



City of Portland
Historic Landmarks Commission

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Bureau of Planning and Sustainability
Bureau of Development Services
1900 SW 4th Ave #7100
Portland, OR 97201

RE: PHLC Request for State Legislative Agenda

Dear Director Anderson and Director Scarlett,

It is the understanding of the Portland Historic Landmarks Commission (PHLC) that both the Bureau of Planning & Sustainability and the Bureau of Development Services have the ability to request that issues be added to the State legislative agenda for advancement in Salem. Through this venue, we seek to bring attention to several pressing issues that continue to affect historic resources throughout Oregon. Please accept this letter as the Commission's initial request that both Bureaus add two important issues to their lists of legislative priorities:

1. Repeal of ORS 197.772.
2. New and increased financial incentives.

The first and most serious issue is ORS 197.772, the "owner consent" law. The law, enacted in 1995, reads:

(1) Notwithstanding any other provision of law, a local government shall allow a property owner to refuse to consent to any form of historic property designation at any point during the designation process. Such refusal to consent shall remove the property from any form of consideration for historic property designation under ORS 358.480 (Definitions for ORS 358.480 to 358.545) to 358.545 (Rules) or other law except for consideration or nomination to the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470 et seq.).

(2) No permit for the demolition or modification of property removed from consideration for historic property designation under subsection (1) of this section shall be issued during the 120-day period following the date of the property owner's refusal to consent.

(3) A local government shall allow a property owner to remove from the property a historic property designation that was imposed on the property by the local government [1995 c.693 §21; 2001 c.540 §19].

This law dramatically weakens protections for locally-designated historic properties. Most at risk are properties within Portland's Conservation Districts, primarily located in North and Northeast Portland, and historic resources that have not been designated but are objectively significant. Additionally, because of the "owner consent" law, Portland Zoning Code allows for an owner or developer to request and be issued a same-day removal from Portland's Historic Resource Inventory (HRI). We continue to see a steady stream of removals from the HRI which then are followed by a demolition. The ease and frequency in which historic properties are being "de-listed" and demolished has never been greater. At a time when the PHLC and preservation advocates across the state are looking to update historic inventories and increase the designation of historic properties, we are losing an unquestionably large number of historic resources due to this law, which is unique in the United States.

The legality of zoning ordinances regulating the development rights of property owners is well established in our country with almost 100 years of settled case law. The 1978 US Supreme Court case, *Penn Central Transportation Co. v. New York City*, affirmed the right of state and local governments to extend zoning ordinances to historic properties. The result of that decision can be seen in the implementation of preservation planning and historic resource zoning ordinances throughout the country. Oregon stands alone as the singular state requiring “owner consent” in order for local and state jurisdictions to protect important historic properties.

Proud Citizens of Oregon have a long history of protecting our state’s resources. The state is known nationally for a commitment to the environment and sound planning principles. Oregon Senate Bill 100 passed in 1973 established the Oregon Land Conservation and Development Commission and the Oregon Department of Land Conservation and Development leading to the adoption of 14 statewide planning goals. Goal 5 of Oregon’s statewide planning goals & guidelines calls on local jurisdictions to protect natural resources, scenic and historic areas, and open spaces.

ORS 197.772 *Consent for Designation as Historic Property* has completely thwarted the authority of local jurisdictions to protect historic and culturally significant resources. The integrity of Oregon’s entire historic preservation system is called into question when the subjective views of individual property owners are the sole determination of eligibility. Decisions to include a property on a local, state or national register should be made objectively by professionals and involve a community process. Allowing an owner to “opt out” of the regulatory process corrodes the very underpinning of the goals set forth in Oregon’s landmark Senate Bill 100 and the values Portlanders hold dear. We urge you to advocate for the protection of the historic buildings Oregonians treasure by lobbying our state government to repeal ORS 197.772. No other legislative issue would have a more profound impact on the future of historic properties in Oregon.

The other issue is simply the ongoing and uphill battle to provide owners with incentives to keep and preserve their historic structures. The most major of these incentives is always funding. While the State Historic Preservation Office (SHPO) is able to provide grant funding to Certified Local Governments as well as to other nonprofits and public entities, the amounts have dwindled over the past decade. As we see across Multnomah County and in much of the Willamette Valley, new construction and signs of economic prosperity abound, yet so many historic properties are still challenged with a lack of financial tools to make rehabilitation and adaptive reuse economically feasible. The Commission applauds your 2015 support of SB 565, *Revitalize Main Street Act*, and hope that you can advocate for additional preservation funding to the SHPO in order to help owners afford to maintain and preserve our heritage.

Sincerely,

The image shows two handwritten signatures in blue ink. The signature on the left is 'Kirk Ranzetta' and the signature on the right is 'Paul Solimano'. Both signatures are written in a cursive, flowing style.

Kirk Ranzetta, PhD
Chair

Paul Solimano
Vice Chair