amendment.

The rule, at OAR 660-023-0200(7), requires a local government to have a historic preservation ordinance if it chooses to protect historic resources. The rule provides no requirements regarding the content of the ordinance as it relates to locally designated resources, but it does encourage ordinances to 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, produced by the National Park Service." Protection measures for National Register resources also must be included in the historic preservation ordinance, but certain rule

Definition
"Demolition" means any act that destroys, removes, or relocates, in whole or part, a significant historic resource such that its historic, cultural, or architectural character and significance is lost. This definition applies directly to local land use decisions regarding a National Register Resource. This definition applies directly to other local land use decisions regarding a historic resource unless the local comprehensive plan or land use regulations contain a different definition. (OAR 660-023-0200(1)(a))

Definition
"Owner"
(OAR 660-023-0200(1)(a))
See page 11

provisions apply directly until that is accomplished (see "Protecting National Register Resources," page 14).

Two definitions in the 2017 rule amendments apply, or potentially apply, directly to local land use decisions. The definition of "demolition" in OAR 660-023-0200(1)(a) applies directly for locally designated resources if the comprehensive plan or ordinance does not include one. (See "Base Level of Protection," page 15, for a discussion of rules related to demolition of National Register resources.) The definition of "owner" in OAR 660-023-0200(1)(h) applies directly regardless of whether the historic preservation ordinance already includes one.

Inventorying Historic Resources

The Goal 5 rule, at OAR 660-023-0030, says the standard process for creating an inventory is: (1) collecting data, (2) determining the adequacy of the data, (3) determining the significance of a resource, and (4) adopting a list of significant resources (the "resource list"). The historic resources rule includes these steps in three sections (OAR 660-023-0200(4)–(6)), but the historic resources rule separates "determining significance" and "adopting a resource list" from the "inventory." All the steps are included, but organized differently.

Regarding collecting data and determining adequacy of the information collected, the 2017 rule amendments removed a requirement that the local government provide "broad public notice prior to collection of information," although opportunities for community participation are still encouraged (OAR 660-023-0200(4)). Make sure to follow any public-involvement requirement contained in an existing historic preservation ordinance, as it still applies until an ordinance amendment removes it.

Note
The **Certified Local Government program** is a federal partnership program of the National Park Service, and is administered locally by the Oregon State Historic Preservation Office. The program encourages the identification, designation, and preservation of historic resources by providing federal pass-through funding and technical expertise.

The rule also states: "Local governments are encouraged to complete the inventory in a manner that satisfies the requirements for such studies published by the Oregon State Historic Preservation Office and provide the inventory to that office in a format compatible with the Oregon Historic Sites Database." While not required, observing established formats will benefit the local government should a state or federal agency request the information for land use planning or disaster planning or response, or if the local government ever pursues federal Certified Local Government status through the Oregon

State Historic Preservation Office. By contributing to the Historic Sites Database, local governments also facilitate public access to information on our history and its meaning.

An "inventory" includes "historic resources" in the community. The local government will not have evaluated whether a resource is significant when the inventory is initially developed. That is, the inventory should include those resources that are *potentially* significant and worthy of protection. This is important because the rule gives no incentive for a local government to leave individual resources or potential districts off the inventory because placement on the inventory has no regulatory effect. Decisions on whether or how to apply ordinance protection comes later in the process.

Definition
"Historic resources" are those buildings, structures, objects, sites, or districts that potentially have a significant relationship to events or conditions of the human past.
(OAR 660-023-0200(1)(e))

Evaluating and Determining Significance

Once a local government places a resource on an inventory, it is eligible to be evaluated for significance. This step is voluntary – that is, the rule does not require a local government to evaluate resources on the inventory. Similarly, the rule (OAR 660-023-0200(5)) does not provide criteria a local government must use when evaluating the significance of historic resources, but does suggest criteria. Inventories are more valuable for state and federal permitting and disaster planning response efforts if the resources have been evaluated for their historic significance and are recorded with the Oregon State Historic Preservation Office. The process allows for local autonomy by permitting the community to determine what is historically significant instead of leaving these decisions to other agencies.

