



# MEMORANDUM

**DATE:** May 2, 2023  
**TO:** Project File  
**FROM:** Heather Richards, Community Development Director  
**SUBJECT:** Public Testimony for AP 5-23 (HL 6-22), AP 6-23 (HL 7-22), AP 7-23 (HL 8-22), and AP 8-23 (DDR 2-22), Appeal of the Gwendolyn Hotel Land-Use Applications (Received During Public Hearing on April 18 as Distributed Handouts to City Council))

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Following is the public testimony that was distributed to the City Council, applicant and appellant during the City Council public hearing on April 18.

**Public Testimony:**

- Amy Wesselman
- Steve Rupp, MDACPA
- Daniel Kiser
- Ernie Munch
- Nathan Coopriider
- Downtown Restaurants - Variety
- Katherine Huit
- Linda Leavitt
- Unknown

4/18/23  
DA

Testimony submitted by:

Amy Wesselman  
Owner, Westrey Wine Co.  
1065 NE Alpine Ave., McMinnville

Executive Director, IPNC  
410 NE Third St., Suite 5, McMinnville

April 17, 2023

- The International Pinot Noir Celebration (IPNC) received its initial funding from private loans from the past presidents of the McMinnville Chamber of Commerce. The first IPNC, held in 1987, would never have taken place without this initial funding that was provided because the presidents had a vision for what an event like the IPNC could bring to McMinnville's economy.
- Today a fundamental part of the IPNC's mission is to support the economic development of the wine industry, Yamhill County, and the City of McMinnville.
- The IPNC's largest single challenge is accommodations for our guests. All local lodging fills; guests drive from as far away as Portland. It's a real obstacle in selling tickets.
- The proposed Gwendolyn Hotel would provide local lodging in the heart of McMinnville, right on our shuttle route, avoiding driving after attending a wine event. When the Atticus opened it was an enormous help to us, not only for our paying attendees, but also as an appropriate high-end lodging choice for our national media guests.
- The IPNC office has been located in the 1893 building for almost 20 years. We love historic McMinnville, and we would like to see the charm of the blocks closer to Baker St. extend further, eventually down to Johnson St.
- I have reviewed the plans for the Gwendolyn carefully, and I think the hotel would make a lovely addition to Third Street. I believe the Gwendolyn, because of the attention to detail and artisanship, will have more historic value 100 years from today than the existing building. On a personal note, because for the past 27 years I have divided my time between the winery and apartment above it in McMinnville and our home in Portland, I often walk by housing infill projects in Portland that stick out like sore thumbs in their historic neighborhoods. It is always a pleasure to see one that has been intentionally designed to fit in with the feel of the surrounding homes and businesses. After seeing the plans for the Gwendolyn, I believe it will be a wonderful addition to our community's beloved downtown.
- There are very significant land-use factors to be considered if the Gwendolyn project is not allowed to go forward.
  - Since an enormous hotel and spa was proposed in the Dundee hills over two decades ago, stakeholders in the wine industry, including myself, have fought hard at the county and state level, and in LUBA hearings, to prevent non-agricultural development, such as hotels, in EFU land.
  - Hotels in EFU zones are opposed by most winery owners because they:

- Send a signal to visitors that we don't value our farmland/vineyard land highly enough that we allow non-agricultural uses in EFU zones. In Burgundy, France, the birthplace of Pinot Noir, it is strictly illegal to use vineyard land for any other purpose because it is so highly valued.
- Hotels in EFU zones tax small country roads and water, just to get started, as infrastructure services provided in a city are not available. Instead of an out-of-sight parking garage in McMinnville such as the one included in the proposed Gwendolyn project, a hotel parking lot in EFU would pave over our precious farm land.
- Yamhill County winery owners oppose what is commonly referred to as "Wine Disneyland", as you find in congested areas of California and other wine regions around the globe. We want our vineyard land to be surrounded by hazelnut orchards, pastures, and other agriculture, not commercial development. In 2009 I participated in a series of 15 meetings that included six members of the Yamhill County Planning Commission and six stakeholders in the wine industry. This work group concluded with a unified vision for keeping agriculture lands just that, rather than allowing development to expand into EFU zones.
- I am a life-long ardent supporter of upholding Tom McCall's vision for Oregon and Senate Bill 100. Without this vision, much vineyard land would be covered by sub-divisions and other development, and the Oregon wine industry would not have prospered as it has. I have never testified at the Capitol or at LUBA in *favor* of development; I have always been on the opposing side. In the case of the Gwendolyn, I would testify in support, because this project will keep development within the urban growth boundary. It is also my opinion that this hotel in particular is an opportunity to maintain McMinnville's historic feel while bringing high-spending visitors to the city.

Respectfully submitted

Amy Wesselman

April 17, 2023

4/18/23  
DA

## A Brief History of the Creation of the International Pinot Noir Celebration

In late 1985 John Roodhouse proposed an idea to create a premier wine event in McMinnville, Oregon to a group of interested persons, some mentioned were Ken Patton, Nick Peirano, John West and Bob Burnett. The McMinnville Downtown Association and the McMinnville Chamber of Commerce were contacted regarding creating such an event, the purpose being to help the economy of McMinnville first and Yamhill County second. It was also clear that if McMinnville did not undertake this type of event, another community soon would.

During an early meeting at the McMinnville Community Center it was decided to form an event that would be independent of any other group. John Roodhouse made it clear that he did not want to lead the group so Bob Burnett volunteered to contact Ken Patton to take this position. Ken accepted at the next meeting and it was decided to seek partial funding from the past presidents of the McMinnville Chamber of Commerce in the form of a loan of \$400 each. (These loans were repaid after the first IPNC was held) They also agreed to create a competitive event and added some winemakers to join the committee. The Yamhill County Winery Association was also contacted for input. David Adelsheim, David Lett and Dick Erath attended the next meeting. The focus of the event was changed to be non-competitive at the urging of the winemakers. This would allow French winemakers to be included. The name of the International Pinot Noir Celebration was selected.

The initial funding from the Chamber of Commerce past presidents totaled approximately \$10,000. Ken Patton and Bob Burnett helped to prepare a request of a grant from the Oregon Lottery Economic Commission. They were successful in securing a grant of \$15,000. The purpose was to promote the wine industry in the area with Pinot noir as the main thrust, to help the local economy and to hold the event in McMinnville with Linfield College being the best choice. At this time more people were added to the committee. Now in place were a name, stated purpose and seed money.

The IPNC approached Frank Spears, Chairman of the Linfield Board of Trustees, about bringing the proposal of locating the first event on the campus before their board. Charles Walker, then Linfield President, remembers the board of this Baptist college included several clergy members. Frank Spears took the lead in the meeting and went on at great length, presenting the concept as a symposium and emphasizing the quality of the proposed type of event. President Walker believes the vote was unanimous, or nearly so, to invite the IPNC to the Linfield College campus and also that Frank Spears was a very effective persuader.

This is a short view of the formation of the unique and very successful International Pinot Noir Celebration. The first event was held August 7, 8, and 9 of 1987.

### The Mission Statement:

*The International Pinot Noir Celebration will promote the recognition and appreciation of Pinot Noir wines. The celebration will be a premiere wine event and will feature Oregon wines and those of other major wine regions of the world. This annual celebration will strengthen the economic development potential and contribution of the Oregon Winery Industry to the State of Oregon. Additionally, it will bring attention to the foods, arts and livability of our communities (July 17, 1986)*

# MDACPA

McMinnville Downtown Association Committee for Public Art

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April 18, 2023

To: McMinnville City Council

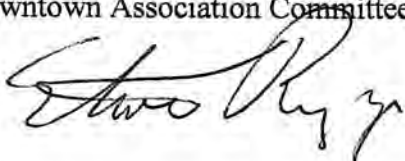
Subj.: Gwendolyn Hotel project

I understand from a recent News Register article that the Developers of the proposed Gwendolyn Hotel suggested that they intend to include art in the development to help make the project more pleasing to the City. To that end, I have a suggestion as to how that should be accomplished. I believe the City Council should require:

1. One (1) percent of the construction cost should go to the acquisition and installation of Public Art. This percentage should not apply to land cost or demolition cost of the existing buildings on the site.
2. The Developer and the MDACPA should work together in selecting the art. Mutual agreement between both parties being required before the acquisition or commissioning of any one work or piece. Also, mutual agreement should be required regarding the placement of any one work or piece. In other words, both parties should have veto power regarding any one piece.
3. At least two (2) or three (3) pieces of art for this project should be sculptures or busts honoring the founders of McMinnville, OR. This would include people like the Cosines, William T. Newby. Also, significant historical information or events should be considered.

This would ensure that the art selected or commissioned reflects to a reasonable extent the history and taste of our fair City.

Sincerely,  
McMinnville Downtown Association Committee for Public Art  
Steven Rupp  
Chair



## **Daniel Kiser - Appellant Testimony - 4/18/23**

### **For the Record**

I want to correct the record that the staff report said that the HLC voted 3-2 on all applications, which is incorrect. They voted 4-1 on the design application. The planning commission did vote 5-3 in favor of all four applications, but one planning commissioner voluntarily recused themselves for having previously submitted testimony in opposition to the applications. This suggests the opinions of commissioners were more evenly split than the recorded vote indicates.

### **1. Introduction**

My name is Daniel Kiser and I am proud to have been born and raised in McMinnville. I'm now kicking myself for not participating in speech and debate while a student at Mac High. I was, however, honored to be named Mr. Mac High 2009 and graduated as a valedictorian in 2010 as part of the 100<sup>th</sup> graduating class.

I've wanted to be an architect since I was a little kid and I studied construction management at Brigham Young University before receiving my Masters of Architecture at the University of Notre Dame. I was drawn to Notre Dame because it is one of the only schools that classically trains architects. My education has instilled in me a love for historic architecture and urbanism. I work remotely as a designer for one of the most well-respected architecture firms in the nation, Ferguson & Shamamian Architects, out of New York City. I was living in New York until the pandemic brought me back home to McMinnville, where I currently reside.

This may sound irrelevant to some of you, but I want you to know that McMinnville is a part of who I am, and I'm qualified to discuss this appeal with you. There has been speculation about my relationship to this appeal and I want to state unequivocally for the record that I am simply a community volunteer. I have absolutely nothing to gain financially from this appeal. None of the other architects who have previously spoken out against this project have been paid for their time or their opinions either. We all simply share a desire to protect the historic fabric of McMinnville's downtown. This appeal was not inexpensive. The city's application fees totaled \$4,380, but through a gofundme, I was quickly able to raise the needed funds from over 100 individual donations.

### **2. The Appeal**

I'm here tonight to walk you through evidence that strongly supports the Historic Landmark Committee's original decision to deny all 4 applications for this project. There's a lot of information to wade through and it's difficult because there are 2 different application types regarding 3 separate historic buildings and multiple layers of applicable codes and policies. The HLC is the body tasked with

understanding and applying the nuance of these codes, and we should be proud of the work that they did weighing the evidence in the record. I have concerns the planning commission didn't recognize their role appropriately as an appellate body and instead took a broader view, outside of the relevant criteria during their deliberations. I'm sure they felt they weighed the issues carefully, but their findings and the evidence submitted simply do not support their votes of approval. This evening, I will also present new evidence that neither committee had at the time of their respective decisions.

Before we dig in, I'd like to remind you that there are four individual applications in front of you. It is possible that you may agree with the HLC on some but not all of them. You do not have to approve them all or deny them all – each building and each application must be weighed on its own individual merits and voted on accordingly.

### **3. Purpose of the Historic District & Benefits**

Downtown McMinnville did not become one of the best main streets in America by accident. Forty years ago, a group of local residents started work on the creation of our local historic inventory. They also fought for the creation of the Downtown Historic District and succeeded in having it formally recognized by the National Park Service's National Register of Historic Places. Their motivation? To stop further demolition of historic properties and protect the irreplaceable value of McMinnville's local main street.

Property owners of historic buildings in this district have a special responsibility beyond traditional ownership. They are also stewards of these buildings for future generations. That extra responsibility comes with benefits, though. A building on historic 3<sup>rd</sup> Street is worth more than that same building located elsewhere in our city. Being listed in the district also gives access to substantial federal tax credit programs as well as opportunities to apply for local and state grants and other funding opportunities. This would not be possible without the historic district

To be clear, the applicant does not own these properties at this time. They are, instead, *choosing* to place their project in a location that is subject to extra layers of local laws and review processes. They could still propose to build this hotel in *any number of other locations* in our community, ones that don't require the demolition of three contiguous historic buildings, and they would have a much easier approval process. They are *choosing* to engage in this particular process.

