



Bureau of Planning and Sustainability

Innovation. Collaboration. Practical Solutions.

---

## MEMO

**DATE:** October 23, 2020

**TO:** Portland Planning and Sustainability Commission

**FROM:** Brandon Spencer-Hartle, BPS

**CC:** Andrea Durbin, Director, BPS  
Sandra Wood, Planning Manager, BPS

**SUBJECT:** Response to Planning and Sustainability Commission Questions Regarding Historic Resources Code Project Briefing

---

Thank you for your reviewing the Historic Resources Code Project Proposed Draft Volumes I and II. In advance of the October 27, 2020, public hearing on the Proposed Draft amendments, several commissioners have requested clarifications on proposed code amendments, existing regulations, and other elements of the City's historic resource program. Below are questions raised by commissioners and staff responses. The questions are organized by proposal themes. Staff apologize for the brevity of answers provided to many of the questions and welcome follow-up discussions on any responses that are unclear or questions that were misunderstood. Furthermore, staff apologize for any errors and omissions introduced in the responses due to the nature of the time sensitivity of these responses.

### **PROPOSAL 1.B. ESTABLISH A CLEAR HIERARCHY OF THE HISTORIC RESOURCE TYPES INCLUDED IN THE INVENTORY.**

**Q.** *The different types of Historic Resources are described in 33.445.040.A-H (pp 29-35). There are also lengthy descriptions of the different resource types in the Definitions Chapter in 33.910 – and those descriptions are somewhat different than the descriptions in 33.445.040. What's the purpose for having different descriptions of the same types of resources in two different chapters of the Code?* (Bachrach)

**A.** Staff have attempted to bridge existing historic resource descriptions, the descriptions employed by the National Park Service, and the proposed new approval criteria for designation. The descriptions in 33.445 are an attempt to combine the definition in 33.910 with the existing and proposed criteria



City of Portland, Oregon | Bureau of Planning and Sustainability | [www.portlandoregon.gov/bps](http://www.portlandoregon.gov/bps)  
1900 SW 4th Avenue, Suite 7100, Portland, OR 97201 | phone: 503-823-7700 | fax: 503-823-7800 | tty: 503-823-6868

Printed on 100% post-consumer waste recycled paper.

without leaving behind any existing resources that may have been designated under previous criteria or National Park Service criteria.

---

**Q.** *The differences between the Historic and Conservation Districts described in 33.445.030 (p.33) seem pretty minor. Historic Districts apply to resources that are important on a local, state or national level, whereas Conservation Districts apply to resources that are important on a “neighborhood or community level.” What is the practical difference between a resource that’s important locally versus one that is important at a neighborhood level? If a District is important locally, what criteria are used to decide whether it’s Historic or Conservation? Besides the local vs neighborhood difference, what significant differences between Historic and Conservation Districts are described in 33.445.030. D and E? What are the significant differences in the approval criteria for designating Historic vs Conservation Districts in 33.846.030.D (pp187-191)? In an effort to streamline the Historic review/designation processes, has consideration been given to getting rid of Conservation Districts (and maybe Landmarks)? What’s the case for why the Code needs both the Historic and Conservation designations? (Bachrach)*

**A.** The proposed code amendments seek to bridge existing definitions of the historic resource types with improvements to more accurately describe the resource types for future listings. The Conservation level of historic resource types (landmarks and districts) was first codified in 1977 as a “less-than-historic-district” vehicle for designating and protecting landmarks and districts outside of the Central City. Since 1977, the most important distinction between Historic and Conservation levels has not been the magnitude of historic significance of the resources but the level of protections applied to the different resources. The approval criteria found in 33.846.030.D.3 dictate that the appropriate level of protection is determined at the time of designation, balancing historic significance with “other conflicting values.” In some cases, such as the Kenton Conservation District which was designated by City Council in 1993, a Conservation-level resource may be highly significant but more appropriate to protect at the Conservation level due to a variety of conflicting values (the core of the Kenton Conservation District was later designated as a Historic District).

Since the inception of the Conservation level of districts and landmarks over forty years ago, the protection program has always been intended to allow for a greater degree of change than would be appropriate for the Historic level of districts and landmarks. The presence of “two-track” historic resource review at the Conservation level has allowed most alterations and new construction to proceed by right without review, resulting in a greater degree of change than has been found in Historic areas but also providing more prescriptive options to property owners. In addition to the two-track approach to design, Conservation-level resources are subject to demolition delay. Demolition delay is ineffective at providing meaningful protection to historic resources or allowing for engagement of the community at the time of designation. The professional opinion of staff is that for the Conservation level of designation to be a meaningful alternative to the Historic level of designation, the resource type needs a more robust approach to demolitions than exists today. With the addition of demolition review, the Conservation level of designation would serve as a meaningful alternative to Historic level of designation for both potential future designations and reevaluation of existing Historic level resources that may no longer be appropriate to protect at the Historic level. By refining the protections that apply to Conservation level resources as proposed in



the Proposed Draft, future local decision-making could intentionally apply the appropriate level of protection as was done before the 1995 change in State law automatically protected virtually all new designations at the Historic level of protection.

Theoretically, eliminating the Conservation level of protection would limit the menu of options for decision-makers to apply an appropriate level of protection to historic resources of different magnitudes of significance and within different contexts of different competing values. Additionally, eliminating the Conservation level of designation would result in an immediate map change for six areas in North and Northeast Portland that were designated as part of the Albina Community Plan process after significant public engagement with area residents during the 1991-1993 period.

