

FINDINGS

I. PROPOSAL

This is a legislative text amendment to Deschutes County Code (DCC), Title 2, Administration, Chapter 2.28, Historic Preservation and Historic Landmarks Commission and to Chapter 2 of the Deschutes County Comprehensive Plan. The primary purpose of the amendments is to provide the option to suspend the Historic Landmarks Commission (HLC) upon Board order, and for review authority as described in DCC 2.28 to be vested in the Planning Divisions of Deschutes County or the City of Sisters as applicable. The amendments retain the ability for the Historic Landmarks Commission to be reinstated at any time by the Board of County Commissioners (Board).

II. BACKGROUND

A. Historic Preservation and County Code

Historic resources are recognized by Statewide Planning Goal 5, Natural Resources, Scenic Views and Historic Areas and Open Spaces, and Oregon Administrative Rule (OAR) 660-023-0200. The Statewide Goal and OAR require basic protections for sites listed on the National Register of Historic Places and recommend the County to inventory and protect other historic or cultural sites.

The Board of County Commissioners (Board) adopted Ordinance PL-21 on September 17, 1980 to establish the Deschutes County Historic Landmarks Commission and create a process to evaluate, designate and regulate historic resources throughout the rural county. The resulting local inventory of historical resources and National Register of Historic Places can be found in the County Comprehensive Plan. Deschutes County Code (DCC) Chapter 2.28 – Historic Preservation and Historic Landmarks Commission – provides procedures for protecting designated local and National Register historic resources. Chapter 2.28 also provides the basis for the establishment and duties of the Historic Landmarks Commission.

B. HLC Overview

Since 2011, the HLC has served as an advisory body for issues concerning historic and cultural resources for unincorporated Deschutes County and the City of Sisters and reviews development applications for alterations to designated historic sites and structures. The cities of Redmond and Bend have independent historic preservation review bodies. The Deschutes County Comprehensive Plan Section 2.11 Cultural and Historic Resources and Deschutes County Code (DCC) Chapter 2.28, Historic Preservation and Historic Landmarks Commission, establish the legal basis for the HLC.

Deschutes County, together with Sisters, is a Certified Local Government (CLG). The Certified Local Government program is designed to promote historic preservation at the local level. It is a federal program (National Park Service) that is administered by the Oregon State Historic Preservation Office (SHPO). Local governments must meet certain qualifications to become "certified" and thereby qualify to receive federal grants through SHPO and additional technical assistance. These requirements include:

- Establish a historic preservation commission;
- Pass a preservation ordinance that outlines how the local government will address historic preservation issues;
- Agree to participate in updating and expanding the state's historic building inventory program;
- Agree to review and comment on any National Register of Historic Places nominations of properties within the local government boundaries.

CLGs are eligible for non-competitive grants that fund work that supports the promotion of historic preservation including surveys, nominations to the National Register of Historic Places, public education, training, etc. The grants, which require a 50/50 in-kind match, have typically been in the \$5,000-\$15,000 range in recent years. Deschutes County has applied for and received CLG grants since 2009. Most recently, Deschutes County HLC applied and was approved for a smaller grant amount (\$5,500) owing to capacity issues and lack of projects that fit the grant funding parameters.

Until recently, the HLC had five voting members and one ex-officio member. In spring of 2023, two committee members—including the then-Chair—resigned and another, longtime Commissioner Sharon Leighty, passed away. Staff initiated recruitments for all three positions to coincide with May Preservation Month. Low interest caused staff to extend the recruitment one month until the end of June, and then again until August 15. Recruitments were posted on the HLC website and social media, the CDD e-newsletter, and promoted via staff's professional networks. Ultimately only two applications were submitted for the three open positions.

It has become increasingly apparent that there is not currently robust interest in the HLC to keep it sustainable. This is not for a lack of residents' appreciation of the rich history of Deschutes County; however, the structure and role of the HLC does have some inherent limitations. County historic sites are generally spread out, often more difficult to access, and lack the "critical mass" of historic sites that cities can offer, an example being a downtown historic district. Most historic sites are private property and require owner consent to either nominate, rehabilitate, or provide access. As such, Deschutes County has not reviewed a property for the nomination of a local historic resource in several decades.¹

¹ Since 2011, there have been three successful nominations to the National Register of Historic Places: Deedon Homestead, Pilot Butte Canal Historic District, and Central Oregon Canal Historic District.