### **4. The Historic District at Risk**

On January 5, Planning staff added an email conversation with Paul Lusignan, a historian at the National Park Service, to the public record. Asked if the demolition of these buildings would impact the eligibility of the district as a whole, Paul said "the effect of these demolitions MIGHT impact the overall eligibility of a district, but not likely... The loss of three buildings in isolation would probably not be

sufficient to demand delisting unless the level of integrity district-wide was also problematic.” Paul’s response was far from the definitive answer that the staff report alludes to.

This was informal communication, but McMinnville’s Historic District listing *has not been updated since it was created*. At least 3, probably more, buildings have been demolished since then with no notice to the park service. The NPS *does not* have an accurate understanding of the current state of our district and therefore *cannot* make an educated guess on how demolishing 3 contiguous buildings on our most prominent street could affect it. Unfortunately planning staff are in no position to promise us that our district would be safe in the aftermath of this scale of demolition, when there has been no indication that it will be, and the nuanced opinion given *was based on incomplete information*. What if we lost our historic district because of it? Would you want to be the elected official responsible for its dissolution?

#### **4b. Considering demo:**

I’ll first touch on the applications for the demolition of three historic buildings. Their significance related to our city’s automotive industry has been well communicated through previous testimony on the record and I trust that you have all reviewed the well researched submissions that document their vibrant stories.

The applicant claims that these buildings have been modified beyond recognition, that they no longer reflect their original purpose. Sure - the buildings’ original use has changed, but that’s the beauty of historic rehabilitation. These auto garages are now offices and restaurant hospitality spaces.

It’s important to remember that, as a council, you don’t have to determine if these buildings are historic. The city and the federal government decided these buildings were of historic importance when they were listed as part of the district in 1987. *Remember also that those determinations were made after the buildings had been modified from their original design.*

The 1987 district nomination states, “Buildings along Third Street represent several phases of development that have a marked cohesion by virtue of their density, common scale, materials and overall design elements. While ground story storefronts have been altered over the years, distinguished features of the upper stories are intact and provide visual continuity.”

Oddly, the applicants are now, all of a sudden, telling us that these buildings do not in fact have a strong historical significance or value to our community and that they need to be demolished.

What’s changed? *Nothing has changed*. The applicant’s own historic consultants confirm on the record that *these buildings are as historic as the day they were designated a part of the district*.



## 5. Purchase Price & Comps

The applicant has provided financial figures to previous commissions to say that these buildings can't be salvaged - they are beyond repair. But numbers in a vacuum mean nothing – you need context for them to have meaning.

Let's look at recent sales only one block away. An internet search shows the Historic Elks Lodge (home to R. Stuart/Mes Amies/Currents Gallery and others), long owned and stewarded by Marilyn Worrix, one of the most meticulously restored buildings in the district and has 7 commercial tenants and 15 parking spaces, sold for \$78/sf.

The Mack and Hotel Yamhill buildings, which need substantial upgrades also recently sold, and if they paid full listing price, it was \$99/sf.

From the cost estimates the applicant provided on April 13, the stated purchase price for our 3 buildings is \$3,475,000. A cost estimate provided on November 4 states the building size. This purchase price would then be \$191 per square foot.

How can we be told that our 3 historic buildings are both devoid of value *and* selling for double to triple the market value by square-foot of other historic buildings downtown? In fact, nicer buildings? Why would the applicant tell you that these buildings can't be sold, and then be willing to pay so much more than market value?

**The answer is simple:** because the developer's business plan for a large scale hotel requires them to have multiple contiguous lots inside our historic district, preferably fronting Third street. These developers are telling us that there is not just one, not two, but three historic buildings, all conveniently located side-by-side, also conveniently need to be torn down. They need  $\frac{3}{4}$  of a block frontage for their business plan to be the most profitable, which is why the developers are clearly willing to pay more than double the price per square foot of neighboring buildings. Mind you, for buildings they contend are in such terrible shape they must be torn down.

Where is the financial hardship argument here? Perhaps these buildings would have sold more easily if they were priced consistently with other properties in the marketplace? When your house doesn't sell at list price, you bring the price down and let the market tell you what it's really worth. These developers are telling us these buildings aren't worth anything, but their actions show otherwise.

Ironically, these specific properties are worth that inflated price to the developers BECAUSE OF the added value created by the protections and design standards of our historic district. *They want to profit off of those protections, while simultaneously asking you to ignore them.*

## 6. Renovation Numbers

On March 13 the applicant provided a cost estimate for renovating the historic buildings into a 13 room hotel instead of demolishing them. Absolutely no detail was given about how they arrived at their numbers, but they said it would cost \$28.5 million. An internet search shows the preliminary pricing of the Mack Theater renovation project will create 62 rooms for \$28 million.

Both projects involve historic buildings with unreinforced masonry. Why does a budget of \$28 million only get the applicant 13 rooms when it gets another group 62 rooms, a historic theater AND a bathhouse?

In another cost estimate from March 13, the applicant said that in order to buy these buildings and to continue using them without a seismic upgrade, it would cost \$15.3 million. How do you spend \$15 million to use the buildings in the same way they're already being used?

In the March 13 cost estimates, the applicant laid out how much a seismic retrofit alone would cost. To be clear, *these buildings require no seismic work to continue to be used as they are*, but the applicant has stated that seismic work is the biggest hurdle to continued investment in or rehabilitation of these buildings.

Also in the public domain is a document from 2020 showing that the McMinnville Urban Renewal Agency loaned \$41,000 to the Bindery to rehabilitate a historic warehouse into an event space. That project involved *converting an unreinforced masonry building into an assembly occupancy space, which has the most restrictive code requirements*. Total project costs, *which included seismic work*, were officially stated as \$205,211. If the Bindery building can undergo seismic upgrades and be converted to a new purpose with a successful business model at an affordable cost, why can't the rest of these buildings?

The bottom line is that the applicant has provided unverified numbers to say these buildings can't be saved *simply because they don't want them to be saved*. And it appears they think no one will notice how far off these numbers are. They can't - or won't - show us detailed or realistic numbers because that data would not support the demolition of these buildings. Just because the numbers don't work for one business plan doesn't mean they won't work for another.

## 7. Bennette Building

Another issue has been brought to my attention regarding one of the buildings the applicant wants to demolish. The Bennette building was built as one building stretching from 3<sup>rd</sup> Street to 4<sup>th</sup> Street

encompassing the entire depth of the city block. In the 1990s the building was divided into two tax lots. But the application being considered is for the 3rd Street half. How do you demolish half of a historic building? Tearing down the 3<sup>rd</sup> street half will destabilize the 4<sup>th</sup> street half.

***But here's what I really don't understand*** – the 3<sup>rd</sup> street half has the more prominent façade and includes renovated tenant spaces. The 4<sup>th</sup> street half is a warehouse with very little improvements or infrastructure. So why is the 3<sup>rd</sup> street half so worthless that it needs to be torn down, but the 4<sup>th</sup> street half retains enough value to support its protection? If you allow the demolition of these three historic buildings, are you now effectively approving the demolition of four? Further, if you decide that the Bennette building doesn't retain value and significance worth protecting, how could one justify the protection of the remaining Bindery building - in its simple warehouse design? I fear that the approval of these applications would effectively start a demolition domino effect that the city will be dealing with for years to come.

## **8. MAC Town 2032 & Historic Preservation Plan**

The applicant wants us to believe that their project is a once in a lifetime opportunity. They are trying to pit our 2019 Historic Preservation Plan and our comprehensive plan's goals for historic preservation against the goals of the MAC-Town 2032, when in fact there is no need for them to be in conflict. I believe that recent submissions to written public testimony further explain this point and I encourage you to read them with great consideration. ***I want to be clear - I'm not anti-development. The Gwendolyn can be built anywhere else in the city and provide us with the same tax revenue without destroying the historic district.*** And we also have to remember that tax revenue isn't a free gift to the city, it's payments into our coffers because this building will put increased demand on city services.

## **9. Massing & Downtown Design Guidelines**

***Now that we've discussed the demolition applications, I'd like to look more closely at the design application for the proposed Gwendolyn Hotel.***

Hugh Development's website calls the Gwendolyn a five story building, but according to their application and submitted architectural drawings, it is in fact six stories tall, not including a basement parking garage.

The applicant provided this height study at the neighborhood meeting a year ago and elected not to include what would be the only remaining historic buildings on the block in their study's map, both of which are only one story in height. I have made a corrected map on this slide that includes them because they're crucial to the assessment of this project's compliance with our city's prevailing code.

**MZO 17.59.050(b)(1): Buildings should have massing and configuration similar to adjacent or nearby historic buildings on the same block.**

'Massing' refers to a structure in three dimensions (form), not just its outline from a single perspective (shape). I made an amendment to my appeal yesterday that I believe a building's mass should only be compared to historic buildings on the same block, whether they be adjacent on the same block or nearby on the same block.

If the applicant is allowed to demolish the three historic buildings, the only historic buildings the Gwendolyn has left to compare its mass with are the Bindery and back half of the Bennette Building -

The applicant has previously been opposed to using height to compare mass, so let's compare mass with cubic feet to take into consideration the building's length, depth and height.

You'll see on the slide that the building that houses the Bindery located at 610 NE 4th Street is approximately 125,000 cubic feet in size. The adjacent building, the rear half of the Bennette building, located at 628 and 634 NE 4th Street is also approximately 125,000 cubic feet. The Gwendolyn Hotel, by stark contrast, is approximately 1,005,000 cubic feet in size (not including the underground parking structure). The size of the proposed Gwendolyn Hotel is 800% or 8 times the size of the two historic buildings that would remain on the block.

I can't imagine that is within anyone's definition of "similar" massing.

The applicant has suggested its massing is comparable to other buildings in the district, which is not a comparison supported by code. But even if we entertained this exercise, the Atticus Hotel and McMenamins Hotel Oregon are both approximately 320,000 cubic feet in size. The Gwendolyn Hotel would be over three times larger than either them! In my opinion, something triple the size is not "similar."

The Planning Commission cited precedent as an excuse for not meeting this code, but if this application goes to LUBA, LUBA will be constrained to evaluating land use decisions for compliance with applicable approval standards, *not* for consistency with prior local government decisions. ***And regardless, the Gwendolyn Hotel is not remotely similar in massing to any building located in the Downtown Design District, historic or new.***

## **10. Should versus Shall**

The applicant has reminded previous commissions the language of these codes is should, not shall. A guideline rather than a requirement. When the applicant is debating should versus shall, it's an acknowledgement that they understand the code guidelines, they just don't care about them. In

particular, they've repeatedly shown they don't value the intent of the code, which is to ensure that all new development is sympathetic and harmonious with the existing historic fabric of our historic downtown. Which the Gwendolyn is not.

The Planning Commission's findings stated the existing historic buildings "... are part of the building fabric of Third Street... a built environment which collectively has a lot of value to the community. Any replacement project would need to be able to become an asset to that built environment and not a disruptor." And that the Gwendolyn "will need to meet the Downtown Design Overlay code criteria for new construction, *including mimicking the character and scale of the existing structures downtown.*" The Gwendolyn *is* a disruptor and does *not* mimic the scale of other buildings.

One of the clarifications Planning Staff made on March 16th is that "new construction should be distinct from the old and must not attempt to replicate historic buildings elsewhere on the site and to avoid creating a false sense of historic development." Take note that staff did not mention the previous sentence from the same document.

*"When visible and in close proximity to historic buildings, the new construction must be subordinate to these buildings."*

This is official direction from the National Park Service that oversees the district. The language is "must" and it overrides the city's "should" mandates. The applicant will argue the document planning staff and I are referencing is for "new construction within the boundaries of historic properties," but the NPS defines districts to be historic properties. The NPS, from their email correspondence with Heather Richards, even suggested that the HLC consider "requiring some compensation for the loss (of the three buildings) by having stronger input into the replacement."