The rule does not include a public-involvement requirement for the significance-evaluation step. The criteria for determining significance will reside in the comprehensive plan or historic preservation ordinance, and public involvement was provided during consideration of the criteria, so application of the evaluation criteria to inventoried resources is initially a technical exercise. The public must be provided an opportunity to review the draft results of the evaluation before a resource is designated on the resource list (this is discussed further in the next section). The rule provides that a planning commission or historic resource commission may complete the evaluation and determination of significance (that is, the rule does not require approval by elected officials).

Definition
"Locally significant historic resource" means a building, structure, object, site, or district deemed by a local government to be a significant resource according to the requirements of this division and criteria in the comprehensive plan. (OAR 660-023-0200(1)(f))

The result of this step is identification of "locally significant historic resources." These are the resources eligible for and encouraged to be designated on a resource list and therefore subject to the historic preservation ordinance.

Designating Locally Significant Historic Resources

You're almost done! Once a local government has identified locally significant historic resources, it may (and should) "designate" them by putting them on a resource list (if the property owner does not object – see the next section). It is only through designation that a local government can apply conditions to local development permits to promote preservation of the historic characteristics of the resource.

Definition
"Designation" is a decision by a local government to include a significant resource on the resource list. (OAR 660-023-0200(1)(b))

The rule (OAR 660-023-0200(6)) says that the resource list "must be adopted or amended as a land use decision." This means that the local government must provide notice and an opportunity for public involvement according to state law and local codes. This will generally be a legislative amendment to the comprehensive plan or historic preservation ordinance, but any local requirements must be followed.

The local government must provide property owners an opportunity to withhold consent to designation of historic resources, as provided in OAR 660-023-0200(6)(b). While designation is never required, it is prohibited to designate a resource over a property owner's objection.

Owner Consent to Designation

State statute, and consequently the rule, provide that a property owner may "refuse to consent to any form of historic property designation at any point during the designation process." (See ORS 197.772(1), Appendix B, and OAR 660-023-0200(6)(b).) Listings in the National Register of Historic Places are exempt from this provision.

The "designation process" occurs under OAR 660-023-0200(6) following the determination of significance. A local government is prohibited from *designating* a locally significant resource (*i.e.*, putting it on the resource list) over the objection of the owner, but it is not required to remove a resource from the *inventory* because a property owner refused to consent to designation.

The rule specifies that, in order to exercise the owner consent authority, a property owner must object "on the public record." This requires oral or written testimony by the owner during the public designation process. A local government is not required to consider statements made only at the planning counter or in a letter to the editor to be an objection that would lead to the resource being left off the resource list. In addition, affirmative "consent" is not required – absence of an objection may be treated as consent. This places the obligation on the local government to ensure that a property owner knows that its property is under consideration for designation and that the owner is apprised of its rights and responsibilities.

Determining ownership will normally be straightforward for an individual building such as a house or store or a site such as a cemetery. Subsection (E) of the definition clarifies how to treat more complex, multi-owner resources such as a condominium or historic district. The definition makes no distinction between public and private ownership.

If a property owner withholds consent for designation of a locally significant resource, the local government is prohibited by OAR 660-023-0200(10) from approving a request to demolish or modify the resource for at least 120 days after the owner's refusal to consent to designation.

The rule treats an application for demolition or modification as a refusal to consent if the application is made while designation of the resource is under consideration. This is a change made in the 2017 rule amendments. Formerly, the rule requiring 120-day delay applied to requests for removal of a resource from a resource list (section (9) in the former rule); this was an erroneous implementation of the owner consent statute (ORS 197.772(2)), so the rule was corrected. ***The 120-day delay provision in statute and rule is directly applicable to local government decisions regarding requests to demolish or alter a locally significant historic resource before the resource is added to the resource list.*** That is, a local government is required to enforce the delay even if there is no such requirement in the historic preservation ordinance.