---

**Q. Are there other codes where the local levels are more restrictive than the federal/national level?**  
(Schultz)

**A.** No other state requires local governments to apply land use regulations to properties listed in the National Register of Historic Places. That said, many cities rely on the National Register as a basis for local inventory and designation decisions; such local decisions may result in application of local land use regulations. Although the National Park Service’s Secretary of the Interior’s Standards for the Treatment of Historic Properties provides best practice guidance for altering historic resources, cities can adopt regulations that deviate from the Standards in ways that are more flexible or more restrictive.

---

**PROPOSAL 2.B. REVISE THE CRITERIA AND PROCEDURES FOR LOCALLY DESIGNATING, AMENDING, AND REMOVING LANDMARK AND DISTRICT STATUS.**

**Q. Are there situations where a resource would be ineligible for National Register listing but might be eligible for City designation?** (Schultz)

**A.** State Administrative Rule OAR 660-023-0200(5)(a) provides a framework for local government decisions related to local designation of historic resources. Generally, resources eligible for listing in the National Register should also be eligible for local designation. The criteria for local designation of landmarks and districts proposed in the HRCP amendments would include the National Register criteria as well as additional criteria related to resources significantly associated with underrepresented histories. Many resources significantly associated with BIPOC communities, LGBTQ history, and other social and cultural contexts currently ineligible for listing in the National Register would be eligible for local designation under the proposed criteria. The Bureau’s recent coordination of the African American Historic Resources 1851-1973 Multiple Property Documentation project informed the approach to the additional criteria proposed in the HRCP amendments.

---

**Q. How are culturally-important resources considered for designation or protection under these proposals?** (Schultz)

**A.** The proposed local designation criteria would allow areas of history currently underrepresented in the Historic Resources Inventory to be considered for landmark or district designation in the future.



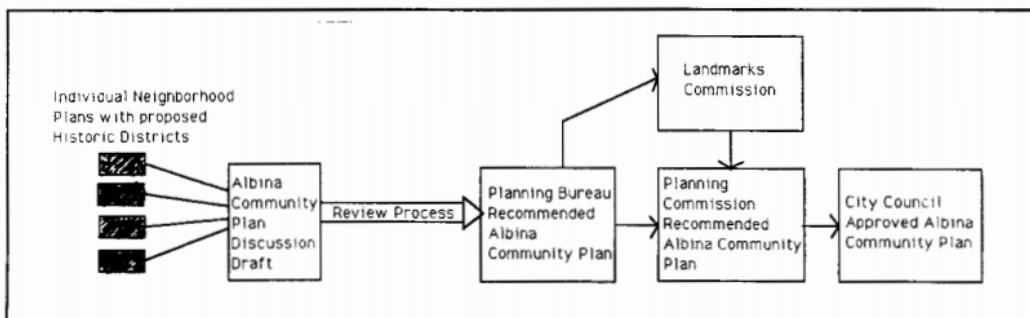
The proposed criteria would allow resources to be considered within their contexts and not within the context of white-dominant history. For example, a historically Black church could be considered eligible for landmark designation because of its significant association with African American history (rather than requiring the church to be considered within the context of all Portland history, which wouldn't allow for equitable consideration of the resource within the context of its association). This more inclusive criteria respond to the Portland African American Leadership Forum People's Plan policy, "Support the preservation and development of Black cultural and heritage sites."

Additionally, the proposed use incentives would support new and creative use of historic resources, some of which may be significant to cultural history and others which may be associated with other areas of history. The use incentives would allow historic resources to better adapt to changing community needs, public investment strategies, and other policy decisions. These new use incentives respond to the Portland African American Leadership Forum People's Plan policy "Creatively reuse and preserve historic structures" by allowing for uses not otherwise allowed in certain zones.

**Q. When and by what process were the last City-designated Historic or Conservation Districts created? (Schultz)**

**A.** Since 1993, all new Historic Districts have been the product of listings in the National Register of Historic Places. Many of these National Register districts were listed with significant support from BPS staff, and some received direct support from the Portland City Council through the parallel development and adoption of district-specific design guidelines. Well-known Historic Districts such as the Kenton Commercial, NW 13<sup>th</sup> Avenue, Alphabet, and East Portland/Grand Avenue Historic Districts were listed in the National Register and automatically identified on the Official Zoning Map as Historic Districts, many of which quickly become subject to City Council-adopted district-specific design guidelines developed by BPS staff with insolvent of the Historic Landmarks Commission and affected property owners and tenants.

The last time the City Council locally designated districts was in 1993 when seven Conservation Districts were designated in North and Northeast Portland (one of the 1993 Conservation Districts—Irvington—was subsequently listed in the National Register and, as such, is now a Historic District). The establishment of these Conservation Districts was recommended by the Planning and Sustainability Commission (then the Planning Commission). The legislative process employed in 1993 was as follows:



**Q.** Which (if any) of the Districts are city-designated, by which I mean they are not listed on the National Registry or else they are listed but the city also took affirmative action to designate the District? (Bachrach)

**A.** All Conservation Districts are City-designated. This includes the existing Conservation Districts (Kenton, Piedmont, Woodlawn, Mississippi, Eliot, and Russell), as well as Conservation Districts that have subsequently become Historic Districts (Ladd's Addition, a portion of South Portland, and a portion of Irvington).

Since 1996, all National Register Districts have been automatically identified on the Official Zoning Map as Historic Districts. The City Council has not designated any new Historic or Conservation Districts since 1993, but the City Council has adopted district-specific design guidelines for many Historic Districts that were automatically identified as Historic Districts upon their listing in the National Register of Historic Places. Design guidelines have been adopted for the Alphabet, King's Hill, NW 13<sup>th</sup> Avenue, New Chinatown/Japantown, Skidmore/Old Town, Yamhill, South Portland, Ladd's Addition, and East Portland/Grand Avenue Historic Districts, as well as design guidelines and design standards for the six existing Conservation Districts.