Recently, the HLC has focused on being a “connector,” directing people to sources of potential grant funds, education, processes, or local resources, since the HLC lacks the ability to directly participate in (or fund) physical rehabilitation. CLG grant funds have recently been used either directly by the City of Sisters (last year’s primary project was to update its StoryMap of historic resources, for instance) or for staff time in developing guiding documents such as the Strategic Plan and the Policies and Procedures Manual. Participation in May Preservation Month has been limited for various reasons, with the brunt of the planning being undertaken by local groups such as the Deschutes County Historical Society and Three Sisters Historical Society & Museum, both of which have reputations for lively and informative events, workshops, and tours.

Given this trajectory and the constraints noted above, staff offered the following path for Board consideration at a work session on August 30, 2023. The Board supported moving forward through a public process for proposed legislative amendments, which include the following:

- Disband the Historic Landmarks Commission as it currently exists.
- Amend DCC Chapter 2.28 to allow suspension of the HLC by Board order. In this scenario, review of alterations to historic resources or nominations of local significance is vested in the Planning Division. Review of alterations of historic sites or structures would be processed as a land use decision; local nominations of historic sites would be processed legislatively, starting with the Planning Commission.
- DCC Chapter 2.28 retains its references to the HLC with an amendment acknowledging that if the HLC is not appointed, review authority rests with the Planning Division.
- Deschutes County/Sisters would no longer be a CLG and therefore would not be eligible for CLG funding. For this grant cycle, no funding has yet been spent and staff would coordinate with SHPO to ensure compliance.
- Amend Policy 2.11 of the current Comprehensive Plan to acknowledge this path.
- Going forward, the City of Sisters would need to address their own responsibilities as it pertains to their historic structures.
- In the future, if the community galvanizes and expresses support for appointing an HLC, staff can coordinate with the Board during CDD’s annual workplan to discuss the opportunity.
- In a separate section, the amendments remove DCC 2.28(new B)(5) that refers to the selection of a commissioner representing the Pioneer Association. The Pioneer Association is no longer a separate not-for-profit Oregon entity and as such this provision is no longer applicable.

III. REVIEW CRITERIA

Deschutes County lacks specific criteria in DCC Titles 22 or 23 for reviewing a legislative text amendment. Nonetheless, since Deschutes County is initiating one, the County bears the responsibility for justifying that the amendments are consistent with Statewide Planning Goals and its existing Comprehensive Plan.

IV. FINDINGS

CHAPTER 22.12, LEGISLATIVE PROCEDURES

Section 22.12.010.

Hearing Required

FINDING: The Planning Commission reviewed the proposed amendments on October 12, 2023. The Board of County Commissioners will hold a public hearing on November 1, 2023. This criterion will be met.

Section 22.12.020, Notice

Notice

A. Published Notice

- 1. Notice of a legislative change shall be published in a newspaper of general circulation in the county at least 10 days prior to each public hearing.***
- 2. The notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration.***

FINDING: This criterion will be met as notice was published in the Bend Bulletin newspaper for the Board of County Commissioners' public hearing.

B. Posted Notice. Notice shall be posted at the discretion of the Planning Director and where necessary to comply with ORS 203.045.

FINDING: Posted notice was determined by the Planning Director not to be necessary.

C. Individual notice. Individual notice to property owners, as defined in DCC 22.08.010(A), shall be provided at the discretion of the Planning Director, except as required by ORS 215.503.

FINDING: The Planning Division mailed notice to all property owners with a designated historic or cultural resource on their property. This criterion is met.

D. Media notice. Copies of the notice of hearing shall be transmitted to other newspapers published in Deschutes County.

FINDING: Notice was provided to the County public information official for wider media distribution. This criterion is met.

Section 22.12.030 Initiation of Legislative Changes.

A legislative change may be initiated by application of individuals upon payment of required fees as well as by the Board of County Commissioners.

FINDING: The application was initiated by the Deschutes County Planning Division at the direction of the Board of County Commissioners, and has received a fee waiver. This criterion is met.

Section 22.12.040. Hearings Body

- A. *The following shall serve as hearings or review body for legislative changes in this order:***
 - 1. *The Planning Commission.***
 - 2. *The Board of County Commissioners.***

- B. *Any legislative change initiated by the Board of County Commissioners shall be reviewed by the Planning Commission prior to action being taken by the Board of Commissioners.***

FINDING: The Deschutes County Planning Commission reviewed the proposed amendments on October 12, 2023. The Board then held a public hearing on November 1, 2023. These criteria are met.

Section 22.12.050 Final Decision

All legislative changes shall be adopted by ordinance

FINDING: The proposed legislative changes will be implemented by Ordinance No. 2023-023 upon approval and adoption by the Board of County Commissioners. This criterion will be met.