Definition
"Owner":
(A) Means the owner of fee title to the property as shown in the deed records of the county where the property is located; or
(B) Means the purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or
(C) Means, 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
(D) Does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature; or
(E) Means, for a locally significant historic resource with multiple owners, including a district, a simple majority of owners as defined in (A)-(D).
(F) Means, for National Register Resources, the same as defined in 36 CFR 60.3(k).
(OAR 660-023-0200(1)(h))

If a local government's historic preservation ordinance includes a 120-day delay of approval for requests to demolish or alter a resource during the process of *removing* the resource from the resource list, the local government should continue to enforce that delay provision until the ordinance is amended to remove it. The rule no longer requires such a delay, but the local ordinance will continue to apply until amended.

Local Historic Districts

Many local governments in Oregon have interpreted ORS 197.772(1) to require that all of the property owners within a proposed historic district must consent to formation of the district in order for it to be designated on a resource list. With the 2017 rule revisions and the new definition of "owner," a local government may consider designation of a district on the resource list with consent from a "simple majority" of property owners in the area. See OAR 660-023-0200(1)(h)(E). The rule provisions for inventorying, significance determination, and designation of a district are the same as for individual buildings, structures, and sites. That is, they are voluntary and subject to local criteria.

Irvington Neighborhood, Portland

REMOVING A RESOURCE FROM THE RESOURCE LIST

The rule, at OAR 660-023-0200(9), provides two circumstances under which a local government may remove a locally designated resource from the resource list, thereby removing protection of the historic qualities of the resource. One is based on the owner consent statute and the other is a product of the rule. Both are land use decisions, meaning a local government must follow appropriate procedures regarding notice and public involvement. The rule does not provide the "appropriate procedures," so a local government should use the quasi-judicial procedures contained in its zoning ordinance.

Pilot Butte Canal, Deschutes County

Rule Applicability

OAR 660-023-0200(9) went into effect with the rule's filing in February 2017 and applies directly to local government decisions. Local governments should make decisions that comply with this section regardless of what their local historic preservation ordinance provides.

When the Designation was Imposed

OAR 660-023-0200(9)(a) implements the owner consent statute (ORS 197.772(3)), as interpreted in *Lake Oswego Preservation Society v. City of Lake Oswego* 360 Or 154 (2016). The statute and rule require a local government to approve a request to remove a locally significant historic resource from the resource list if the designation was "imposed." The statute dates to 1995, while the rule provisions guiding a local government decision under the statute were added in 2017. Formerly, with no rule guidance regarding what "imposed" meant, implementation of the statute varied around the state, and some resources may have lost protection unnecessarily.

The rule lists the circumstances that must exist in order for a local government to remove a locally significant resource from the resource list as required by the statute. If those circumstances do not exist, the only options for removing a resource from the resource list are provided in OAR 660-023-0200(9)(b). Most importantly, *an owner who acquired a property after it was designated as a historic resource on the resource list does* not *have the right to have the designation removed under OAR 660–023-0200(9)(a)*.

When the Designation was Not Imposed

A local government may remove a locally significant resource from an adopted resource list according to OAR 660-023-200(9)(b), which provides a list of circumstances that warrant "delisting." The list in the rule is the full list of acceptable circumstances. That is, a local government may not approve removal of a resource from the resource list for a reason not contained in the rule. The reasons are limited to the resource having lost its historic qualities, a mistaken designation, or a public safety concern. This section does not apply to resources listed in the National Register of Historic Places, as local governments do not control the contents of this federal list.

