



Comprehensive Plan Update

Comp Plan

Chapter 6 Historic and Cultural Resources

Draft Text

January 8, 2016

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1. INTRODUCTION/BACKGROUND INFORMATION

Goal 5 of Oregon's statewide planning goals covers more than a dozen resources, including historic places. The goal and its administrative rules call for cities and counties to develop land use programs to conserve and protect these resources. Local governments and state agencies are not required, but are encouraged, to maintain current inventories of historic resources, determine significant sites among inventoried resources, and develop programs for their preservation and protection.

Over the last several decades, Multnomah County's efforts to inventory, designate and protect local historic resources have been sporadic. The County first created and applied a historic landmark designation and generated an inventory of historic sites and an implementing overlay zone in 1978. The County updated information about potential historic resources in 1988 through work conducted by a consultant. However, no formal action was taken on the later efforts and the original program adopted by the County falls short of being a meaningful program for the preservation and protection of historic resources. As part of the 2015/2016 Comprehensive Plan update process, the County has adopted new policies and strategies to strengthen its program.

Although the County and State value and strive to help maintain historic resources, the County's ability to do so is tempered by state law and legal decisions. Under state law (ORS 197.772) enacted in 1995, a local government is required to allow a property owner to remove a historic property designation that was imposed by the local government. In addition, the property owner may refuse to consent to the designation at any time in the process, thus removing the property from consideration for all but the National Register of Historic Places. More recent court cases address the degree to which new owners of a property with a historic designation may revoke that designation. The implication of these statutes and case law is that current County historic designations and code provisions will no longer be relevant or enforceable if the property designation does not have owner consent.

Cultural and archeological resources most typically include Native American burial sites and associated resources. A variety of state and federal laws pertain to the protection of these resources and the state maintains an inventory of known resources. Protection of such

Comment [N1]: The outcome of *Lake Oswego Preservation Society v City of Lake Oswego* currently under consideration by the Oregon Supreme Court may provide clarification on this issue. Given the potential impact of this expected ruling, the Oregon SHPO recommends waiting to finalize this chapter until a decision is rendered and comments have been provided by our office and the Oregon Department of Justice, as applicable.

resources also is coordinated with the State Office of Historic Preservation (SHPO) and Native American tribal governments.

This chapter provides an overview of conditions and planning issues associated with historic and cultural resources, along with Comprehensive Plan policies and strategies to address them.

A. HISTORIC AND CULTURAL RESOURCES CONDITIONS

In 1988, the County sought to expand upon its previous limited inventory by hiring a consultant to conduct a comprehensive survey of rural unincorporated areas. The consultant identified 68 historic sites that were candidates for historic landmark designation. The consultant's report included several recommended goals and priorities for the County to pursue in carrying out a comprehensive historic preservation program. However, between that time and the most recent Comprehensive Plan update (2016), the County did not implement those recommendations. Updated policies in this Plan call for the County to revisit and implement those earlier planning efforts. This will involve updating the previous inventory using state information and supplementing it with additional sites identified through a local survey process similar to how it was done in the past.

Prior to the arrival of European and other immigrants to Oregon, there was a long history of Native American settlements in the area within and around Multnomah County. Petroglyphs found within Columbia River Gorge trace a human presence in the Gorge that is 10,000 years old. The area around the confluence of the Willamette and Columbia Rivers near Sauvie Island was a well-known and favored location for Native American settlements from perhaps 3,500 years ago up through the early 1800's. Sauvie Island has several known village sites, which were mapped by the Lewis and Clark expedition, as well as the Sunken Village site, located on Multnomah Channel near the southern end of the island. Information about these sites is not made known to the general public due to the potential for abuse and concern for the private property rights of affected landowners. Five Native American tribes — the Nez Perce, Yakama, Umatilla, Grande Ronde, and Confederated Tribes of Warm Springs — have a history of settlement and an explicit role in identifying historic and cultural resources within different portions of Multnomah County.

B. RELEVANT STUDIES AND PLANNING PROCESSES

A variety of state, regional, and local plans and policies are relevant to planning for historic and cultural resources in Multnomah County, including the following.

Oregon's **Statewide Planning Goals** provide comprehensive policy direction for local governments to follow. Goal 5 historic resources are governed by Oregon Administrative Rule (OAR) 660-023-0200. The rule does not require local governments to amend their comprehensive plans or land use regulations in order to provide new or amended inventories or programs regarding historic resources. However, if a local government decides to compile an inventory and designate significant resources, it is required to follow a prescribed process that involves public notice prior to collecting information about historic resources and notification of landowners about participation in the inventory and designation process.

Comment [N2]: Local jurisdictions play a critical role in informing residents of applicable state and federal laws through the permitting process. This should be reflected here.

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Comment [N3]: This step is highly recommended. Participants in the federal Certified Local Government Program may receive matching federal grant funds for activities such as survey. Please contact our office for further information.

Comment [N4]: The County may wish to address the process for engaging Native American tribes in discussions regarding cultural resources, which our office highly recommends. The Oregon SHPO can provide information regarding best practices on request.