STATEWIDE PLANNING GOALS AND GUIDELINES

Goal 1: Citizen Involvement: The amendments do not propose to change the structure of the County's citizen involvement program. Notice of the proposed amendments was provided to the *Bulletin* for the Board public hearing, and the Planning Commission, which acts as the citizen involvement committee for Deschutes County, reviewed the proposed amendments at a work session. This goal is met.

Goal 2: Land Use Planning: This goal is met because ORS 197.610 allows local governments to initiate post acknowledgment plan amendments (PAPA). An Oregon Land Conservation and Development Department 35-day notice was initiated on September 27, 2023. The Planning Commission reviewed the amendments at a work session on October 12, 2023 and the Board of County Commissioners held a public hearing on November 1, 2023. The Findings document provides the adequate factual basis for the amendments.

Goal 3: Agricultural Lands and Goal 4, Forest Lands: No changes related to agricultural or forest lands are proposed as part of the text amendments. The proposed amendments impact the administration of historic resource protection; they do not modify allowed uses or where uses can be located. This goal does not apply.

Goal 5: Open Spaces, Scenic and Historic Areas, and Natural Resources: The proposed amendments address the administration of historic resource protection, giving the option of review by the Planning Division if the Historic Landmarks Commission is suspended at the time. The protections themselves and the list of resources remain unchanged and remain in compliance with the State Historic Preservation Rule under Goal 5, OAR 660-023-0200. More specifically, OAR 660-023-0200 (5)(b) states “Local governments may delegate the determination of locally significant historic resources to a local planning commission or historic resources commission.” This goal is met.

Goal 6: Air, Water and Land Resources Quality and Goal 7, Natural Hazards: The proposed text amendments do not propose changes to the County’s Comprehensive Plan policies or implementing regulations for compliance with Goal 6. The County has proposed amendments that address the administration of historic resource preservation; the historic preservation ordinance does not regulate uses or where a structure can be located. No development or land use changes are proposed that impact air, water and land resource qualities or natural hazards. Thus, Goal 6 is not applicable.

Goal 8: Recreational Needs: This Goal is not applicable because the County is proposing amendments to the County’s administration of historic preservation. No development or land use changes are being proposed that impact lands designated with recreational resources.

Goal 9: Economic Development: This Goal is not applicable because the proposed amendments do not impact the ability of cities or counties to have enough land available to realize economic growth and development opportunities. The amendments pertain to the administration of historic preservation.

Goal 10: Housing: This goal is not applicable because unlike municipalities, unincorporated areas are not obligated to fulfill certain housing requirements.

Goal 11: Public Facilities and Services: This goal is not applicable because the County is proposing amendments to the administration of historic preservation. No development or land use changes are being proposed that impact public facilities.

Goal 12: Transportation: This Goal is not applicable because the County is proposing amendments to the administration of historic preservation. No development or land use changes are being proposed that impact transportation facilities.

Goal 13: Energy Conservation: This Goal is not applicable because the County is proposing amendments to the administration of historic preservation. No development or land use changes are being proposed that impact energy conservation.

Goal 14: Urbanization: The purpose of Goal 14 is to direct urban uses to areas inside UGBs. As the proposed amendments do not seek to allow urban uses on rural land, nor do they seek to expand an existing urban growth boundary, this goal does not apply.

Goals 15 through 19: Deschutes County does not contain any of the relevant land types included in Goals 15-19. Therefore these goals do not apply.

OAR 660-023 PROCEDURES AND REQUIREMENTS FOR COMPLYING WITH GOAL 5

OAR 660-023-0200 Historic Preservation Rule

(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.

FINDING: Deschutes County has an adopted historic preservation ordinance.² The purpose of the proposed amendments is to provide an option for Planning Division review pursuant to DCC 2.28 if the Historic Landmarks Commission is suspended by Board order.

(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.

FINDING: The County's response to the requirements of the standard Goal 5 process in OAR 660-023-0030 through 660-023-0050 are provided below.

OAR 660-023-0030

This section speaks to the inventory process to locate, evaluate, and potential adoption of significant resources. The proposed amendments are unique in regard to this section because they are intended to address the administration of the County's historic preservation code. There will be no collection or survey of potential resources because the County already has an adopted historic or cultural resource list.³ Thus, there is no need to evaluate potential resources for their significance. The adopted resource list has already been deemed significant. The proposed amendments seek to amend the historic preservation ordinance to apply changes to the administration of the historic preservation code, not change the Goal 5 resources themselves.

² See DCC 2.28

³ Comprehensive Plan Section 5.9

OAR 660-023-0040

Not applicable as provided above in (c).

OAR 660-023-0050

This section speaks to the various programs to achieve Goal 5 and refers to OAR 660-023-0040. This section is not applicable because the proposed amendments do not modify conflicting uses. The amendments pertain to the administration of historic preservation.

