

## Frequently Asked Questions Regarding Regulation of Properties in the National Register of Historic Places

*This document was developed by SHPO and DLCD for Coos Bay, North Bend, and Coos County as a response to questions received from each of these local governments regarding OAR 660-023-200 and the National Register of Historic Places.*

**Question** - What is the Goal 5 rule for historic resources and how does it apply to properties listed in the National Register of Historic Places (NRHP)?

**Answer** – The NRHP was designed to be an honorific program. Oregon is the only state that ties local land use regulation to the NRHP. The administrative rule that implements Statewide Planning Goal 5 for historic resources, OAR 660-023-0200(8), requires a local public process to review a proposal to demolish or relocate a property listed in the NRHP. Local governments may approve, conditionally approve, or deny an application based on factors described in the rule.<sup>i</sup> For additional information regarding the rules for protecting historic resources under Goal 5, see [“Planning for Historic Preservation in Oregon.”](#)

*Also relevant to cultural resources* - OAR 660-023 was adopted in 1996 and replaced OAR 660-016 for all Goal 5 resource categories except cultural resources (OAR 660-023-0250(1)). The possibility of the TCP nomination to the NRHP is the first time DLCD has had to consider how the rules apply to a resource that is both cultural and historic. OAR 660-023’s treatment of a cultural resources, once it is recognized as an historic resource via nomination to the NRHP, is unclear.

**Question** - Are there other State Planning Goals that factor into the application of OAR 660-023-0200?

**Answer** - Yes. OAR 660-023-0240(2) states that the requirements of Goals 16, 17, and 19 supersede the requirements of OAR 660-023 for natural resources that are subject to local codes implementing one or more of these goals.<sup>ii</sup> Some local codes that implement Goals 16 and 17 regulate the management of natural resources (e.g. eel grass beds, salt marshes and some freshwater wetlands). It follows that a Goal 5 rule for protection of a historic resource would not apply if the historic resource is also a natural resources regulated under these local codes.

**Question** - What other laws are relevant to the protection of historic resources?

**Answer** - Under Federal Law ([36 CFR 800](#)) Federal agencies must take into account the effects of any undertaking on a historic property (building, site, object, structure, district) regardless if it is listed in the NRHP. Federal actions include: activities authorized by a federal permit or funded with federal dollars and activities on federal property. Negative impacts that cannot be avoided must be mitigated. Under Oregon State Law (ORS 97.740, ORS 358.905-358.961, ORS 390.235, and OAR 736-051-0090) significant archaeological sites are protected on all non-federal public land (state, county, city) and private lands. Significance is based on the potential of an archaeological site to be eligible for inclusion on the NRHP, regardless if the site is listed in the NRHP or not. Additionally, ORS 358.653 obligates state agencies and all “political subdivisions”

of the state to consult with the State Historic Preservation Office (SHPO) to avoid inadvertent impacts to historic properties that are publicly owned. (See [Protection of Publicly Owned Historic Properties Fact Sheet](#) for more information about this statute.)

**Question** - The Q'alya ta Kukwis shichdii me Traditional Cultural Property Historic District application identifies archaeological sites yet to be discovered as contributing resources within the proposed NRHP historic district. What is a local government's obligation to apply the Goal 5 rule baseline protections upon discovery of a contributing site, *after* a local development permit has been issued?

**Answer** - Not known. There is more than one issue to be resolved before this question can be answered. The National Parks Service has not indicated how they will treat resources in the proposed Traditional Cultural Property that are likely to exist, but have not been discovered or evaluated. In general local governments can only issue and condition permits based on information known at the time the permit is issued. However, OAR 660-023-0200(8)(a) was written without consideration of a scenario where discovery of a NRHP resource occurs after a local permit is issued, so a definitive answer cannot be provided.

**Question** - How does the definition of "demolition" in the Goal 5 rule apply to nonstructural resources such as scenic views and fishing grounds?