PROTECTING NATIONAL REGISTER RESOURCES

Beginning in 1996, the Goal 5 rule has deemed that resources listed in the National Register of Historic Places are "significant" for the purposes of Goal 5. The 1996 rule used the term "historic resources of statewide significance" for these resources; this term was changed to "National Register resource" in the 2017 updates. The rule requires local governments to protect these resources and it spells out criteria and procedures in OAR 660-023-0200(8).

Definition
"National Register Resource" means buildings, structures, objects, sites, or districts listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966 (PL 89-665; 16 U.S.C. 470).
(OAR 660-023-0200(1)(g))

A local government is not required to list a National Register resource on a local inventory or designate it on a local resource list, but doing so is not prohibited. Adding a National Register resource to the local inventory is a common way to apply local protection that exceeds the base level specified in rule (see "Supplemental Protection," below).

Note
The **National Register of Historic Places** is the official list of buildings, structures, objects, sites, and districts important to the nation's history. The Register is maintained by the National Park Service and locally administered by the Oregon State Historic Preservation Office.

The State Historic Preservation Office maintains a list of National Register resources.

Rule Applicability

OAR 660-023-0200(8) went into effect with the rule's adoption in January 2017 and applies directly to local government decisions. A local government must make decisions that comply with this section regardless of whether it has a historic preservation ordinance or what its existing ordinance provides. The rule requires local governments to update their land use regulations to conform to this section of the rule, but it provides no deadline by which the update must happen.

Base Level of Protection

The 1996 Historic Resources rule required local governments to "protect" historic resources of statewide significance (now called "National Register resources"). The rule formerly defined the term "protect" as "review of applications for demolition, removal, or major exterior alteration of a historic resource." The rule did not include any review criteria or procedural requirements.

The 2017 amendments continue to require protection of National Register resources, and that protection is still a review, but the rule now provides more detail regarding what that review must entail and how the local government should carry it out. The rule is now also clear that a local government must perform the review even if there is no local ordinance mandating it. A local government may provide additional protection at its discretion.

OAR 660-023-0200(4)–(6) (inventory, significance determination, and designation) do not apply to National Register resource protection. The National Park Service effectively designated the resource by listing it in the National Register. Although section (6), "Designating Locally Significant Historic Resources" does not apply to National Register resources, a local government *may* need to include a National Register resource on its resource list in order to comply with its own historic resource protection ordinance if it wishes to apply supplemental protection *and* the ordinance requires designation in order to apply protection. In other words, local governments must comply with their existing ordinances.

OAR 660-023-0200(8)(a) provides a base level of protection from demolition or relocation of a National Register resource. Review of "major exterior modifications" is no longer included in the base level of protection, but the definition of "demolition" is somewhat broad.

When a city receives a request to demolish or relocate a National Register resource, it must conduct a public hearing on the request. The rule provides no specific requirements regarding the conduct of this hearing, so a local government should follow its normal procedures for a quasi-judicial land use hearing. Local jurisdictions may exclude accessory structures and non-contributing resources within a National Register nomination from review, at their discretion.

Note
The definition of "demolition" (page 8) applies to all requests to alter a National Register resource. The definition includes modifications short of complete destruction. Changes that may be considered a "remodel" or "major exterior alteration" in some codes could qualify as a demolition under the rule.

The body that hears the request is up to the local government, but it will most likely be the historic landmarks commission – if the local government has appointed one and it has authority to make land use decisions – or the planning commission.

The rule provides a list of "factors" for the decision-maker to consider when hearing the request to demolish or relocate the resource. They are not "criteria" that must be satisfied. The local government must consider all of the factors and be able to explain why it made the decision that it made. The outcome is up to the local government. The rule specifies that the local government may approve, approve with conditions, or deny the request for demolition or relocation. A common condition would be to require a 120-day demolition delay to provide the interested parties an opportunity to consider alternatives to demolition.