A detailed examination of physical records would be necessary to determine which Historic Districts were established by the Portland City Council and which National Register Districts were supported by the Portland City Council by resolution and were subsequently automatically identified as Historic Districts on the Official Zoning Map. Staff did not have time to complete this evaluation prior to preparing this memo.

---

**Q.** The Purpose Section in 33.846.030.A appears to exclude the designation of Districts from the code section, but the Approval Criteria in 33.846.030.D expressly includes Districts? (Bachrach)

**A.** Staff can explore further clarifying the language in this section, but the creation of new Historic and Conservation Districts would apply these criteria in addition to the goals and policies of the Comprehensive Plan as would be the case for other legislative decisions.

---

**Q.** The 15 approval criteria – they are really more like subjective factors – contained in subsection 030.D. 1-3 apply whether the proposed historic designation is any one of five different types of resources or whether the proposal is to create a new District or Landmark or expand the boundary of an existing District or Landmark. It seems like there should be more differences in the factors applicable to a review of a District vs a Landmark. Moreover, as noted above, if the approval factors are basically the same for designating Historic and Conservation resources than what's the for continuing with the Conservation designation? (Bachrach)

**A.** The proposed new criteria for designation include differences between the Conservation and Historic levels and retain the existing criteria that an appropriate level of protection—Historic, Conservation, or none—be assigned to a resource considered for designation.



---

**Q.** *Many of the 15 subjective factors don't seem to fit very well when applied to a District, rather than to a Landmark. For example, 030.D.2.a provides: "The resource remains in the exact location as during the period of historic significance." (Bachrach)*

**A.** Not all of the proposed factors would need to be met for a resource to be eligible for designation. Unlike individual landmarks which could be designated quasi-judicially with owner consent, the establishment of a new Historic or Conservation District is proposed to require a legislative procedure where the goals and policies of the Comprehensive Plan would be applied to the decision.

---

**Q.** *33.846.030.D.3 doesn't seem like an approval criterion or an applicable factor? Can you explain the point of that provision? (Bachrach)*

**A.** This approval criterion is critical to ensuring that the designation of a landmark or district is appropriate given the goals and policies of the Comprehensive Plan and, if the designation is appropriate, that the most appropriate level of protection (Historic or Conservation) be applied to the resource upon its designation.

---

**Q.** *p. 41. 33.445.100.B.2.b. "...changing the resource's designation from Historic Landmark to Conservation Landmark or National Register Landmark requires..." AND p. 87. 33.445.200.B.1. "... from Historic District to Conservation District or National Register District requires..." (Spevak)*

**A.** The City does not maintain control or authority over National Register listing. If a resource isn't on the National Register, the City cannot apply the National Register Landmark/District listing through a city process (quasi-judicial or legislative). For resources that are National Register landmarks/Districts, removing the City historic designation would not affect the National Register listing.

---

**Q.** *p. 169. Has a resource or district ever been removed for reason other than that it no longer exists – or was moved? I'm trying to get a handle on whether this ever happens, in practice. (Spevak)*

**A.** Staff have not extensively studied this topic and cannot provide a credible answer without additional research and analysis.

---

**Q.** *p. 171. 33.720.030 D. "Historic Landmark and Conservation Landmark designation, expansion, and removal..." (Spevak)*

**A.** "Designation of a landmark" includes expansion (see 445.100.A.2).

---

**Q.** *p. 183. 33.846.030 A. Why not require a legislative process to expand boundaries of districts? Consider the possibility that there might be a proposal to double the size of a district – or more. (Spevak)*



**A.** Allowing for quasi-judicial expansion of a district provides an opportunity for an individual property owner to add their property to the district if appropriate given the significance of the district, presence of owner consent, and the history of the property proposed to be added. An individual may seek to add their property to an existing district to honor rehabilitation work, access a use incentive, or both.

---

**Q.** *p. 183. 33.846.030 B.2. A Type 2 review seems way too easy for what is, in effect, a map change. Expanding a landmark isn't a big deal. But expanding a district could be Big. (Spevak)*

**A.** Staff anticipate this Type II procedure will be used by individual properties, not groups of properties. Staff are supportive of narrowing applicability of the Type II procedure as it is intended for one-off requests of individual consenting property owners who have made the case for addition to the existing district.

---

**Q.** *p. 185. If equity is a consideration in the review, perhaps some statement of equity issues related to the proposal should be a submittal requirement? (Spevak)*

**A.** Application requirements must have a nexus to one or more approval criteria (see next answer).

---

**Q.** *p. 187-191. "... will be approved if the review body finds that all of the following approval criteria are met." With this language, is there any way a review body (be it PSC or HLC or city council) could deny a proposed district designation based on equity or other grounds – that otherwise meets the standards of 33.846.030.D? If not, it makes no difference who the review entity is – since the approval criteria can be met without reference to equity or racial justice. (Spevak)*

**A.** Approval criterion D.3 requires identification of “other conflicting values” to determine if a resource should be designated and, if so, at what level. These conflicting values may be related to equity, sustainability, housing, economic development, or a host of other considerations that may exist on any given site(s) considered for designation. This criterion exists today and must be met for both quasi-judicial and legislative designation decisions. Additionally, in legislative decisions (such as the creation or removal of districts) findings must be made against the goals and policies of the Comprehensive Plan.

---

**Q.** *p. 195 33.846.040. C. 1. For federally designated landmarks and districts (and probably others too), I think it would be impossible to meet this standard (note that for D.1, National Designation clears this hurdle, and for D.2., most would continue to be met), making the ability to remove or reduce designations unlikely to ever happen. (Spevak)*

**A.** Staff developed these criteria in response to the criteria provided by OAR 660-023-0200(9), while also considering the existing and proposed criteria used to designate resources under 33.846.030.