## **11. Conclusion**

Historic preservation is an integral piece of the city's adopted code and goals. If this council thinks historic preservation is no longer important, the council should go through the process of amending our code to reflect that, because our current code language simply does not support demolishing 3 contiguous buildings on the most prominent street in our historic district - a decision that could threaten the entire district's eligibility. What are we saying about McMinnville's commitment to its own codes?

If the real argument is that these historic buildings should be torn down because we can build something that makes more money, no historic building on Third Street is safe. The city has drawn a line in the sand with its adopted policies to preserve these buildings. Either the city follows its policies or it doesn't.

Since no decisions are made in a vacuum, if you approve this project, you need to think, what are the unintended consequences? You will be opening the floodgates for more developers to come in and make the same argument. And if you think this has been a long, difficult, expensive endeavor for the city and its taxpayers, this is going to happen over and over again.

I respectfully request the City Council reverse the Planning Commission's decisions and adopt/build upon the Historic Landmark Committee's findings.

I want to thank each of you for being a community volunteer on this council. Our volunteer driven community is experiencing the full force of a large development team with specialized lawyers and paid staff that want to drag out this process as long as possible to wear us out. They have tried to distract our attention with hundreds of pages of "evidence" and countless hours of their own testimony that is either contrary to the prevailing code or irrelevant to the discussion at hand. But this process has shown me that this community is full of engaged citizens that are depending on your votes on this matter to protect what makes our small city remarkable. I want to thank all of the members of the community who donated their personal funds and efforts to make this appeal possible and want to especially recognize those who have shown up to tell you that we want to continue to protect our historic and irreplaceable downtown.

RESOLUTION NO. 2020- 01

A Resolution of the McMinnville Urban Renewal Board authorizing the McMinnville City Manager or designee to enter into and manage a Development Agreement with Type A Press dba the Bindery Event Space for the historic rehabilitation of a historic warehouse at 610 NE Fourth Street into an active meeting, event and conference center facility.

RECITALS:

Some of the McMinnville Urban Renewal Agency's (Agency) goals are to encourage the economic growth of the McMinnville Urban Renewal Area (Area) as the commercial, cultural, civic and craft industry center for McMinnville; to encourage a unique district identify both in the downtown commercial core and the Northeast Gateway area; and pursue development and redevelopment opportunities that will add economic, civic, craft industry and cultural opportunities for the citizens of McMinnville, economically strengthen the Area and attract visitors to the Area.

In order to achieve these goals, the Agency developed a Property Assistance Program to encourage new construction and significant redevelopment projects in the Area per Resolution No. 2017-03.

As part of the Property Assistance Program, the McMinnville Urban Renewal Board authorized the development of a Development Loan and Grant program.

Type A Press dba the Bindery Event Space applied for \$41,000 from this Development Loan and Grant program to help rehabilitate a historic warehouse at 610 NE Fourth Street into a new downtown event center, with total project costs of approximately \$205,211. The request for \$41,000 is approximately 20% of the total hard construction costs of the project.

The McMinnville Urban Renewal Advisory Committee reviewed the request at their meeting on Wednesday, January 8, 2020, and voted unanimously to recommend that the McMinnville Urban Renewal Agency fund the project with a \$41,000 loan.

The McMinnville Urban Renewal Board feels that this project achieves the overall goals and objectives of both the McMinnville Comprehensive Plan and the McMinnville Urban Renewal Plan.

And the McMinnville Urban Renewal Agency feels that an investment of \$41,000 in this project is a valuable investment for the Agency and the community of McMinnville helping to leverage urban renewal funds for significant historic rehabilitation of a warehouse into an event space in the downtown area, revitalizing a blighted area, creating jobs, tax base for public services and an economic generator for other businesses in the area.

The McMinnville Urban Renewal Agency has budgeted for this effort as part of the "Planning and Development Assistance Program" identified in the McMinnville Urban Renewal Plan.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF THE MCMINNVILLE URBAN RENEWAL AGENCY as follows:**

1. That a loan of \$41,000 with a payback period of ten years and an interest rate of 2.25% is approved for the Bindery Event Center project. Funds should only be used for approved capital costs. The first two years of the loan period will be an interest only payment period. If the loan is paid in its entirety within five years, 10% of the remaining portion of the loan at the time of payoff will be forgiven. Payments will be made semi-annually on December 31 and June 30 of each year.
2. That the Agency will secure a personal guarantee from one of the members of the Type A Press dba The Bindery Event Space to pay back the loan if the business becomes non-performing.
3. That the loan will be recorded on the deed of the property.
4. That the loan plus interest will be paid back to the Agency in full if the building is sold within five years of the disbursement of the loan.
5. That the loan is dependent upon successful underwriting review per the program's criteria.
6. The McMinnville City Manager or designee is authorized to execute a Development Agreement and such other documents as are necessary to carry out this decision.
7. This Resolution will take effect immediately upon passage.

Adopted by the Board of the McMinnville Urban Renewal Agency at a regular meeting

held the 14<sup>th</sup> day of January, 2020 by the following votes:

Ayes: -Drabkin, Stassens, Peralta, Menke, Geary, Garvin

Nays: \_\_\_\_\_

Approved this 14<sup>th</sup> day of January, 2020.

  
\_\_\_\_\_  
CHAIR OF THE URBAN RENEWAL BOARD

Approved as to form:

  
\_\_\_\_\_  
CITY ATTORNEY



## Historic Preservation Tax Incentives

### New Construction within the Boundaries of Historic Properties

It is possible to add new construction within the boundaries of historic properties if site conditions allow and if the design, density, and placement of the new construction respect the overall character of the site. According to the Secretary of the Interior's Standards for Rehabilitation (<https://www.nps.gov/subjects/taxincentives/secretarys-standards-rehabilitation.htm>) – Standard 9 in particular – and the Guidelines for Rehabilitating Historic Buildings (<https://www.nps.gov/crps/tps/rehab-guidelines/rehabilitation-guidelines-1997.pdf>), new construction needs to be built in a manner that protects the integrity of the historic building(s) and the property's setting.

In addition, the following must be considered:

- Related new construction – including buildings, driveways, parking lots, landscape improvements and other new features – must not alter the historic character of a property. A property's historic function must be evident even if there is a change of use.
- The location of new construction should be considered carefully in order to follow the setbacks of historic buildings and to avoid blocking their primary elevations. New construction should be placed away from or at the side or rear of historic buildings and must avoid obscuring, damaging, or destroying character-defining features of these buildings or the site.
- Protecting the historic setting and context of a property, including the degree of open space and building density, must always be considered when planning new construction on an historic site. This entails identifying the formal or informal arrangements of buildings on the site, and whether they have a distinctive urban, suburban, or rural character. For example, a historic building traditionally surrounded by open space must not be crowded with dense development.
- In properties with multiple historic buildings, the historic relationship between buildings must also be protected. Contributing buildings must not be isolated from one another by the insertion of new construction.
- As with new additions, the massing, size, scale, and architectural features of new construction on the site of a historic building must be compatible with those of the historic building. **When visible and in close proximity to historic buildings, the new construction must be subordinate to these buildings.** New construction should also be distinct from the old and must not attempt to replicate historic buildings elsewhere on site and to avoid creating a false sense of historic development.
- The limitations on the size, scale, and design of new construction may be less critical the farther it is located from historic buildings.
- As with additions, maximizing the advantage of existing site conditions, such as wooded areas or drops in grade, that limit visibility is highly recommended.
- Historic landscapes and significant viewsheds must be preserved. Also, significant archeological resources should be taken into account when evaluating the placement of new construction, and, as appropriate, mitigation measures should be implemented if the archeological resources will be disturbed.


2007

Last updated: October 25, 2022

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EXPERIENCE MORE

#### SUBJECTS

Historic Preservation  
(<https://www.nps.gov/subjects/historicpreservation/>)

National Register of Historic Places  
(<https://www.nps.gov/subjects/nationalregister/>)

#### ORGANIZATIONS

Cultural Resources Partnerships and Science Directorate  
(<https://www.nps.gov/orgs/1345/>)

Technical Preservation Services (<https://www.nps.gov/orgs/1719/>)

# National Register of Historic Places

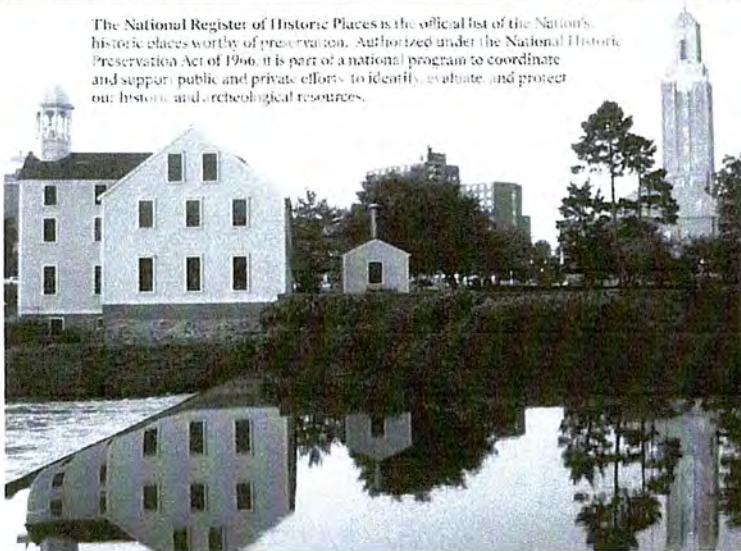
[https://www.nps.gov/subjects/nationalregister/upload/NR\\_Brochure\\_Poster\\_web508.pdf](https://www.nps.gov/subjects/nationalregister/upload/NR_Brochure_Poster_web508.pdf)

NPS Cultural Resources  
Washington, D.C.

National Park Service  
U.S. Department of the Interior



The National Register of Historic Places is the official list of the Nation's historic places worthy of preservation. Authorized under the National Historic Preservation Act of 1966, it is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect our historic and archeological resources.



Old Slater Mill, Providence County, RI  
Liz Thompson

## Who We Are

Properties listed in the National Register include districts, sites, buildings, structures, and objects that are significant in American history, architecture, archeology, engineering, and culture.

Listing properties in the National Register of Historic Places often changes the way communities perceive their historic places and strengthens the credibility of efforts by private citizens and public officials to

preserve these resources as living parts of our communities.

Nomination to the National Register plays an important role in preservation activities of federal agencies, state, tribal, and local governments, and private organizations.

All National Historic Landmarks and all historic areas in the National Park System are included in the National Register of Historic Places.

## What We Do

The National Register of Historic Places program reviews nominations submitted by States, tribes, and Federal agencies, and lists eligible properties in the National Register.

We offer guidance on evaluating, documenting, and listing different types of historic and archeological places through the National Register Bulletin series and other publications.

The National Park Service and National Register can

provide information on the National Register program, including lists of properties, nomination documentation, and information on preparing nominations.

Contact information for State Historic Preservation Officers, Federal Preservation Officers, and Tribal Historic Preservation Officers can be found on our website ([www.nps.gov/history/nr](http://www.nps.gov/history/nr)) or on reverse side.