(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.

FINDING: The County has maintained policies and provisions to encourage historic preservation since 1980 (i.e., a historic preservation ordinance). The County's historic preservation ordinance is in compliance with ORS 358.605, which speaks to the importance of preventing the destruction of historic or cultural resources and the recommended development of preservation plans. The County's historic preservation ordinance requires coordinated review with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation. This requirement does not change in the proposed amendments. While the County does not have a formally adopted local historic context statement, it is not a requirement in this situation.

(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...

FINDING: The County is not proposing to inventory historic resources and, thus, is not required to evaluate or determine the significance of a resource. The proposed amendments pertain to the administration of historic preservation.

(6) Designating Locally Significant Historic Resources...

FINDING: The County is not proposing to designate a Locally Significant Historic Resource. The proposed amendments pertain to the administration of historic preservation.

(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.

FINDING: The County has had a historic resource ordinance since 1980. DCC 2.28, formerly PL-21, protects Locally Significant Historic Resources. As stated above, the existing proposal does not include the designation of additional Locally Significant Historic Resources. The proposed amendments pertain to the administration of historic preservation.

(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;

FINDING: The proposed amendments do not affect or address National Register Resources, which are already addressed in DCC 2.28. The proposed amendments pertain to the administration of historic preservation.

(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

FINDING: The proposed amendments do not affect or address National Register Resources, which are already addressed in DCC 2.28. The proposed amendments pertain to the administration of historic preservation.

(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.

FINDING: The proposed amendments do not affect or address National Register Resources, which are already addressed in DCC 2.28. The proposed amendments pertain to the administration of historic preservation.

(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

...

FINDING: The proposal does not involve the removal of a historic resource from the resource list. The proposed amendments pertain to the administration of historic preservation.

(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:

FINDING: The proposal does not involve the demolition or modification of a historic resource from the resource list. The proposed amendments pertain to the administration of historic preservation.

DESCHUTES COUNTY COMPREHENSIVE PLAN

Chapter 2, Resource Management

Section 2.11, Cultural and Historic Resources

Goal 1 Promote the preservation of designated historic and cultural resources through education, incentives and voluntary programs.

Policy 2.11.1 The Historic Landmarks Commission shall take the lead in promoting historic and cultural resource preservation as defined in DCC 2.28.

- a. Support incentives for private landowners to protect and restore historic resources.***
- b. Support the Historic Landmarks Commission to promote educational programs to inform the public of the values of historic preservation.***
- c. Support improved training for the Historic Landmarks Commission.***

FINDING: The proposed amendments continue to promote historic and cultural resource preservation by providing a clear process for administering historic resource designations and protections, which themselves remain unchanged; through these amendments, that process now will have the option to utilize the Planning Division in the case where the Board chooses to suspend

the Historic Landmarks Commission for reasons noted in the Background section of this Findings document. The proposed amendments are consistent with Comprehensive Plan Policy 2.11.1.

Policy 2.11.2 Coordinate cultural and historic preservation with the Oregon State Historic Preservation Office.

- a. Maintain Deschutes County as a Certified Local Government.***
- b. Encourage private property owners to coordinate with the State Historic Preservation Office.***

FINDING: The proposed amendments provide an option for the Board to suspend the HLC and for the Planning Division to serve as the review body for nominations or alterations to historic resources; the amendments modify the above language to acknowledge this option. As noted in the Background section above, reasons for suspending the HLC lie with the ability to achieve a quorum of active commissioners as well as develop preservation-related tasks within the relatively narrow purview of the HLC. If the HLC is suspended for those reasons, Deschutes County would no longer be able to function as a Certified Local Government, but review and protection of historic resources would continue pursuant to DCC 2.28—in this scenario, by the Planning Division. Regardless of which County body holds review authority, the County would continue to coordinate with the Oregon State Historic Preservation Office (SHPO) for preservation matters. SHPO has been notified of this proposal. The proposed text amendments are consistent with Policy 2.11.2.

The sub-policy to encourage private property owners to coordinate with the State Historic Preservation Office will not be impacted by the proposed amendments.

Policy 2.11.3 Encourage the preservation of lands with significant historic or cultural resources.

- a. Develop and maintain a comprehensive list of sites on the National Register of Historic Places.***
- b. Review County Code and revise as needed to provide incentives and adequate regulations to preserve sites listed on the Statewide Goal 5 historic and cultural inventory.***

FINDING: The proposed text amendments are not proposing any changes to County Code regarding incentives or regulations concerning either the list of National Register sites, sites listed on the Statewide Goal 5 historic and cultural inventory, or the procedures governing their protection. The proposed amendments are consistent with Policy 2.11.3.