**PROPOSAL 3.A. APPLY DEMOLITION REVIEW TO ALL DESIGNED HISTORIC RESOURCES AND EXPAND DEMOLITION REVIEW APPROVAL CRITERIA.**

**Q.** *The procedure types for demolition reviews set out in 33.846.080.B are difficult to follow. It would be helpful to have some sort of a chart that breaks down the differences with the different review procedures types and which ones apply to which type of historic resource. For example, why is a lower level of review (Type IV) used for Historic Landmarks and Historic Districts and a higher level of review (Type III) for Conservation Landmarks and Conservation Districts? That seems backwards?* (Bachrach)

**A.** Type IV review is the highest level of quasi-judicial review that we have. Type I is the lowest level of quasi-judicial review. Therefore, demolition of a Historic Landmark or contributing resource in a Historic Districts requires the highest level of review (requiring a public hearing before City Council; City Council is the decision maker).

---

**Q.** *33.846.080.c.2 contains an extensive (and expensive) list of new requirements for demolition applications. Does that list of requirements apply to demolition reviews of any type of historic resource? What's the policy reason for the new application requirements? The Commentary says some are required by or informed by OAR 660-023-0200, but there do not appear to be any such provisions in the administrative statute rule?* (Bachrach)

**A.** Supplemental application requirements for demolition review exist today. The changes to the application requirements introduce the factors required to be considered by OAR 660-023-0200(8) when demolition of a National Register resource is proposed. For consistency, those application requirements are applied to all resource types subject to demolition review.

---

**Q.** *Do the demolition review criteria vary depending on the type of historic resource proposed for demolition?* (Bachrach)

**A.** Yes. Only one of the criteria need to be met, and the criteria that pertain to a specific type of historic resource are identified in the wording of the criterion.

---

**Q.** *p. 59. 33.445.100.E.2.a. Is there any reason to include "Demolition of noncontributing resources" in this list? It would only arise if there's a Historic Landmark that's non-contributing; but I doubt that ever happens (reference back to E.1 on prior page)* (Spevak)

**A.** There is not a need to add such language because demolition of a noncontributing resource doesn't trigger demolition review (see E.1). Staff have concerns about the cumbersome nature of adding exhaustive lists of work that would not trigger a review (whether it's historic resource review or design review or environmental review, etc.) to the lists of exemptions from review.





**Q. p. 131.** *By applying demo review to 2,208 contributing structures in conservation districts, does Portland need to remove redevelopment of those properties from its Goal 10 housing capacity? (Spevak)*

**A.** Demolition review does not prohibit demolition or preclude development of housing types within existing structures or on the sites of existing structures. Furthermore, the proposed historic resource incentives would allow contributing resources in single-dwelling zones in Conservation Districts to access more housing opportunities than allowed by the base zone (including the Council-adopted Residential Infill Project housing types). In the mixed-use, multi-dwelling, and single-dwelling zones, application of demolition review would unlock the potential for owners of contributing resources in Conservation Districts to propose use of development bonuses not currently available to sites of resources demolished through 120-day demolition delay. Finally, the existing six Conservation Districts were designated by City Council and preceded by completion of an ESEE analysis.

---

**Q. p. 139.** *33.445.220.E.1. Are these exceptions to demo review baked into OAR, or is there local discretion in our definition of “demolition”? If there’s discretion, where does the proposed definition fall on the allowable spectrum (strict – flexible)? (Spevak)*

**A.** OAR 660-023-0200 provides: “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.”

Staff intend for the definition of demolition included in 33.445 to meet the letter and spirit of the State Administrative Rule, while providing clear and objective thresholds for demolition review that are lacking today.

---

**Q. p. 157.** *33.445.500 How do proposed new restrictions for conservation districts (e.g. demo review, facade/height triggers of mandatory discretionary review...) further equity & racial justice? (Spevak)*

**A.** Staff welcome further discussion with PSC regarding this question, but provide a few items for consideration. First, the absence of meaningful participation required in demolition delay does not afford longstanding and new community members with an opportunity to submit evidence and participate in decision-making regarding the long-term preservation of contributing resources in Conservation Districts. Application of demolition review provides new venues for public engagement, approval criteria that allow for demolition when other community values are advanced, and unlock bonus development potential on sites where such bonuses are not allowed today. Second, these code amendments are not district-specific and provide an opportunity to envision a protection approach for Conservation Districts that would apply to both existing and future Conservation Districts, including the potential for an individual Historic District to be changed to a Conservation District in the future if there were a compelling justification for doing so. And, finally, applying demolition review to Conservation Districts allows the regulations for the three tiers of historic



resources—National Register, Conservation, and Historic—to logically nest for the benefit of future decision-makers, implementors, and applicants.

---

**Q. p. 245** *What’s the cost range of preparing a complete application? It seems like it could be onerous – as though one way to prevent demolitions is to make the process of requesting one expensive and time-consuming above-and-beyond what it needs to be to make an informed decision. Also, for items i., k., and l., obtaining financial information on the property going back years may not be possible – if the applicant didn’t own it for that long. In such instances, the owner should at most have to make reasonable efforts to obtain the information – but not be required to have it. (Spevak)*

**A.** Supplemental application requirements for demolition review exist today. Changes intend to incorporate the “factors” required by OAR 660-023-0200(8) and align the application requirements with the approval criteria. The cost to assemble the supplemental application requirements would depend on the resource proposed for demolition and the criterion under which approval is sought.