Supplemental Protection

When a local government wishes to provide protection for National Register resources in addition to the base level described in the previous section, it may do so but must comply with the requirements in OAR 660-023-0200(8)(b). Similar to the requirements for the base level of protection, the rule requires that a local government conduct a public hearing and consider factors contained in the rule before it applies its historic preservation ordinance to National Register resources, even if its ordinance does not require a hearing. (This subsection only applies to newly listed resources. Local protections applied to resources listed in the National Register that were in effect before the rule amendments became effective – February 10, 2017 – are unaffected.)

Harry A. Crosley House, Forest Grove

A hearing is required because the federal National Register listing does not trigger regulations limiting the use of the property. The National Park Service encourages local protection of National Register resources that takes into account the historic context of the local jurisdiction and the values of the community. The Goal 5 rule requires an opportunity for public participation when a local government makes a decision on whether to regulate a property, as is the case with other land use decisions.

The supplemental protection mechanisms and criteria will need to exist in a historic preservation ordinance when the local government applies them to a resource. That is, conditions on approval of a request to alter a National Register resource (or on any permit, for that matter) must be limited to those needed to satisfy criteria in the ordinance.

Local governments have discretion to devise a program that treats all National Register resources uniformly or to apply tailored measures based on the particular attributes of the resource, or some combination of these approaches. For example, an ordinance may use a uniform set of regulations for individual houses placed on the National Register (after a hearing to decide whether to apply them), but tailor the regulations for a district depending on the qualities to be preserved.

Winn Barn, Umatilla County

CONCLUSION

Oregon's historic resources represent the broad diversity of the people and communities who shaped our state. Every community has unique historic places worthy of both recognition and protection. DLCD thanks our local partners for their continued commitment to the state's special historic places, and invites communities to establish preservation programs or further develop existing efforts.

For Further Information

Regarding implementation of the Historic Resources rule, contact the Oregon Department of Land Conservation and Development.
http://www.oregon.gov/LCD

Regarding the Certified Local Government and Main Street Programs, contact the Oregon State Historic Preservation Office.
http://www.oregon.gov/OPRD/HCD

Appendix A – OAR 660-023-0200

The Oregon Administrative Rules contain OARs filed through July 15, 2017

DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

DIVISION 23

PROCEDURES AND REQUIREMENTS FOR COMPLYING WITH GOAL 5

660-023-0200
Historic Resources

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

(a) "Demolition" means any act that destroys, removes, or relocates, in whole or part, a significant historic resource such that its historic, cultural, or architectural character and significance is lost. This definition applies directly to local land use decisions regarding a National Register Resource. This definition applies directly to other local land use decisions regarding a historic resource unless the local comprehensive plan or land use regulations contain a different definition.

(b) "Designation" is a decision by a local government to include a significant resource on the resource list.

(c) "Historic context statement" is an element of a comprehensive plan that describes the important broad patterns of historical development in a community and its region during a specified time period. It also identifies historic resources that are representative of the important broad patterns of historical development.

(d) "Historic preservation plan" is an element of a comprehensive plan that contains the local government's goals and policies for historic resource preservation and the processes for creating and amending the program to achieve the goal.

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

(f) "Locally significant historic resource" means a building, structure, object, site, or district deemed by a local government to be a significant resource according to the requirements of this division and criteria in the comprehensive plan.

(g) “National Register Resource” means buildings, structures, objects, sites, or districts listed in the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966 (PL 89-665; 16 U.S.C. 470).

(h) “Owner”:

(A) Means the owner of fee title to the property as shown in the deed records of the county where the property is located; or

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

(C) Means, 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

(D) Does not include individuals, partnerships, corporations or public agencies holding easements or less than fee interests (including leaseholds) of any nature; or

(E) Means, for a locally significant historic resource with multiple owners, including a district, a simple majority of owners as defined in (A)-(D).

(F) Means, for National Register Resources, the same as defined in 36 CFR 60.3(k).

(i) “Protect” means to require local government review of applications for demolition, relocation, or major exterior alteration of a historic resource, or to delay approval of, or deny, permits for these actions in order to provide opportunities for continued preservation.