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Independent of the County's historic landmark designation process, owners of historic resources can register their property on the **National Register of Historic Places** (NRHP) administered by the National Park Service under the provisions of the National Historic Preservation Act of 1966, as amended, and carried out locally by the Oregon State Historic Preservation Office (SHPO). Properties ~~on~~ listed in the NRHP automatically become historic resources of statewide significance and are then monitored by the Oregon State Preservation Historic Office (SHPO).

Comment [N5]: The SHPO keeps the records, but does not regulate NRHP properties unless the owner elects to take advantage of a state or federal tax or grant program administered by our office.

Recent and current court cases in Oregon also affect issues associated with designation of historic landmarks. Most of the case law at this time deals with owner consent and removal from local landmarks registers. A case regarding the locally-listed Carmen House in Lake Oswego is still before the courts and likely will affect how local governments include or remove landmarks from a local inventory or designation. That case is scheduled to be argued in front of the State Supreme Court in November 2015. The other relevant case is Kay Demlo vs. The City of Hillsboro, which is currently under appeal to the Oregon Land Use Board of Appeals (LUBA). In this case the lower court ruled that an owner could not remove their property from the local register after giving consent to have it listed.

Comment [N6]: Given the potential impact of these cases on local programs, we highly recommend waiting to finish this portion of the plan until these issues are decided.

A number of federal and state laws protect archaeological sites and cultural resources in Oregon. Laws and regulations are listed by subject and divided by state and federal laws.

Native American Graves and Protected Objects

- State Laws
 - Indian Graves and Protected Objects
- Federal Laws
 - Native American Graves Protection and Repatriation Act of 1990

Cultural Resource Management

- State Laws
 - Archaeological Objects and Sites
 - Scenic Waterways
 - Conservation Easement
- Federal Laws
 - Antiquities Act of 1906
 - National Historic Preservation Act of 1966
 - Section 106 of the National Historic Preservation Act (NHPA) of 1966
 - National Environmental Policy Act of 1969
 - Protection and Enhancement of the Cultural Environment of 1971
 - Archeological and Historical Preservation Act of 1974 (AHPA)
 - American Indian Religious Freedom Act of 1978
 - Indian Sacred Sites (Executive Order No. 13007)

Comment [N7]: Goal 5 and related OARs? Special Assessment Program, etc.?

Archaeological Excavation Permits

- State Laws

- Permit and Conditions for Excavation or Removal of Archaeological or Historical Materials
 - Administrative Rules for Archaeological Permits for Public and Private Lands
- Federal Laws
 - Archaeological Resource Protection Act of 1979

Historic Preservation Planning

- State Laws
 - State Historic Preservation Plan
 - State Land Use Planning Law- Goal 5

C. KEY PLANNING ISSUES AND SUPPORTING INFORMATION

A number of key planning issues affect land use planning policies and practices in the rural portions of Multnomah County:

- **Enforceability of historic designations and regulations.** The County cannot force the owner of a historic resource to register that property as a national historic landmark, nor can the County designate a historic resource as significant (i.e., a historic landmark) without the consent of the property owner. In addition, a historic designation does not necessarily protect a structure forever. A new owner may elect to remove the designation and demolish the building absent any deed restrictions or other measures that would prevent it.
- **Adaptive reuse of historic structures.** Because of their age, maintenance, and upkeep of most historic properties can be both challenging and costly. Many people who reside in or simply own an older, historic building may have purchased the property with all the intentions of fixing it up or at least keeping it from deteriorating, but the reality is that there are high costs associated with those maintenance duties. In addition, zoning of the property often does not permit the type of use that fits the character of the building and which could provide the owner with additional income and the means to better maintain and protect its historic value. One way to accommodate owners of historic properties seeking opportunities to use their property in a supportive way is by allowing adaptive uses not otherwise permitted by the underlying zoning if that use would be beneficial to the purposes of historic preservation.
- **Ability to ensure historic structures are not demolished.** As noted previously, the County cannot force an owner of a historic property to designate it as either a local or national historic resource or landmark. The owner must consent to such a designation. Even if an owner does consent to or apply for and receive such a designation, future property owners may revoke such designations. Some community members recommend strengthening County requirements to establish a more permanent way to protect historic structures from future demolition.
- **Cultural resources and coordination with Tribal governments.** Multnomah County must coordinate with Tribal governments on issues related to documentation, investigation and protection of cultural resources. In the Columbia River Gorge National

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Comment [N8]: Removing National Register designation requires that the owner go through a process administered by the SHPO. Removal under ORS 197.772 is still a legal open question, and this statement may or may not be true. See comments above.

Comment [N9]: These are common arguments, but not all necessarily true in all cases. Be cautious of providing all argument for demolition of historic resources within your own planning documents intended to assist with the preservation of these same resources.

Comment [N10]: Note federal and state tax and grant programs.

Comment [N11]: Again, and open question and not interpreted and applied consistently in all jurisdictions.

Comment [N12]: The OARs of Goal 5 require a 120 day demolition delay for properties recommended for designation.