---

### **PROPOSAL 3.B. INCREASE EXEMPTIONS TO HISTORIC RESOURCE REVIEW.**

**Q.** *I am considering creating an amendment around solar to allow it on any part of the roof. What should I be thinking about? (Larsell)*

**A.** In 2013, a previous historic resources project codified an exemption to historic resource review for certain solar installations in Historic and Conservation Districts. The current proposals expand the exemption in Historic Districts and introduce a new narrow exemption for Historic and Conservation Landmark. The Proposed Draft amendments intended to find a balance between maintaining the historic integrity of landmarks and contributing buildings in districts, while expanding opportunities for solar energy access. In general, staff determined that expansion of the solar exemption to side-facing roof slopes to be more appropriate in districts than for individual landmarks.

---

**Q.** *What, in this code revision, does anything to address earthquake safety? (Larsell)*

**A.** The HRCP amendments are limited to changes to Title 33. Among the changes in the Proposed Draft intended to support seismic resilience are:

- New exemptions to historic resource review for certain seismic projects affecting parapets and roofs, installation of exterior seismic straps, and removal of internal service chimneys;
- A lower Type I review procedure for seismic-only projects;
- New approval criterion language related to seismic upgrades to Historic Landmarks; and
- Use incentives intended to encourage greater investment, rehabilitation, and use of historic resources, which may include related seismic improvements.

In 2019, BPS participated in a legislative work group to develop a State Rehabilitation Tax Credit that would have provided direct financial assistance to seismic improvements to income-generating historic resources. While the resulting senate bill did not pass, the effort provides groundwork for future State policy discussions about financial incentives for seismic improvements.



---

**Q.** *p. 49. 33.445.D.2.p Add language to make it similarly easy to remove electrical, gas or water meters from any facade unless it's specifically designated in historic documentation. (Spevak)*

**A.** Staff have no concerns about advancing this request during work sessions.

---

**PROPOSAL 3.C. REFINE HISTORIC RESOURCE REVIEW APPROVAL CRITERIA.**

**Q.** *One of the policy objectives many commenters have expressed is that the code package should do more to address the problem where affluent neighborhoods use the National Register process to get around city policies and regulations encouraging more development (i.e., RIP) in those desirable close-in neighborhoods. One way to tackle that problem could be to expand the list of exemptions from historic review. 33.445.200.D.2 (p.91). As a policy consideration, I'd propose for discussion that sites in Historic and Conservation Districts, which have not been designated as Landmarks, should be exempt from Historic Review. Those sites would still be subject to the 120-day demolition delay. (Bachrach)*

**A.** In 2017, BPS staff participated in the rewrite of the OAR 660-023-0200, the adopted version of which ended the practice of historic resource review applying automatically to National Register listings. Although that change significantly upended Portland's longstanding approach to designating and protecting historic resources, staff continued to have concerns about the lack of broad public involvement and the weighing of community values that accompanies National Register listing process (primarily for large districts). In 2019, Staff participated in a legislative work group and engaged the Office of Government Relations in advocating for a repeal of ORS 197.772, which would have ended the practice of automatic protection of National Register Resources. The resulting senate bill did not pass. The proposed code amendments intend to adopt the provisions of OAR 660-023-0200, provide new procedures and criteria for designation removal, and apply additional housing opportunity beyond Residential Infill Project to residential zones that have a Historic or Conservation designation.

---

**Q.** *33.846.060.D requires three dimensional digital models for proposals in a Historic District within the Central City. Is that also a requirement for development proposals in the Central City that are not within a Historic District? (Bachrach)*

**A.** Yes; See 33.825.025.D.

---

**Q.** *It seems the criteria in 33.846.060.G-H is generally moving in the direction of maintaining and strengthening the bias in favor of preservation. I'd encourage staff to provide the PSC with an opportunity to discuss its desired policy outcomes when it comes to regulating historic uses. With DOZA, we had policy discussion where we tried to balance the benefits of design review with its costs and impacts on efficient and affordable development, particularly how it impacted affordable housing. (Bachrach)*

**A.** The criteria referenced apply to alterations to individual landmarks and alterations and new construction in Historic Districts without adopted design guidelines. These criteria do not place limits on the use of property. Staff note that many individual Historic Landmarks are currently used as affordable housing, as are many contributing buildings in Historic Districts. Examples of such historic-



resources-turned-affordable-housing are too numerous to cite in this memo, but include the Musolf Manor, Erickson-Fritz Building, Rich Apartments, Estate Hotel, Bronaugh Apartments, Admiral Hotel, Wilshire Building, Rex Arms, and the Golden West Hotel. The tax incentives and grants available to historic rehabilitation projects that result in affordable housing have long been a driver of affordable housing production in Portland and elsewhere in the United States. The approval criteria in 33.846.060.G are, by design, intended to be no more onerous than the National Park Service’s Secretary of the Interior Standards, which are often applied as a requirement of accessing the financial incentives needed to develop affordable housing within a historic resource.

---

**Q.** *The Commentary to 33.846.060.G says the code changes “retain and clarify” the existing approval criteria, which, in turn, are consistent with the National Park Service’s practice guide for resources on the National Registry. Because the approval criteria in 33.846.060 cover many locally-adopted historic resources that are not on the National Register, as a policy matter, why should the city use federal standards to evaluate development impacts on local resources? (Bachrach)*

**A.** In the coordination with Bureau of Development Services, the development of code concepts, and reviewing feedback received on the Discussion Draft, staff have not identified any policy rationale for amending the approval criteria that apply to alterations and additions to Historic Landmarks, but have identified one opportunity to amend the approval criteria to work better in Historic Districts without district-specific design guidelines. The National Park Service best practices are informed by decades of experience across the county in protecting historic materials, details, and workmanship for long-term preservation. If there are resources that are not appropriate for protection at the highest level, the code proposals allow for consideration of a change in resource type or removal of the designation in its entirety.