(j) “Significant historic resource” means a locally significant historic resource or a National Register Resource.

(2) Relationship of Historic Resource Protection to the Standard Goal 5 Process.

(a) Local governments are not required to amend acknowledged plans or land use regulations in order to provide new or amended inventories, resource lists or programs regarding historic resources, except as specified in section (8). Local governments are encouraged to inventory and designate historic resources and must adopt historic preservation regulations to protect significant historic resources.

(b) The requirements of the standard Goal 5 process in 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.

(c) Local governments are not required to apply the ESEE process pursuant to OAR 660-023-0040 in order to determine a program to protect historic resources.

(3) Comprehensive Plan Contents. Local comprehensive plans should foster and encourage the preservation, management, and enhancement of significant historic resources 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, produced by the National Park Service. Local governments should develop a local historic context statement and adopt a historic preservation plan and a historic preservation ordinance in conjunction with inventorying historic resources.

(4) Inventorying Historic Resources. When a local government chooses to inventory historic resources, it must do so pursuant to OAR 660-023-0030, this section, and sections (5) through (7). Local governments are encouraged to provide opportunities for community-wide participation as part of the inventory process. Local governments are encouraged to complete the inventory in a manner that satisfies the requirements for such studies published by the Oregon State Historic Preservation Office and provide the inventory to that office in a format compatible with the Oregon Historic Sites Database.

(5) Evaluating and Determining Significance. After a local government completes an inventory of historic resources, it should evaluate which resources on the inventory are significant pursuant to OAR 660-023-0030(4) and this section.

(a) The evaluation of significance should be based on the National Register Criteria for Evaluation, historic context statement and historic preservation plan. Criteria may include, but are not limited to, consideration of whether the resource has:

(A) Significant association with events that have made a significant contribution to the broad patterns of local, regional, state, or national history;

(B) Significant association with the lives of persons significant to local, regional, state, or national history;

(C) Distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction;

(D) A high likelihood that, if preserved, would yield information important in prehistory or history; or

(E) Relevance within the local historic context and priorities described in the historic preservation plan.

(b) Local governments may delegate the determination of locally significant historic resources to a local planning commission or historic resources commission.

(6) Designating Locally Significant Historic Resources. After inventorying and evaluating the significance of historic resources, if a local government chooses to protect a historic resource, it must adopt or amend a resource list (i.e., "designate" such resources) pursuant to OAR 660-023-0030(5) and this section.

(a) The resource list must be adopted or amended as a land use decision.

(b) Local governments must allow owners of inventoried historic resources to refuse historic resource designation at any time during the designation process in subsection (a) and must not include a site on a resource list if the owner of the property objects to its designation on the public record. A local government is not required to remove a historic resource from an inventory because an owner refuses to consent to designation.

(7) Historic Resource Protection Ordinances. Local governments must adopt land use regulations to protect locally significant historic resources designated under section (6). This section replaces OAR 660-023-0050. 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, produced by the National Park Service.

(8) National Register Resources are significant historic resources. For these resources, local governments are not required to follow the process described in OAR 660-023-0030 through 660-023-0050 or sections (4) through (6). Instead, a local government:

(a) Must protect National Register Resources, regardless of whether the resources are designated in the local plan or land use regulations, by review of demolition or relocation that includes, at minimum, a public hearing process that results in approval, approval with conditions, or denial and considers the following factors: condition, historic integrity, age, historic significance, value to the community, economic consequences, design or construction rarity, and consistency with and consideration of other policy objectives in the acknowledged comprehensive plan. Local jurisdictions may exclude accessory structures and non-contributing resources within a National Register nomination;

(b) May apply additional protection measures. For a National Register Resource listed in the National Register of Historic Places after the effective date of this rule, additional protection measures may be applied only upon considering, at a public hearing, the historic characteristics identified in the National Register nomination; the historic significance of the resource; the relationship to the historic context statement and historic preservation plan contained in the comprehensive plan, if they exist; the goals and policies in the comprehensive plan; and the effects of the additional protection measures on the ability of property owners to maintain and modify features of their property. Protection measures applied by a local government to a National Register resource listed

before the effective date of this rule continue to apply until the local government amends or removes them; and

(c) Must amend its land use regulations to protect National Register Resources in conformity with subsections (a) and (b). Until such regulations are adopted, subsections (a) and (b) shall apply directly to National Register Resources.