Scenic Area this is done in part through coordination between the Columbia River Gorge Commission and Tribal governments. In other parts of the County, it occurs through application of County policy as well as state and federal laws and administrative rules.

Comment [N13]: Consider defining this organization, its role, and authority.

2. GOAL, POLICIES AND STRATEGIES

Goal: To protect cultural resources and conserve and restore historic resources.

A. POLICIES AND STRATEGIES APPLICABLE COUNTY-WIDE

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1) HISTORIC RESOURCES

The following policies and strategies direct the County to continue to recognize significant historic resources and to implement strategies to protect them, including the adaptive reuse of historic structures where such reuse can increase the ability of properties to maintain their condition and historic value.

Policy 6.1. Recognize significant historic resources and apply appropriate historic preservation measures to all designated historic sites.

Strategy 6.1.1. Maintain an inventory of significant historic resources which meet the historical site criteria:

- 1) Historical Significance - Property is associated with significant past events, personages, trends or values, and has the capacity to evoke one or more of the dominant themes of national or local history.
- 2) Architectural Significance (Rarity of Type and/or Style) - Property is a prime example of a stylistic or structural type, or is representative of a type once common and is among the last examples surviving in the County. Property is a prototype or significant work of an architect, builder or engineer noted in the history of architecture and construction in Multnomah County.
- 3) Environmental Considerations - Current land use surrounding the property contributes to an aura of the historic period, or property defines important space.
- 4) Physical Integrity - Property is essentially as constructed on original site. Sufficient original workmanship and material remain to serve as instruction in period fabrication.
- 5) Symbolic Value - Through public interest, sentiment, uniqueness or other factors, property has come to connote an ideal, institution, political entity or period.
- 6) Chronology - Property was developed early in the relative scale of local history or was an early expression of type/style.

Strategy 6.1.2. Use the National Register of Historic Places, the Oregon Historic Sites Database and local historical society databases in compiling an inventory of historic resources.

Strategy 6.1.3. Develop and maintain a historical preservation program for Multnomah County which includes:

- 1) A review of, and compliance with, the laws related to historic preservation.
- 2) Ongoing identification and inventory of significant sites, working with area citizens groups, local historical societies, the Oregon Historical Society, the State Historic Preservation Office, the Oregon Natural History Museum and other historic and archeological associations.
- 3) Developing a handbook on historic preservation to assist County staff, area citizen groups, land owners, and developers in understanding and using applicable federal and state programs.
- 4) Fostering, through ordinances or other means, the private restoration and maintenance of historic structures for compatible uses and development based on historic values.
- 5) Encouraging the installation of appropriate plaques or markers on identified sites and structures.

Comment [N14]: If the survey product is consistent with our database we can import the information.

Strategy 6.1.4. The Zoning Code should:

- 1) Amend the Historic Preservation overlay district to include a process for the owner of a historic resource to obtain a historic landmark designation.
- 2) Amend the Historic Preservation overlay district to provide opportunities for owners of historic landmarks to preserve and maintain the resource by allowing as conditional uses, where possible, a use which can be shown to contribute to the preservation and reuse of the historic landmark.
- 3) Provide for a 120-day delay period for the issuance of a demolition permit or a building permit that substantially alters the historic nature of a historic landmark. During this period, a review of the land use permit application to demolish or substantially alter, including the impacts and possible means to offset the impacts, would be undertaken.

2) CULTURAL AND ARCHEOLOGICAL RESOURCES

The following policies and strategies direct the County to continue to assist in protecting archeological and cultural resources through coordination with state agencies (SHPO) and Native American tribes, including through requirements to document, investigate, and protect resources identified during development processes or other land use activities.

Policy 6.2. Protect cultural areas and archeological resources and prevent conflicting uses from disrupting the educational and scientific value of known sites.

Strategy 6.2.1. Maintain information on file regarding the location of known archeological sites. Although not made available to the general public, this information will be used to insure the sites are not degraded through incompatible land use actions.

Comment [N15]: Please note that much of this information is protected by applicable state laws. Please consult with the tribes when building such a system.

Strategy 6.2.2. Coordinate with the State Historic Preservation Office regarding the identification and recognition of significant archeological resources.

Strategy 6.2.3. Encourage landowners to notify state authorities upon discovering artifacts or other evidence of past cultures on their property.

Policy 6.3. Coordinate with Native American tribes and the Oregon State Historic Preservation Office (SHPO) to adopt a program to inventory, recover, and protect archaeological and cultural resources and prevent conflicting uses from disrupting the scientific value of known sites. Adopt a process that includes timely notice to tribes and SHPO of applications that could impact cultural resource sites, and develop standards to evaluate comments received from the tribes and SHPO.

Policy 6.4. Require reporting of the discovery of Native American artifacts and other cultural resources to SHPO and the Native American tribes.

Policy 6.5. Where development is proposed on areas of cultural significance, require evaluation of alternative sites or designs that reduce or eliminate impacts to the resource.

B. POLICIES AND STRATEGIES APPLICABLE TO INDIVIDUAL RURAL PLANNING AREAS

There are no historic and cultural resource policies specific to individual Rural Planning Areas.