---

**Q.** Consider mimicking 33.825.035 for historic reviews (Spevak).

**33.825.035 Factors Reviewed During Design Review.**

The review may evaluate the architectural style; structure placement, dimensions, height, and bulk; lot coverage by structures; and exterior alterations of the proposal, including building materials, color, off-street parking areas, open areas, landscaping, and tree preservation.

While the review may evaluate the distribution of massing and placement of structures on the site, the review may not require the applicant to reduce or increase the total floor area proposed for the site except when floor area has been transferred to the site using the floor area within a sector transfer option in the Central City plan district. In this case, the review may require the proposed floor area to be reduced, but not more than the amount that was transferred from within the sector. In addition, the review body is not obligated to approve modifications or adjustments that are requested in order to achieve the proposed floor area.

**A.** In the re-adoption of the Central City 2035 Plan, City Council adopted extensive findings explaining the purpose and scope of historic resource review. As such, staff have not proposed limiting the scope of what can be reviewed in historic resource review. Importantly, individual Historic Landmarks and contributing resources in Historic Districts are often shorter than the allowed height on the site, with FAR transfer options available in many zones and in the Central City Plan District.

---



### **PROPOSAL 3.D. IMPROVE DEMOLITION DELAY TO APPLY ONLY AT THE TIME OF DEMOLITION APPLICATION.**

**Q.** *My understanding is that the 120-day demolition delay is the only regulatory requirement applicable to Significant Resources. Is that correct? However, 33.445.310.B refers to Significant Resources that have been demolished after a 120-day delay or “through demolition review.” In what circumstance (under what code provision) is a Significant Resource subject to a demolition review?* (Bachrach)

**A.** The current code provides a voluntary opportunity for historic resource owners to sign a Preservation Agreement obligating the property to demolition review. This Preservation Agreement is proposed for removal in the code amendments due to redundancy and complexity, but there may exist Significant Resources that have signed a Preservation Agreement in the past.

---

### **PROPOSAL 4.A. EXEMPT ALL LANDMARKS AND DISTRICTS FROM PARKING REQUIREMENTS.**

**Q.** *p. 19. 33.266.110. Given that parking minimums are almost non-existent in the code now, the benefit of this incentive is pretty minimal. But perhaps there are other ways to provide a benefit – like dropping loading zone requirements? Or being more flexible on bike parking requirements?* (Spevak)

**A.** Staff did not consider these concepts, but welcome further discussion during the work sessions.

---

### **PROPOSAL 4.B. INCREASE ZONING CODE INCENTIVES ALLOWING FOR ADAPTIVE REUSE OF CERTAIN DESIGNATED RESOURCES.**

**Q.** *Are there more incentives in this plan? I ran into c6-c10 in the code on page 154 and wasn't able to understand it.* (Larsell)

**A.** The use incentives included in the Proposed Draft amendments can be found on pages 153 and 155 of Volume II. Some incentives are allowed by right and others may require Historic Preservation Incentive Review.

---

**Q.** *I'd appreciate an explanation about how the Incentives are typically used, and what's the intended policy outcome? Also, Incentives are addressed in both 33.445.300 (pp. 153-155) and again in 33.846.050 (p 199); why not consolidate all provisions dealing with Incentives in one code section?* (Bachrach)

**A.** The zoning code is organized as a reference document. It is not intended to be read from cover to cover. Instead, it is organized so you may look up only the parts you need. The 800 series describes most of the various land use reviews. Some reviews may be applied for at the discretion of the applicant, such as a conditional use or adjustment request. Other reviews are mandatory in certain situations such as design review or historic resource review. The 800 series contains the thresholds that state when a review is required, and the approval criteria for the land use review. The 400s series--overlay zones—consist of regulations that address specific subjects that may be applicable in



a variety of areas in the City, such as environmental zoning or historic zoning. Overlay zones are applied in conjunction with a base zone and modify the regulations of the base zone—they do not generally contain review thresholds or approval criteria. 33.445.400 states the types of use incentives that are available to historic resources and when a historic preservation incentive review is required. And, in keeping with the structure of the zoning code, 33.846 contains the review thresholds and review approval criteria for that review. Today, historic preservation incentive reviews are relatively rare due possibly due to the limited use opportunities offered by existing incentives, the limitations on resource types eligible for incentives, and/or the requirement for a covenant. For those existing incentives that do not require a historic preservation incentive review, there is no tracking mechanism to analyze their utility.

---

**Q.** 33. 445.400.C.2 allows (as an incentive) two ADUs on sites with a duplex, triplex, four-plex or a multi-dwelling structure; why aren't single-family dwellings on the list? (Bachrach)

**A.** The Residential Infill Project will allow for two ADUs for single-family dwellings citywide so no special incentive is needed.

---

**Q.** p. 153. 33.445.400.C.1. I think you can strike “are allowed on sites zoned R7, R5 ... at least one contributing resource.”, since this redundant with 33.445.400B1,2,3 from the prior page (Spevak)

**A.** Staff will add this to the code clean-up list.

---

**Q.** p. 153 33.445.400.C.1.b. How does this mesh with the affordable housing FAR bonus, included by council in RIP? Probably not a big deal, since I think the residential density incentive for residentially zoned historic properties has been used about once or twice ever. (Spevak)

**A.** Staff have proposed FAR limits for use of the historic resource incentive to ensure the Residential Infill Project affordable housing bonus is still available as was intended by City Council.