**Answer** - The definition requires a subjective assessment to determine if an act "destroys, removes, or relocates, in whole or part, a significant historic resource such that its historic, cultural, or architectural character and significance is lost."<sup>iii</sup> Whether a local government must apply the review criteria for demolition of a property listed in the NRHP to a permit application will likely be a subjective call, and therefore may require public notice and an opportunity for a hearing. SHPO has experience assessing whether a proposal threatens the historic, cultural, or architectural character and significance of a site and can advise local governments on approaches for making such decisions.

**Question** - Can a local government refine the Goal 5 rule definition for demolition?

**Answer** – Possibly. A local government can add to the rule definition in its code as long as the addition does not conflict with the rule. For example, a description of the actions or outcomes that do or do not result in the loss of historic, cultural, or architectural character and significance would provide more clarity.

**Question** - Most, if not all development proposals within an estuary require a permit from the US Army Corps of Engineers (USACE). Will the local government be able to utilize federal findings to inform a local review of a proposed activity within a historic district listed in the NRHP?

**Answer** - Likely no. The timing of a federal decision regarding impacts to an historic site might not fit within the timeframe of a local review and decision process. There also may be some situations where USACE review is not required.

**Question** - What local permit applications are subject to the Goal 5 rule baseline protection standard?

**Answer** - The rule only applies to historic properties listed in the NRHP. In the case of a historic district, only permit applications for projects affecting contributing resources, either above or below ground, are subject to the baseline protection standard. If the proposed work involves ground disturbing activity, all state archaeology laws would be in effect, regardless of whether a resource is listed in the NRHP.

**Question** - Does the Goal 5 baseline protection require an additional layer of local review process, besides that specified in the local code?

**Answer** - Probably. A local government must first determine if demolition or relocation will occur. If the local government determines that demolition or relocation will occur, it must then conduct a review, including a public hearing, as required by the rule.

*Also relevant to the City of Coos Bay* - Coos Bay's code currently applies a local review process and standards to proposed development that will disturb cultural resources, including archeological sites (See City of Coos Bay Agenda and Staff Report, February 19, 2019, Item 5, pg. 2). These local code provisions need to be compared to OAR 660-023-0200(8) to determine if there are significant differences in process or standards.

**Question** - Does the Goal 5 baseline protection for sites listed on the NRHP require amendments to a local comprehensive plan or code?

**Answer** - No, the rule was specifically written so it would not mandate comprehensive plan or code amendments.

**Question** - What are best practices that can be utilized in addition to the regulatory process to avoid damaging archaeological sites?

**Answer** - While there are many different ways, below are a few ideas:

- If the local jurisdiction has its own archaeologist, they can access SHPO's archaeology data and review a project's potential of damaging an archaeological site.
- Private citizens can submit a letter to SHPO asking for a review of their proposed project, and SHPO will respond with a letter regarding the potential effect of the proposed project. (See, [https://www.oregon.gov/oprd/HCD/ARCH/docs/How to Request a Letter from SHPO.pdf](https://www.oregon.gov/oprd/HCD/ARCH/docs/How%20to%20Request%20a%20Letter%20from%20SHPO.pdf))
- The local jurisdiction can require applicants to contact SHPO for a letter regarding the effect of the proposed project on a historic resource.

**Question** - Would development of public property listed in the NRHP be subject to the same review and permit requirements as development of private property?

**Answer** - Yes.

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<sup>i</sup> A local government, “ 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; [\[OAR 660-023-0200\]](#)

<sup>ii</sup> The requirements of Goals 15, 16, 17, and 19 shall supersede requirements of this division for natural resources that are also subject to and regulated under one or more of those goals. However, local governments may rely on a Goal 5 inventory produced under OAR 660-023-0030 and other applicable inventory requirements of this division to satisfy the inventory requirements under Goal 17 for resource sites subject to Goal 17. [\[OAR 660-023-0240\(2\)\]](#)

<sup>iii</sup> “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. [\[OAR 660-023-0200\]](#)