(9) Removal of a historic resource from a resource list by a local government is a land use decision and is subject to this section.

(a) A local government must remove a property from the resource list if the designation was imposed on the property by the local government and the owner at the time of designation:

(A) Has retained ownership since the time of the designation, and

(B) Can demonstrate that the owner objected to the designation on the public record, or

(C) Was not provided an opportunity to object to the designation, and

(D) Requests that the local government remove the property from the resource list.

(b) Except as provided in subsection (a), a local government may only remove a resource from the resource list if the circumstances in paragraphs (A), (B), or (C) exist.

(A) The resource has lost the qualities for which it was originally recognized;

(B) Additional information shows that the resource no longer satisfies the criteria for recognition as a historic resource or did not satisfy the criteria for recognition as a historic resource at time of listing;

(C) The local building official declares that the resource poses a clear and immediate hazard to public safety and must be demolished to abate the unsafe condition.

(10) A local government shall not issue a permit for demolition or modification of a locally significant historic resource during the 120-day period following:

(a) The date of the property owner's refusal to consent to the historic resource designation, or

(b) The date of an application to demolish or modify the resource if the local government has not designated the locally significant resource under section (6). [Amended, effective 2/2018]

(11) OAR 660-023-0200(1)(a) and (1)(h) are effective upon filing of the rule with the Secretary of State.

(12) OAR 660-023-0200(8) is effective upon filing of the rule with the Secretary of State and applies directly to local government permit decisions until the local government has amended its land use regulations as required by OAR 660-023-0200(8)(c).

(13) OAR 660-023-0200(9) is effective upon filing of the rule with the Secretary of State and applies directly to local government decisions until the local government has amended its land use regulations to conform with the rule.

(14) OAR 660-023-0200(10) is effective upon filing of the rule with the Secretary of State and applies directly to local government permit decisions.

Appendix B – Relevant Statutes

OREGON REVISED STATUTES

Chapter 197 — Comprehensive Land Use Planning I

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.