---

**Q.** p. 155 33.445.400.C.6. Consider striking “In residential zones, if there was a ... or the historic resource is a Historic or Conservation Landmark.” The last part is covered by 33.445.400.B. And given the low likelihood of this being used, I’m not sure there’s a need to limit it to places close to transit or buildings with prior non-residential use. (Spevak)

**A.** If staff were to remove the words “or the historic resource is a landmark” it will narrow the number of sites that qualify for this particular incentive to only those that had a non-residential use in the past, and those that are near transit. In other words, as is, the historic landmark does not need to have had a nonresidential use in the past or be close to transit to qualify. Furthermore, staff welcome discussions about the assertion that this incentive may not be used.



## **PROPOSAL 5.A. REFINE PURPOSE STATEMENTS, PROCEDURE TYPES, AND LANGUAGE.**

**Q.** *Like Jeff, I skimmed through the code changes and found it full of repeats. Not super important, but why is the code so difficult to follow (Larsell).*

**A.** Staff intend for the code to be clear for both applicants and City staff. By introducing discrete sections in Chapter 33.445 for each resource type, the chapter is structured with the intent of allowing applicants to most quickly find the historic resource regulations applicable to their property.

---

**Q.** *What's the public policy benefit of allowing resources to be open to the public 4 hours one day each year? If it's to enable a regressive property tax break, should it be in the zoning code? (If the historic property tax is going away, as you shared, my interest in this answer goes away too) (Spevak)*

**A.** The requirement to have the resource open once a year is occasionally embedded in state and foundation grant and incentive programs. That code ensures that the single-dwelling zone prohibition on commercial meetings in short-term rentals (i.e. a bed and breakfast) that are also historic resources does not conflict with any grant or incentive requirement that may be applied outside of the zoning code. One such incentive program, the Oregon Special Assessment of Historic Property Program, is set to sunset in 2022.

---

**Q.** *p. 59. 33.445.100.E.2.c. Could we just reclassify Historic Landmark Trees as "Heritage Trees" and not perpetuate 2 names for the same thing? (Spevak)*

**A.** Staff considered this option, but did not want to introduce any mapping components to the project.

---

**Q.** *General organization. There are 3 different versions of the solar exemption, window replacement exemption... Yet they're scattered across over 50+ pages of the code. Couldn't these be put in a table in one place, so you can compare them more easily? (Spevak)*

**A.** Organizing all the exemptions to historic resource review into one table may be advantageous for PSC members during their review of these code amendments, but from an implementation perspective the zoning code is a reference document. It is not written to be read from beginning to end or for comparison. When the code is being implemented, someone who needs to know the regulations applicable to a Historic Landmark does not need compare the Historic Landmark regulations to those for a Conservation Landmark. In other words, no applicant will need to read all 50+ pages because the solar exemption for a Conservation Landmark is not relevant to someone with a Historic Landmark.

---

**Q.** *p. 179. 33.815.129 C. "The proposed use will not significantly alter the overall industrial character of the area, based on the existing proportion ..." (just trying to avoid the use of 'character' in the code, for all the ways it can be interpreted) (Spevak)*

**A.** BPS code development staff disagree with this possible amendment because it would significantly change the meaning of an approval criterion that is not proposed for amendment in this code package. Without those words, the second part of the criterion would not have a logical basis and would read like this: "The proposed use will not significantly alter the proportion of industrial and



non-industrial uses and the effects of incremental change.” The criterion is asking us to not undermine the industrial character of an area by altering the existing ratio of industrial and non-industrial uses or by making other incremental changes. This is a major underpinning of our policies aimed at protecting our industrial sanctuaries. And, if we limit the criterion to only address the existing proportion of industrial and non-industrial use, the criterion is no longer discretionary—it become an objective measure. In addition, the words “character” and “characterize” are employed throughout the zoning code. As such, a larger discussion about the use of these words would be more appropriate than making a singular change to Chapter 33.815.

---

## **PROPOSAL 5.B. AMEND THE ROLE AND MAKEUP OF THE HISTORIC LANDMARKS COMMISSION**

**Q.** *Could a requirement be added for the Historic Landmarks Commission to deliver an annual report and/or hold a joint meeting with the Planning and Sustainability Commission?* (Schultz)

**A.** The Historic Landmarks Commission and Design Commission both provide annual reports to the Portland City Council; similar coordination with the Planning and Sustainability Commission could be explored as a formal duty of the commissions or as an informal best practice.

---

**Q.** *Proposed code changes continue to require that members of the Commission must have expertise in historic preservation. As two witnesses pointed out, that means the Commission will likely continue to have a bias in favor of preservation as the outcome, rather than a broader balancing of other city land-use policies.* (Bachrach)

**A.** The Design and Historic Landmarks Commissions are bodies that, for the most part, determine if approval criteria have been met during quasi-judicial land use reviews. They are not bodies that evaluate (except when a criterion requires it) or balance broader city land use policy. Therefore, expertise in the subject matter is important to ensure adopted quasi-judicial criteria are appropriately applied to applications.

---

**Q.** *Should [Historic Landmarks] Commission recommendations on design guidelines go to the PSC or direct to city council?* (Bachrach)

**A.** The current code delegates the recommendation of design guidelines to the Historic Landmarks and Design Commissions. City Council is responsible for the adoption of any new design guidelines that are recommended by either commission.

---

**Q.** *33.720.020.D.3 assigns demolition review to the Commission. What body currently reviews demolition applications?* (Bachrach)

**A.** City Council is currently the decision-maker for demolition reviews. The proposed changes create a new Type II (staff) procedure, Type III (Historic Landmarks Commission) procedures, as well as retains the Type IV (City Council) procedure for Historic Landmarks and contributing primary buildings in Historic Districts.