McDougall-Sullivan Gardens  
Historic District  
New York County, NY  
Michael DeLeon



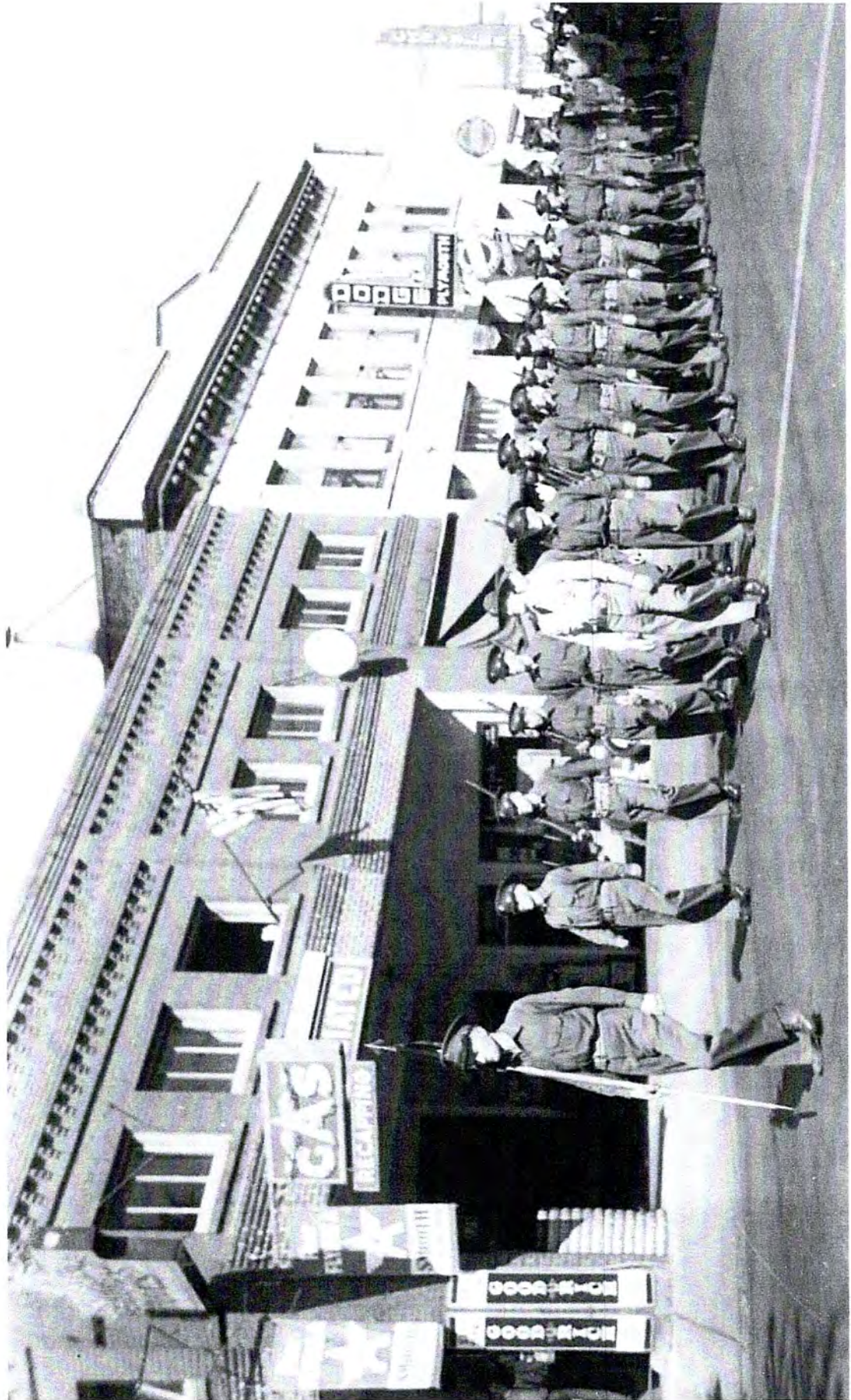
Angels Flight Railway  
Los Angeles County, CA  
Lacey Miller



Craigwood,  
St. Louis County, MO  
Doug Stone



Lindholm Oil Company  
Service Station  
Carlton County, MN  
Michael DeLeon





609 NE 3rd St: O'Dell Building



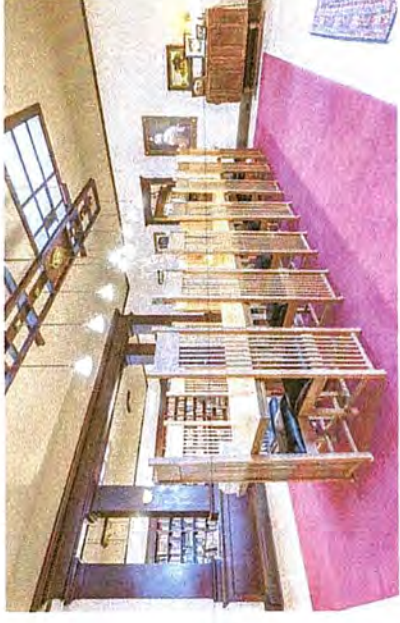
611 NE 3rd St: News-Register Building



619 NE 3rd St: Bennette Building



Building(s)	Address	Price	S.F.	Price/Gross S.F.
Historic Elks Lodge	520-532 NE 3 <sup>rd</sup> St.	\$1,513,400	19,400	\$78
Mack Theater/Hotel Yamhill	502 & 510 NE 3 <sup>rd</sup> St.	\$2,300,000	23,234	\$99
News-Register/Wild Haven	609, 611 & 619 NE 3 <sup>rd</sup> St.	\$3,475,000	18,188	\$191



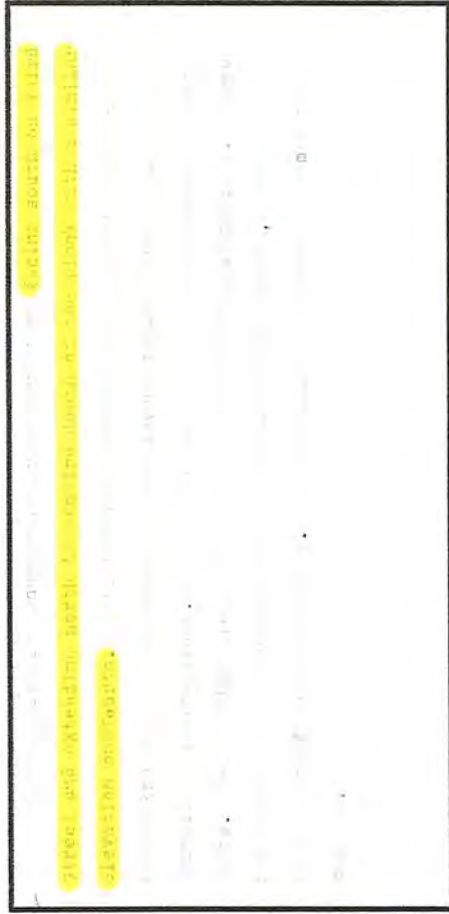
Historic Elks Lodge Listing Photos



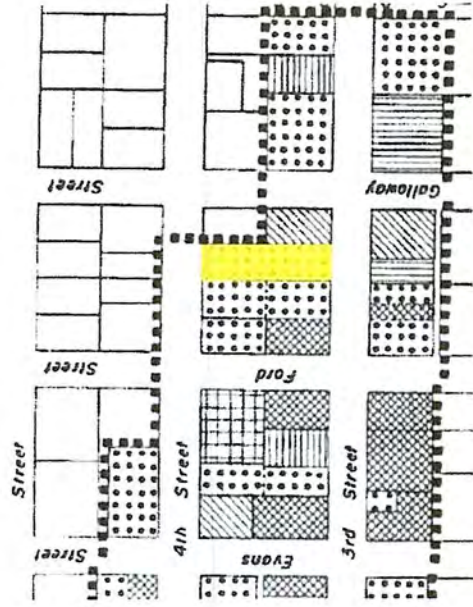
Front Half of the Bennette Building - 619 NE 3rd St.



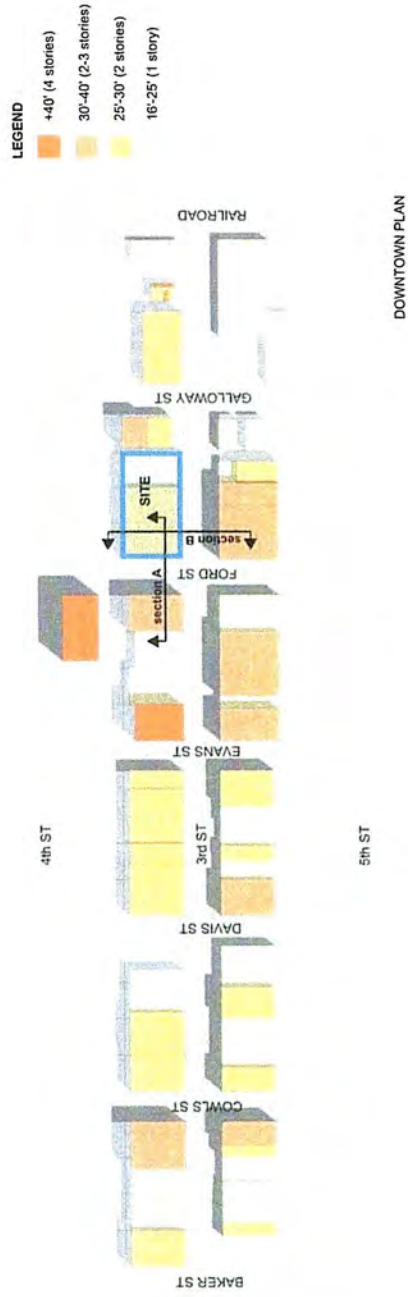
Back Half of the Bennette Building - 628/634 4th St.



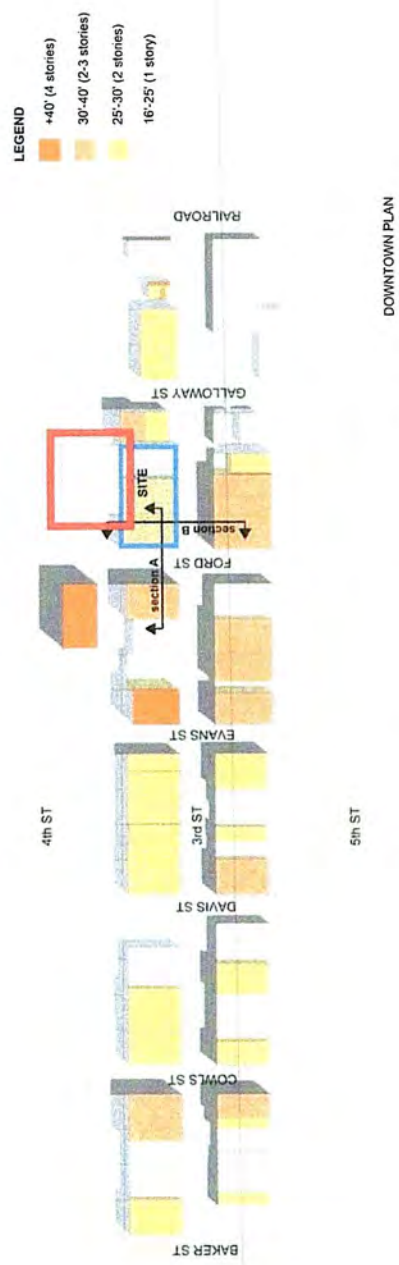
1983 Historic Resources Survey



Historic District Map



Inaccurate height study by applicant



Height study corrected by appellant

MZO 17.59.050(b)(1): Buildings should have massing and configuration similar to adjacent or nearby historic buildings on the same block.

The Bindery, 610 4th St: approx. 125,000 cubic ft.

Back Half of the Bennette, 628/634 4th St: approx. 125,000 cubic ft.

The Gwendolyn Hotel: approx. 1,005,000 cubic ft.