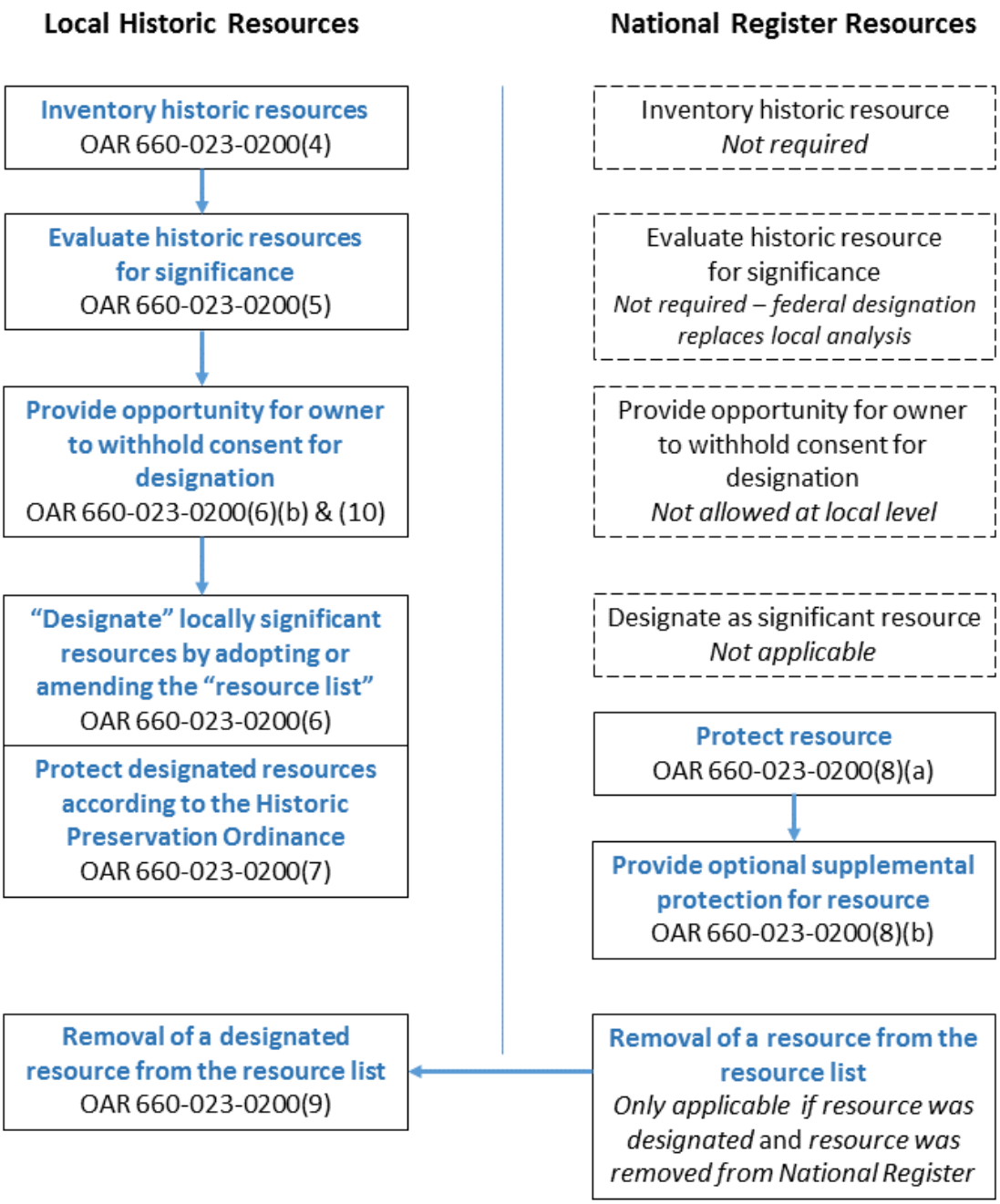
(3) A local government shall allow a property owner to remove from the property a historic property designation that was imposed on the property by the local government.

Chapter 358 — Oregon Historical and Heritage Agencies, Programs and Tax Provisions; Museums; Local Symphonies and Bands; Archaeological Objects and Sites

358.605 Legislative findings. (1) The Legislative Assembly declares that the cultural heritage of Oregon is one of the state's most valuable and important assets; that the public has an interest in the preservation and management of all antiquities, historic and prehistoric ruins, sites, structures, objects, districts, buildings and similar places and things for their scientific and historic information and cultural and economic value; and that the neglect, desecration and destruction of cultural sites, structures, places and objects result in an irreplaceable loss to the public.

(2) The Legislative Assembly finds that the preservation and rehabilitation of historic resources are of prime importance as a prime attraction for all visitors; that they help attract new industry by being an influence in business relocation decisions; and that rehabilitation projects are labor intensive, with subsequent benefits of payroll, energy savings and are important to the revitalization of deteriorating neighborhoods and downtowns.

(3) It is, therefore, the purpose of this state to identify, foster, encourage and develop the preservation, management and enhancement of structures, sites and objects of cultural significance within the state in a manner conforming with, but not limited by, the provisions of the National Historic Preservation Act of 1966.

Appendix C – Goal 5 Process Flowchart

OAR 660-023-0200 Historic Resources