---





## QUESTIONS NOT DIRECTLY RELATED TO A CODE PROPOSAL

Q. *In the past five years, what historic preservation issues has PSC considered?* (Schultz)

A. Given the time constraints in returning these responses to PSC members, BPS staff were unable to undertake a full accounting of recent PSC recommendations related to historic resources. However, a flavor of PSC recommendations since 2015 related to historic resources are as follows:

- Residential Infill Project. PSC considered several staff proposals related to incentivizing internal conversions of existing and historic houses and discouraging demolition of contributing resources in Conservation Districts. These staff proposals included waiving minimum parking, allowing FAR to be combined for all structures on the site, allowing triplexes on internal lots, and restrictions for additional housing types on sites where contributing resources in Conservation Districts had been demolished. PSC recommended to City Council a broader application of the incentives than just providing them to historic resources and recommended against the restrictions related to demolition in Conservation Districts. City Council reversed the PSC's recommendation related to demolitions in Conservation Districts, preferring the HRCF amendments bring back a proposal for demolition review in Conservation Districts and disallowing development of middle housing on sites demolished through just 120-day demolition delay.
- Better Housing by Design. PSC made several recommendations to City Council supporting historic preservation in the BHbD Project. First, PSC recommended changes to the multi-dwelling zone mapping in the Alphabet and King's Hill Historic Districts to more closely relate to the scale of larger historic buildings (some areas had allowed scale reduced, while one area with large historic buildings had the scale allowances increased). Second, PSC recommended the reduction of base FAR in the large-scale RM4 (former RH) zone for properties located in Historic Districts (from 4:1 to 3:1), as well as the bonus FARs, to more closely relate to the scale of the historic context. Third, PSC recommended bonus FAR be allowed to be used in mixed-use zones in Historic and Conservation Districts, in alignment with allowances in multi-dwelling zones, with the understanding that Historic Resource Review would shape the design of development based on the historic context. Fourth, PSC recommended an expanded FAR transfer incentive for seismic upgrades to historic buildings in both the multi-dwelling and mixed-use zones by allowing additional FAR to be transferred to other properties from sites with historic structures in conjunction with seismic upgrades. City Council accepted PSC's recommendations to generally allow bonuses in mixed-use and multi-dwelling zones in historic districts, but prohibited the use of bonuses on sites where historic resources were demolished without demolition review (primarily in the Conservation Districts).
- Central City 2035. PSC made several recommendations to City Council supporting historic preservation in the CC2035 Project. First, PSC recommended eliminating bonus height in all Central City Historic Districts. Second, PSC recommended lowering the base height limits in the NW 13<sup>th</sup> Avenue, New Chinatown/Japantown, and East Portland/Grand Avenue Historic Districts. Third, PSC recommended landmarks and contributing buildings in Historic and



Conservation Districts be prioritized in the FAR bonus and transfer system and be provided an additional 3:1 FAR to encourage such transfers. Finally, PSC recommended historic resources be exempt from Bird Safe Glazing standards to provide a range of options for consideration in historic resource review.

- RICAP8. PSC recommended that 120-day demolition delay be applied to all proposals to demolish and remove Ranked Resources from the Historic Resources Inventory. City Council adopted the recommendation.
  - Mixed Use Zones. PSC considered a staff proposal to reduce the allowed height in certain “low-rise commercial storefront areas” as a vehicle to promote the preservation of areas containing a high density of older building but not designated as historic or conservation districts. With a few notable exceptions, PSC did not recommend the reduced heights in these areas and preferred staff explore new options for historic/conservation district designation for consideration in the future.
- 

**Q.** *What are some opportunities for historic resources outside of Title 33? (Bortolazzo)*

**A.** Two examples of potential opportunities outside of Title 33 are intangible preservation programs and State financial incentives. First, in recent years many cities in the United States have begun adopting Legacy Business and Cultural District programs that honor and protect “intangible” or lived histories of institutions and communities. In general, these programs are primarily incentive-based anti-displacement strategies that may or may not overlap with the historic landmark and district provisions of their cities’ land use regulations. Second, 34 other states have adopted State Rehabilitation Tax Credit programs to support major rehabilitation of buildings (largely income-producing buildings). Oregon is one of a handful of states that taxes income but does not offer an income tax-based tax incentive for commercial building rehabilitation.

---

**Q.** *P. 6. “The amendments described in the pages that follow do not propose to add or remove ... Landmarks or districts..” Given the compelling case made in the prior paragraph and in the 2019 Portland Historic Landmarks Commission State of the City Preservation Report, Why Not? (Spevak)*

**A.** The BPS Historic Resources Program has a staff capacity of 1 FTE. Development of the HRCP zoning code proposals has met and often regularly exceeded the capacity available within that 1 FTE, not including the Program’s “keeping the lights on” expectations and recent coordination of a major project to document African American historic resources. Given staff capacity and budget, the need for resource-specific analysis, the lack of public engagement related to map amendments, and the antiquated processes and criteria in the code today related to designation and designation removal, staff strongly prefer historic resource code amendments precede historic resource map amendments. Possible future map amendments may include, but would not be limited to, examining the resource type (i.e. Historic or Conservation) of existing districts, the zoning applied to specific existing landmarks and districts, and the potential for future listings that recognize and protect currently underrepresented histories.

---



**Q.** *How can reparative elements be inserted into the project?* (Magnera)

**A.** Staff welcome further conversations with the PSC about the content and sequencing of these code amendments, future analysis of the map of existing and potential historic resources, and a review of opportunities for elevating racial justice in the historic resources program work. The use incentives proposed in these code amendments ensure that all designated historic resources are provided with more flexibility to meet the changing needs of Portlanders, including providing additional housing opportunities than were included in the Residential Infill Project. Future district-specific map amendments, design guideline updates, or non-regulatory policy proposals may provide a venue for district-specific opportunities, healing, or reparations.

BPS staff look forward to answering additional PSC questions and supporting amendments to the Proposed Draft during your upcoming work sessions.