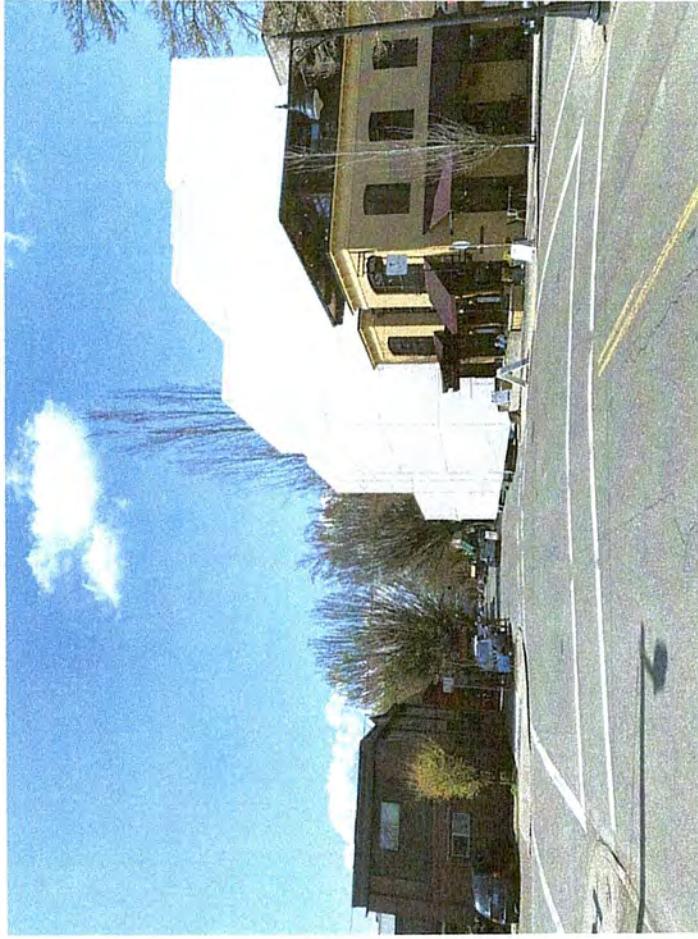
**800% bigger than historic buildings on the block**



Drawing by Appellant

Historic buildings in yellow, Gwendolyn in orange

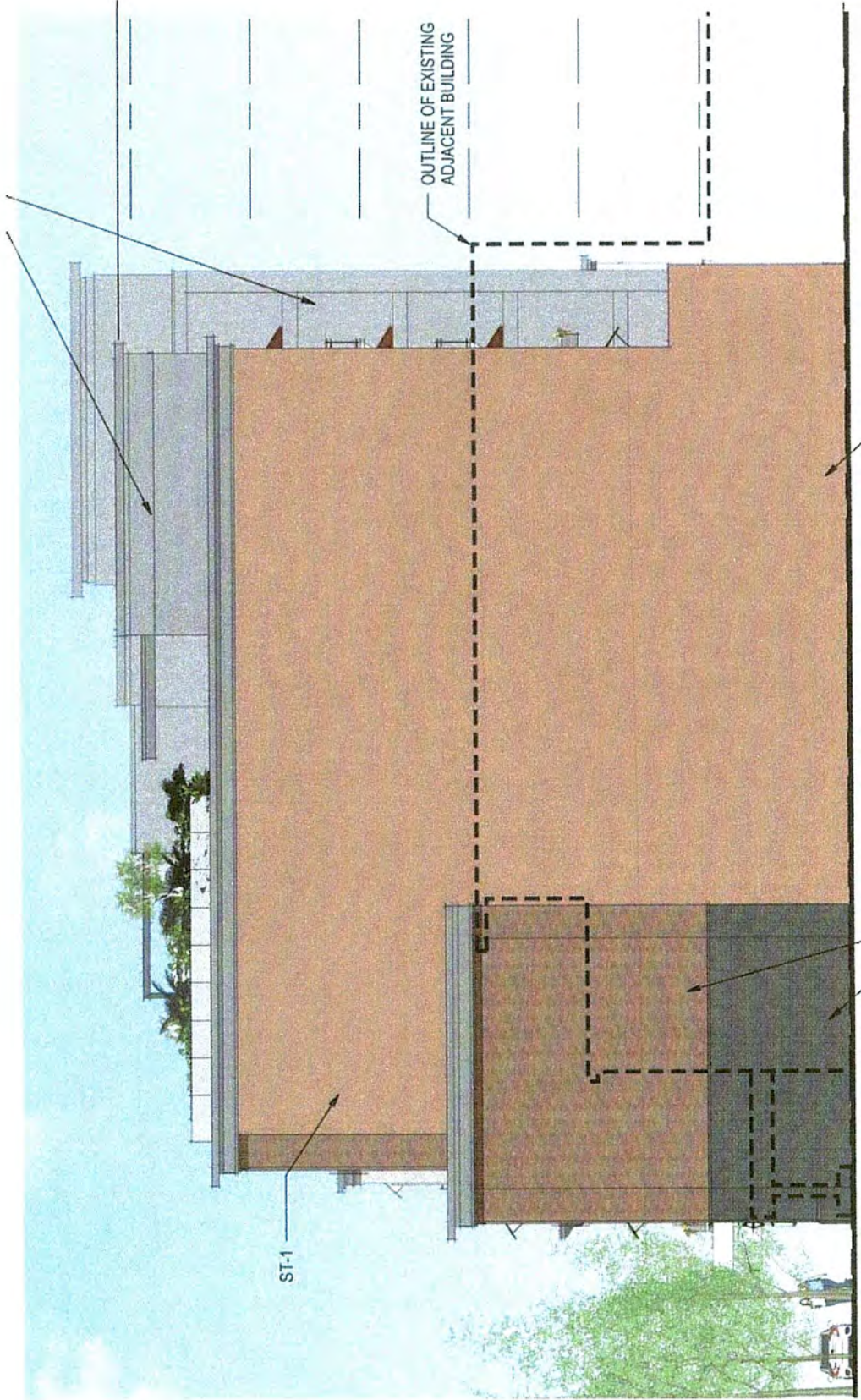




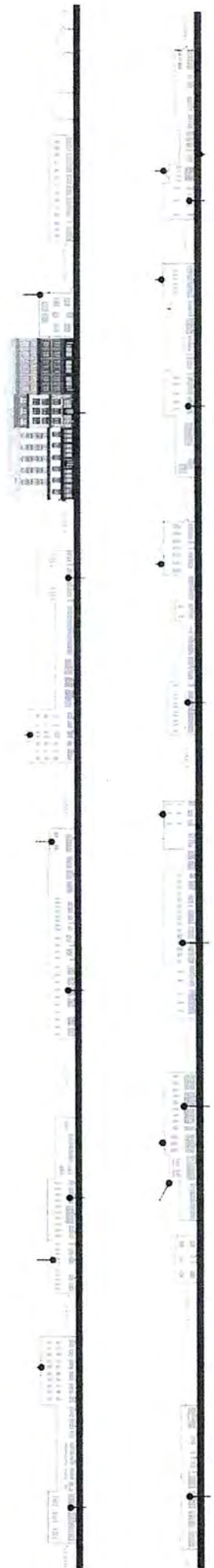
Third St. from the East - After



Third St. from the East - Before



Gwendolyn Hotel East Elevation



Historic 3rd Street, north blocks at top, south blocks at bottom

# New Construction within the Boundaries of Historic Properties

It is possible to add new construction within the boundaries of historic properties if site conditions allow and if the design, density, and placement of the new construction respect the overall character of the site. According to the [Secretary of the Interior's Standards for Rehabilitation](#) – Standard 9 in particular – and the [Guidelines for Rehabilitating Historic Buildings](#), new construction needs to be built in a manner that protects the integrity of the historic building(s) and the property's setting.

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- Historic landscapes and significant viewsheds must be preserved. Also, significant archeological resources should be taken into account when evaluating the placement of new construction, and, as appropriate, mitigation measures should be implemented if the archeological resources will be disturbed.

2007

# CLARIFICATIONS

- 1) **Parking** – the parking garage is not full. We have had discussions with businesses in the past about leasing spaces.
- 2) **Gwendolyn Hotel, Construction Details** – There is some public testimony about ADA compliance associated with the new construction, location of HVAC equipment on the roof deck, specificity of the interior design of the project, ROW design concerns. This is a review of the exterior of the building from a design perspective. Construction documents will be reviewed for compliance with ADA regulations, building codes, DEQ regulations, PROWAG and any other local, state and federal regulations associated with the actual construction of the project when applying for a building permit.
- 3) **New Construction in a Historic District** – “New construction should be distinct from the old and must not attempt to replicate historic buildings elsewhere on site and to avoid creating a false sense of historic development.” (*National Park Service*)

# The Telephone Register

McMinnville, Oregon, March 14, 1903

Reprinted from the Boston Transcript

The automobile is yet in its infancy and its cost confines it to the wealthy classes. These are making it a sporting vehicle, but this is only an ephemeral nature of the machine. He wants simplicity and compactness of machinery, a reduction of weight and certainty of operation, and his money is paying for experiments in this direction, and thereby contributing to the general good, for ultimately the machine is to come into general use and provide practical and valuable portion of the equipment of mankind.

The ruralist who is the chief critic of the new machine is too shortsighted and the greater of his present fears will never be realized. In fact, it promises him a large personal savings which he does not yet comprehend. The automobile of today, which excites his anxiety and fear is only the pioneer of a machine of but moderate cost which will soon replace his animals, costing him almost nothing for feed and maintenance, never getting sick and dying, and not eating its head off when not in use.

**From:** Heather Brower <hbrower@precisionimages.com>  
**Sent:** Thursday, January 5, 2023 10:46 AM  
**To:** Ernie Munch <Ernie@MAP-archplan.com>  
**Subject:** RE: Letter to Historic Landmarks Committee re: Gwendolyn Hotel Proposal

Thanks for trying to preserve history! My ancestors came across the trail and settled in neighboring Polk County. Every time I visit McMinnville, I think about walking on the same streets as my ancestors who probably traded and shopped for supplies there.  
I adore the historic feel of the city..it is what keeps me coming back to visit.

Go get em, Ernie!



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**Heather Brower**

Customer Service Representative

[hbrower@precisionimages.com](mailto:hbrower@precisionimages.com)

Office 503-274-2030

900 SE Sandy Blvd. Portland, OR 97214 [Website](#)

**From:** Ernie Munch <[Ernie@MAP-archplan.com](mailto:Ernie@MAP-archplan.com)>

**Sent:** Thursday, January 5, 2023 10:16 AM

**To:** Orders <[orders@precisionimages.com](mailto:orders@precisionimages.com)>

**Subject:** FW: Letter to Historic Landmarks Committee re: Gwendolyn Hotel Proposal

Please print 12 copies of the attached letter and attachments properly ordered and oriented. Staple upper left.

Please Call 503.936.1062 | cell with any questions.

Thank you,

Ernie Munch, Architect

Member

**MAP** Architecture

Ernie Munch • Architecture • Urban Planning, LLC

111 SW Oak Street • Suite 300 • Portland OR 97204

[Ernie@MAP-archplan.com](mailto:Ernie@MAP-archplan.com)

503.936.1062 | cell

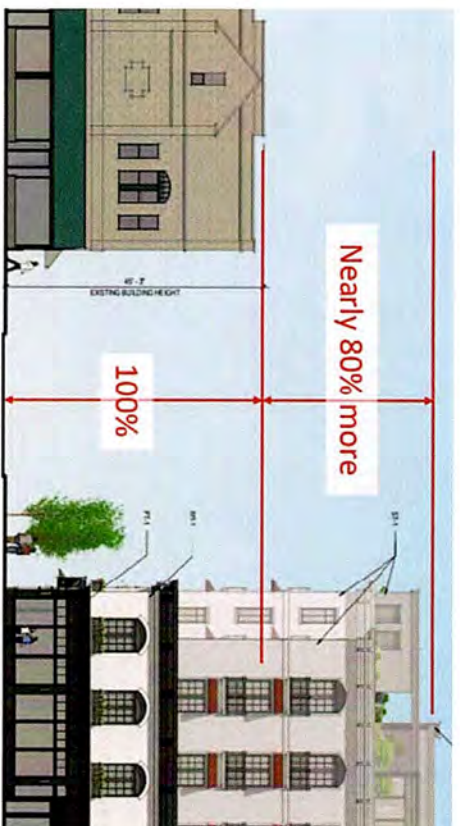
503.227.3660 | offic

17.59.050 Building & Site Design.

B. Building Design.

I. Buildings should have **massing** and configuration similar to adjacent or **nearby historic buildings on the same block,**

*block,*



Odd Fellows Building on 3rd St. Hotel N. Elevation



Type A Press & Bindery Event Space on 4th St.

Hotel N. Elevation

Derived from Drawing 1/A3.02



W. Elevation, View from Fourth

Derived from Drawing 2/A3.01

*Carol Radlock*





2 WEST - ELEVATION  
ASB SCALE 3/8" = 1'-0"

Drawing A3.01

MZO 17.59.050  
Building and  
Site Design.

B. Building Design.

1. Buildings should  
have massing and  
**configuration**  
similar to adjacent  
or nearby historic  
buildings on the  
same block...

Drawings by the Applicant.



AXONOMETRIC - MID-BLOCK

Drawing A6.02

17.59.050 Building & Site Design. B. Building Design.

1. Buildings should have massing and configuration similar to adjacent or nearby historic buildings on the same block...



Troon Vineyard Wine Bar



Jameson / Taylor-Dale Hardware Store on Third & Ford Streets



Odd Fellows Building on Third St.



Type A Press and The Bindery Event Space on Fourth St.

Most photos by the applicant.

## 17.59.050 Building & Site Design.

### B. Building Design.

1. Buildings should have **massing** and configuration similar to adjacent or nearby historic buildings on the same block...

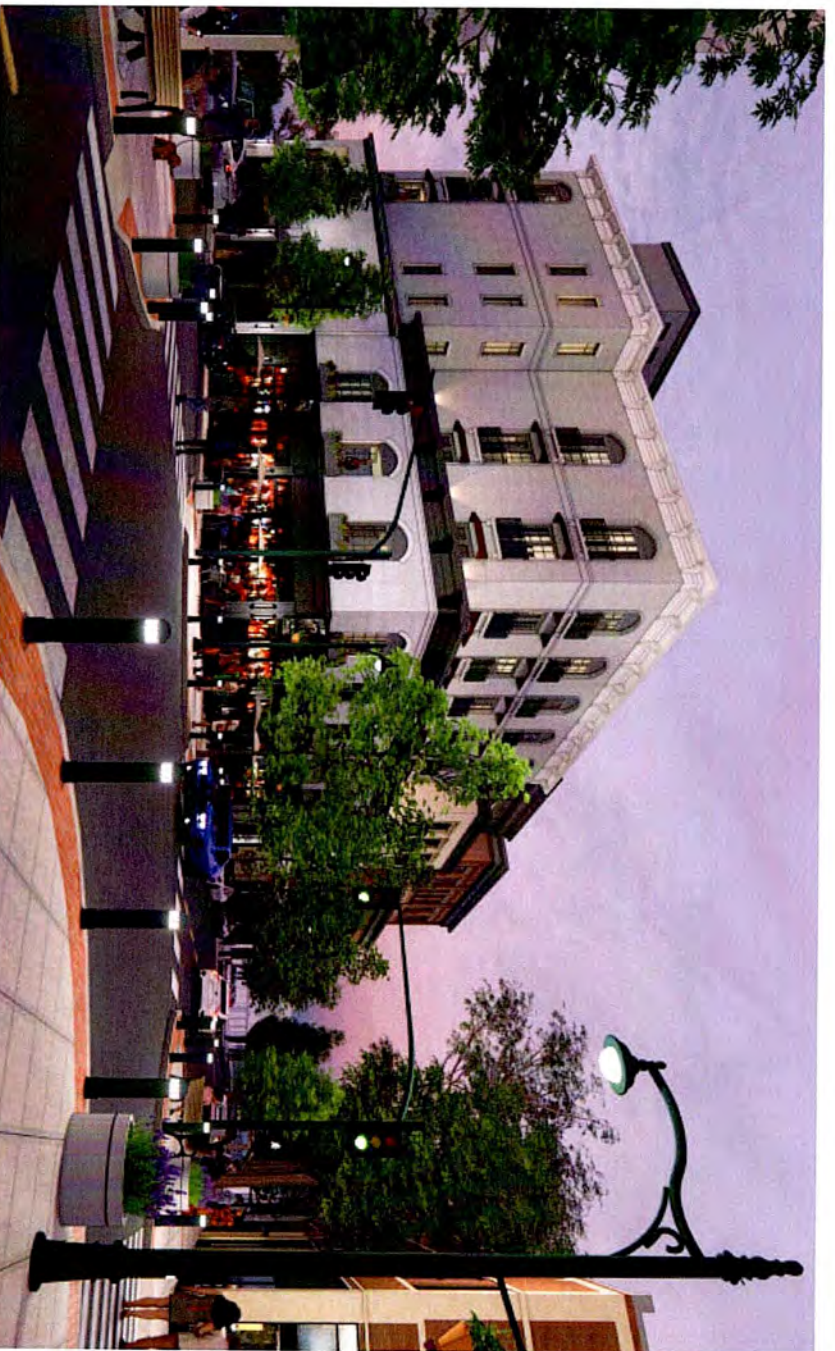


Derived from Drawing A1.01



Drawing A6.04

SIGHT LINE FROM FORD STREET SIDEWALK



VIEW OF GWENDOLYN HOTEL FROM FORD ST AND 3RD  
Drawing A7.04

## 17.59.050 Building & Site Design. B. Building Design.

1...Buildings situated at street corners or intersections should be, or appear to be, two-story in height.

Drawings by the applicant.

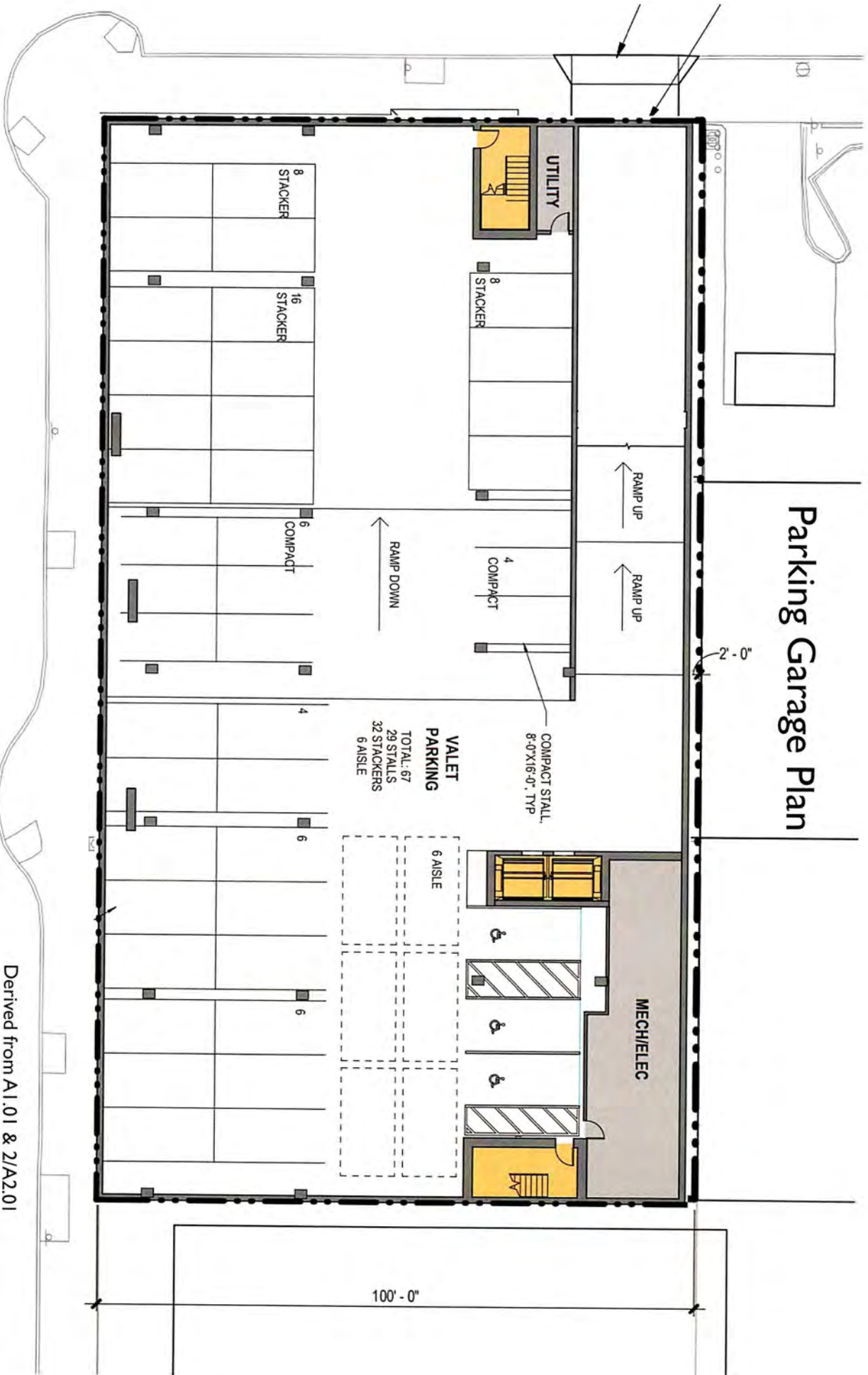


First Floor Plan

North Half of  
Bennette Building

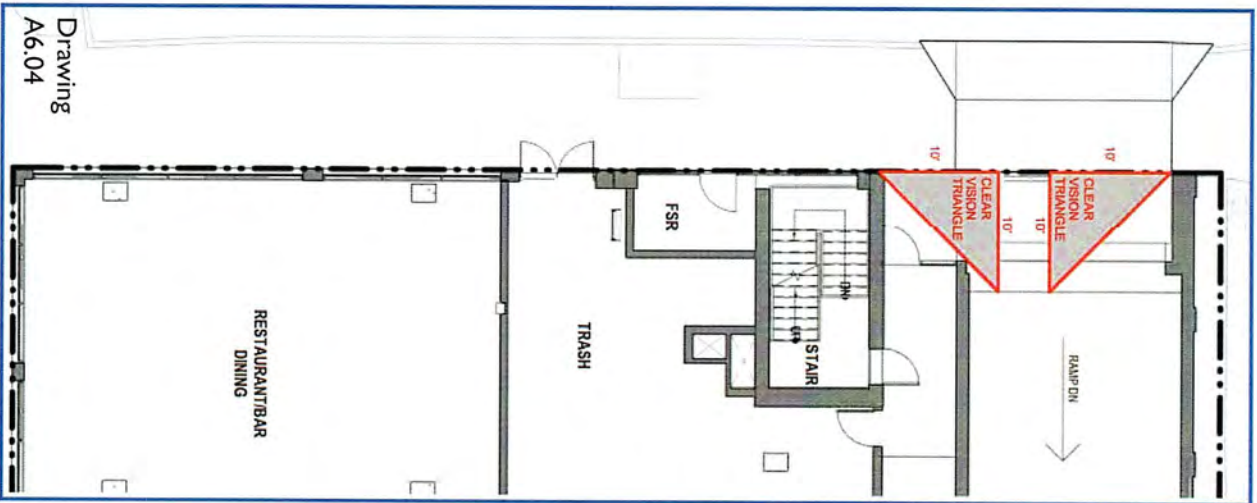
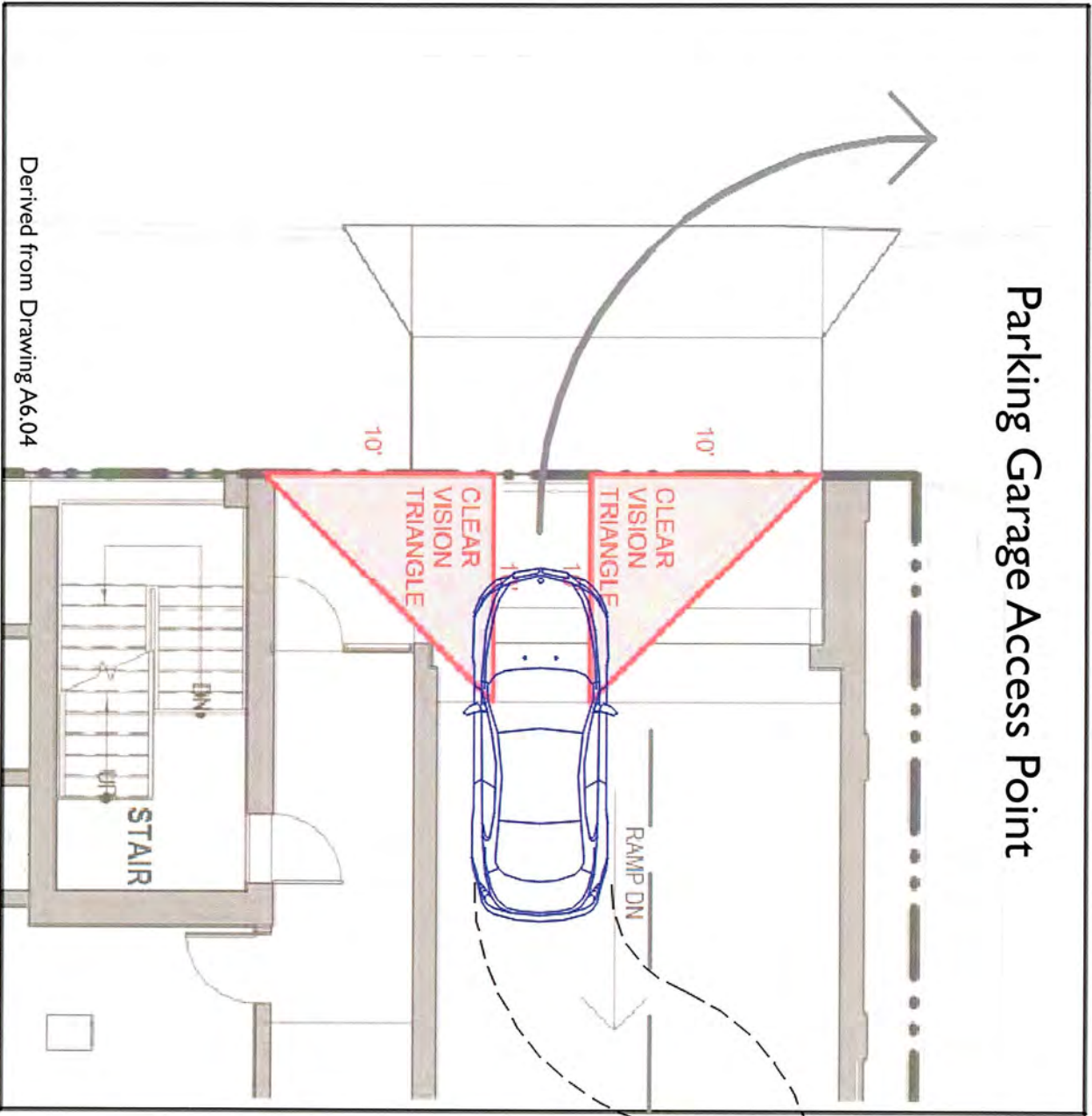
Derived from A1.01 & I/A2.01

# Parking Garage Plan

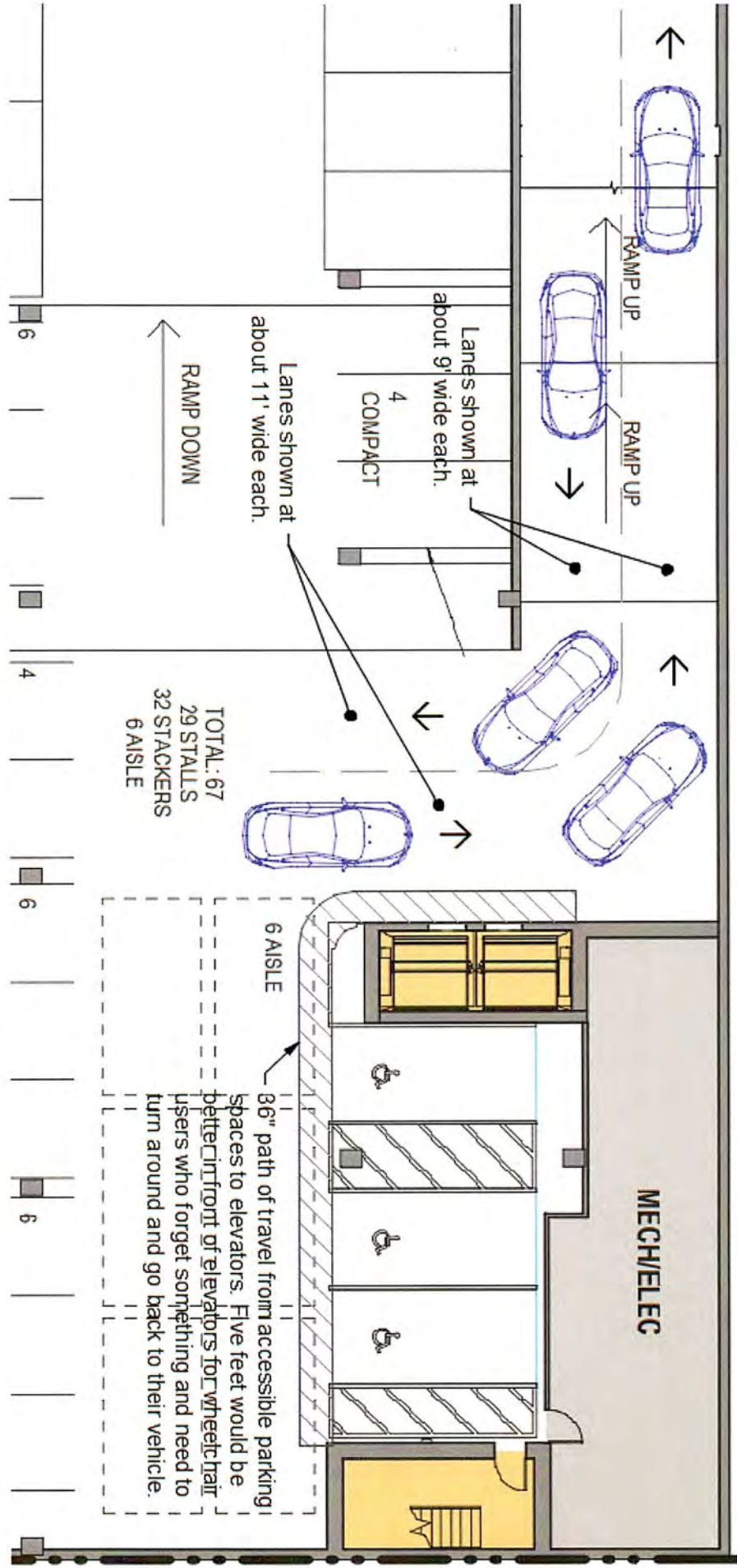


Derived from A1.01 & 2/A2.01

# Parking Garage Access Point

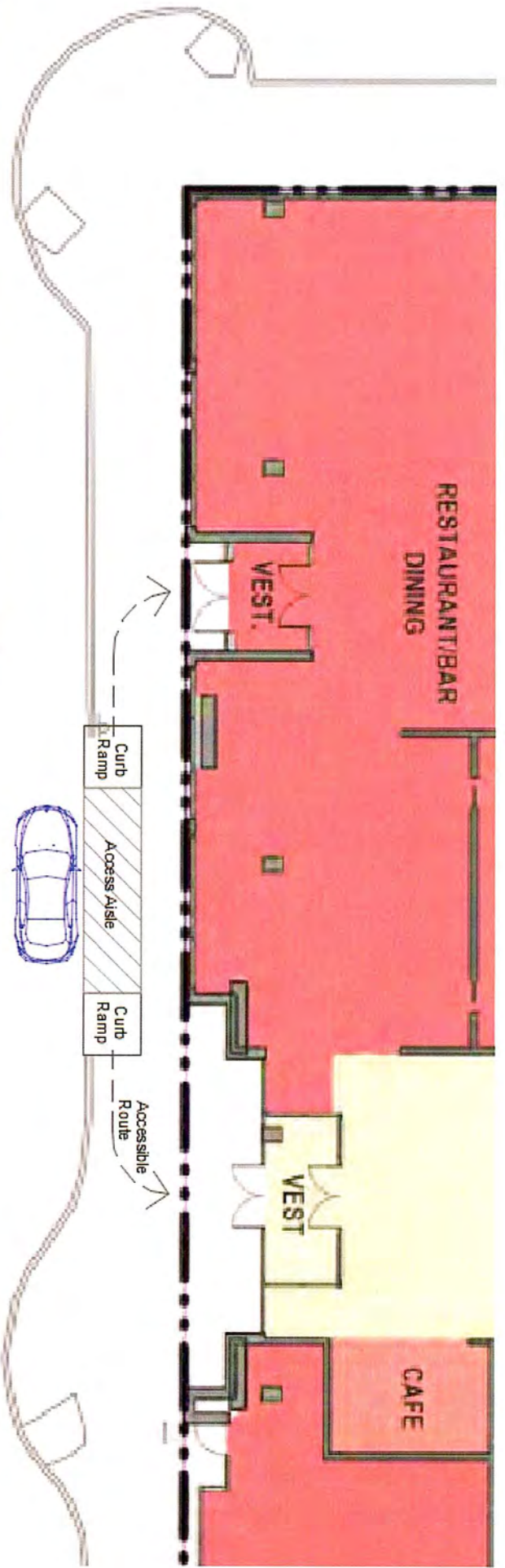


# Parking Garage ADA Issues



Derived from 2/A2.01





**3RD STREET**

# Accessible Passenger Loading Zone

Derived from Drawing A1.01 & I/A2.01

# Summer Solstice, June 21

Sun angle source: Mechanical and Electrical Systems for Buildings, 7th Edition



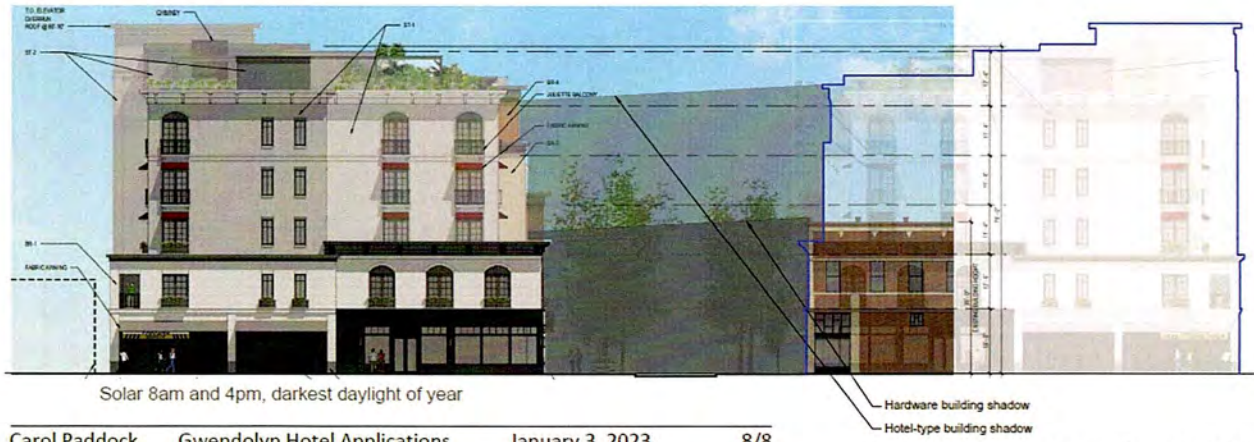
Solar noon, greatest light of year



# Winter Solstice, December 21



Solar noon, best light of the day



Solar 8am and 4pm, darkest daylight of year

**Memo:** Public Testimony

Gwendolyn Hotel – Appeal of Planning Commission decision, applications HL- 6-22, HL-7-22, HL 8-22, and DDR 2-22

**Date:** Monday, April 18th, 2023

**By:** Nathan Coopridner

Dear Mayor Drabkin and McMinnville City Councilors:

As I understand it, this hearing is a 'de novo' review of 4 independent, yet each very significant proposals within the National Downtown Historic District. Your decision will be an extremely consequential one for the future of McMinnville, as an approval would forever blemish and drastically alter the character, course, and integrity of "America's 2<sup>nd</sup> Best Main Street" (*Parade Magazine*, 2014). This will set the downtown on a completely different direction than the one which, time and time again, the community has voted and enacted ordinances to uphold. That is the direction of Historic Preservation of the National Downtown Historic District, and, when infill is required, strict adherence to the downtown design standards and guidelines.

It is unfortunate to see such a decision made under duress. A challenging proposal being pushed through by appeal, and in disregard of the good work to be found within the Historic Landmark Committee's deep, thorough and detailed review of these proposals. Why not simply go back to the drawing board? It was very unsettling in the applicant's appeal applications to see, in my opinion, the Historic Landmark Committee's work almost universally criticized, and then these critical remarks seemed to morph into a critique amongst some in the public against the very purpose of historic preservation. It just doesn't pencil.

Now this appeal by Mr. Daniel Kiser, comes before you, where 1000's of pages of documents and hours and hours of testimony require review. This situation is not created by fair, factual and caring testimony provided by citizens and experts, or by a citizen funded public appeal process. This situation is not created by the hard and diligent work of the City review body's. It is my opinion that this pressure is created by the applicant themselves. Why is such a mountain of paperwork and hearing after hearing required? Why are unprecedented demolitions concurrently submitted with the review of an out-of-scale and inadequately developed replacement building? All while, as added to the record, the City Planning Department is under staffed. Why not simply work with the Historic Landmark Committee, incorporating their feedback with revised proposals addressing the criteria?

The City and the community appear to me to be subject to a pressure for approval without compromise.

Adding to this pressure, is a good deal of very confusing information. One of the final items submitted by the applicant during the Planning Commission hearing were drawings of a completely different building design (*an Otak memo dated March 9<sup>th</sup>, 2023, subject: "Gwendolyn Hotel – Response to March 2, 2023 Planning Commission Comments."*). It remains unclear what the purpose was for submitting additional building design drawings to the Planning Commission at the final hour. These drawings included irrelevant building perspectives, street sections, and even the indication of a potential fourth historic building demolition facing 4<sup>th</sup> Street. If building drawings are submitted to show how a proposed design fits into its context, it is VERY important for those drawings to actually include **the building design that is being proposed**. How did this additional information impact the Planning Commissioners? What building designs were they were actually approving?

Going further back to the end of the deliberations of the Historic Landmark Committee, there was a discussion about what additional conditions of approval the applicant might be open to. At that juncture, a Committee Member asked the applicant if they would be willing to consider removing a single floor from the building design as a condition of approval. The answer given was no. (*Please see video recording of the final HLC hearing for the precise wording of question and answer*).

During the Planning Commission hearing, when asked by a Commissioner if the applicant would invest in the community if this design and 3 demolitions were not approved, the answer given was something to the effect of, no – we will take that as a sign that McMinnville does not want our hotel in this community. *(Please see video recording of the first PC hearing for the precise wording of question and answer).*

As much as my heart dropped when I heard that, I thought to myself “this is not how I would communicate with a jurisdiction that I want to collaborate with”. I realize now in retrospect what an incredible pressure this could put on McMinnville's chosen decision makers, who do appear very much to want additional hotels and investment in construction or renovations. Just to make clear – I have always testified that growth, and change, and investment are both wonderful and necessary. But no investment is a reason to abandon the rules that are put in place to protect such a priceless heritage as the National Downtown Historic District.

I attended the Planning Commission hearings on the applicant's appeal before the Planning Commission. In the brief deliberations open to public view, much of the conversation veered from the approval criteria.

One item of particular importance stuck out to me: (meeting packet pg. 394 of 401, emphasis added) “Commissioner Murray valued the community and the historic significance of these buildings. However, that did not outweigh the opportunity they had. Based on **staff's recommendation** and the conditions of approval, moving forward was in the best interest of the community. They had good community partners at the table.”

But Heather Richards Planning Director was very clear during the hearing: The Staff was not a decision maker, and **Staff was not providing a recommendation** to the Planning Commission.

It is possible the “*staff's recommendations and conditions of approval*” Commissioner Murray was referring to, was the earlier “soft recommendations” found in a previous Staff Report, dated 1 / 5 / 2023. These were the recommendations that the applicant was asking the Planning Commission to adopt in their appeal.

One major problem with this is that, for unknown reasons, in that 1 / 5 / 2003 Staff Report, the Staff had changed their position on the Massing Criterion. No longer was the specific wording “on the same block” to refer to the entire block. Here, in this 1 / 5 / 2003 Staff Report, is the ONLY time I have ever seen the criterion interpreted in this way. However, the HLC, in their subsequent deliberations after these “soft recommendations” were made, confirmed the common understanding of the wording “on the same block” to include the entire block not just one frontage, and also concluded that “adjacent” historic context (across the street from a site) was also a factor for consideration. This is a generous interpretation by the HLC. But not as ‘generous’ as the idea that the only thing one needs to consider is similarity to “the rest of Third Street”. Reinterpreting the code in new and different ways is not the task in this review process, of a single project no matter how desirable it may be.

Nonetheless, in my opinion, this is the erroneous finding which opened the door to the Planning Commission approval. And this erroneous finding was adopted, word for word, in the approval by the Planning Commission.

Excerpt from Staff Report, January 5, 2023 (and basis of Planning Commission findings):

corner/intersection as shown on Sheets A3.01, A6.01, and A6.04. The ground floor is a generous 15' in height to allow for a variety of commercial uses, including restaurants and retail.

**FINDING: SATISFIED.** As the applicant points out this criterion is a "should" and not a "shall" criterion, meaning that it is considered a guideline and not a requirement, which provides the Historic Landmarks Committee some discretion that is defined by past precedence.

The Historic Landmarks Committee has established a precedent previously where this criterion was not considered a requirement for new construction, (the KAOS building, the First Federal building and the Atticus Hotel). In those circumstances, either the guideline for a building with similar massing and height to other historic buildings on the same block and the appearance of two stories on the corners at intersections were not required.

In regards to the first guideline, the language is specific about massing and configuration similar to adjacent or nearby historic buildings *on the same block*. For the Third Street side of this project, if the three Certificate of Approvals for Demolition for 609, 611 and 619 NE Third Street are allowed, which would be necessary for this project to move forward, **there would be no historic buildings left on the Third Street side of this block.** This same precedent for decision-making was applied to the First Federal new construction project.

The question then is whether or not the massing and configuration are similar to the rest of Third Street. In their original application, the applicant provided a height study of the downtown historic buildings to demonstrate that many buildings in downtown McMinnville were three and four-story buildings with rooftop amenities, and several that were in the immediate vicinity of this project were 40' in height as a vertical plane from the property line, and some such as the Atticus Hotel and McMenamin's Hotel were taller. Per the amended submittal provided by the applicant on November 4, 2022, the design of the project is still five-stories with an active roof-top program, however, the original design was modified so that the façade appears to be three separate buildings in order to reduce the massing and configuration of the original design and the three faux buildings all incorporate setbacks of varying degrees in the upper floors in order to offset the massing and configuration as well.

The Historic Landmarks Committee has also established a precedent of allowing new construction buildings greater than two-stories at the intersection with the First Federal Building (three stories), the KAOS building (three stories) and the Atticus Hotel (four stories). In some cases, a setback was required (the KAOS building) and in other cases, the taller height was allowed

Per the amended submittal provided by the applicant on November 4, 2022, the design of the project was modified so that the height of the vertical plane from the property line reduced to a two-story height at the corner by the intersection.

The very occurrence of this finding in the 1 / 5 / 2023 Staff Report was shocking because it appears to relieve the applicant from the very important requirement of relating to the immediately surrounding building context. *(Please refer to my testimony from 4 / 10 2023, referencing NPS "New Construction within the Boundaries of Historic Properties")*. Due to the fact that the design changes submitted did not diminish the overall massing, the uppermost roofs, parapet and elevator shaft, it is a shock to find this new interpretation being introduced, and these conflicting recommendations indeed should have been reviewed with the utmost specificity by the Planning Commission.

In the excerpt below, you will see Staff's initial stance on the massing criterion, which at that time was being considered through the waiver process as submitted by the applicant. You will see no relief being provided by Staff, nor any indicating that no historic context remained. To the contrary, the Staff recommendation was that a waiver request would be required – as the overall massing and configuration was not approvable. This is consistent with how the Staff has handled all other projects that I am aware of.

Excerpt from September 29<sup>th</sup> Draft DDR 2-22 Decision Document:

**FINDING: NOT SATISFIED.** The applicant requested a waiver from this section of the code based on the premise that the two-story limitation was based on appearance and not literal and provided a height study to demonstrate that the applicant's proposed height at the street corner of Ford Street and Third Street appeared to be the same height as buildings around it at that intersection based on height and not number of floors. However, the applicant failed to provide enough information to create a finding for Section 17.59.040(3)(a), which means that the waiver is not available. This code criteria has two components though – 1) "buildings should have the same massing and configuration similar to adjacent or nearby historic buildings on the same block"; and 2) buildings situated at street corners or intersections

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Attachment 1: Application and Attachments  
Application Form  
Application Narrative  
Redevelopment Plan  
Neighborhood Meeting Materials  
Attachment 2: Department/Agency Comments  
Attachment 3: Public Testimony

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DDR 2-22 – Decision Document

Page 37

should be, or appear to be, two-story in height. The applicant did not request a waiver for the first component of this code criteria, and has not shown how the proposed project with a 180 feet length and 98 foot depth, six stories tall, is similar massing and configuration to adjacent or nearby historic buildings on the same block.

I am grateful that this is before you, and that you do have the opportunity to deliberate on the precise requirements in the code, and weigh all the information – including the deliberations of both the HLC and the Planning Commission. (For the HLC deliberations you will need to review the video, as I do not believe there is a read-out or other notes of the deliberations that took place). I am also grateful that you will have the chance to weigh additional facts and testimony being provided by concerned citizens including many experts in the field. I especially commend the testimony of Carol Paddock, and the appeal application narrative of Daniel Kiser, and the due diligence of architect Ernie Munch, historic preservationist Katherine Huit, and many other who have submitted important facts starting at the beginning of this public process up to this hearing.

It is my professional opinion that this proposed design does not meet criterion for:

MZO 17.59.050.A. Building Setback. (the upper floor setbacks, especial at the corner, are not in compliance with this 'shall' guideline, and they do not meet the intent of this criterion, as indicated in the "Purpose" of "building on the "main street" qualities that currently exist". The main street qualities, especially for corner building massing, is a zero setback at sidewalk property lines. This is an essential main street quality, and should especially not be violated by a proposed corner building taller than anything else in the district. (Please refer to my testimony from 4 / 10 2023, referencing NPS "New Construction within the Boundaries of Historic Properties").

But this building should never be allowed to be the tallest in the district, due to it's surrounding historic buildings:

MZO 17.59.050.B. Building Design.

1. Massing and Configuration. (See previous testimony).

2. Proportional bays similar in **scale** to other adjacent historic buildings and reflecting historic property lines. (See previous testimony). (emphasis added)

And the below issues, while potentially correctable (unlike the two points above), are indications that this design, in its current state, does not adhere to the code's purpose and of fitting into the district:

- 3.) Beltcourse (proposed design displays a lack of understanding of the important patterns of the district for upper floors above the beltcourse)
  - 6.) Window recess (The upper floor opening are mostly French doors, not windows).
  - 8.) Building Base: This proposed design sets one building on top of another, rendering impossible to decipher what is the base.
  - 9.) Building Materials: Painted composite paneling is not listed, but elsewhere in the district has been used on back elevations as it has a cheap appearance. Here it is used as the primary material at pedestrian level at the corner.
- MZO 17.59.070. Awnings: Upper floor awnings and main entry awning do not appear to meet all of the requirements, nor exist anywhere else in the district. Here these are very prominent features of this design proposal.

Additionally, the lack on a handicap passenger loading zone on the property is not correctable. This important function must be accommodated for this design to function and for the long term benefit of the community. The long term benefit is extremely important when developing in the district. Another short sighted issue is that half of the hotel rooms have windows very close to the rear property line. If this hotel sets all kind of new and dangerous precedents taking the downtown in a completely different direction from the codes that are in place, what is to keep the next applicant from building to 80' directly behind the Gwendolyn Hotel and completely blocking the view from half of the rooms and the rooftop restaurant? McMinnville has design and preservation codes to protect its district and the future through smart and careful planning. It is my opinion that in many ways, the long term view was not taken, and this design could possible be, mostly an attempt to test whether an weakly justified demolition in the National Historic District is allowed, and if your design code can be violated.

Thank you for your careful review and the great service you are performing for the people of McMinnville and beyond.

Sincerely,  
Nathan Coopridner

Additional input regarding setback / setback:

I have seen where other jurisdictions have incorporated a "step back" as a design standard (not necessarily in a small town National Historic District main street though). But it is **not** included in the McMinnville Downtown Design Standards and Guidelines. When jurisdictions do have a standard, they spell out specifically the parameters and goals of that requirement, including things like how far of a step back, at what height, for how many stories, etc. Due to the lack of a standard, this is not in affect in downtown. The "setback" standard is of utmost importance to building on the main street qualities that exist. This needs to be applied to every project, and where exceptions are proposed, that should be sought through a waiver request.

Additional info about demo:

In looking much closer that the renovation budget number provided by the applicant (Cost Estimate Scenarios, Supplemental Materials, 03.13.23)., I notice that there is not much breakdown at all, just large lump sums. There is also not a design plan for the "Office without Seismic Work" option, which means that there is not much info for a builder to develop more detailed cost estimates from. I also believe that Commissioner Langenwalter's very specific questions (for 6 options, all related to a more minimal remodel approach) were not answered by the applicant. They did provide 3 cost estimates, and only one represented the 'minimal' approach to occupy the building productively, including the existing 2<sup>nd</sup> floors. There are no as-built floor plans of the first or second floor. There are no building sections.

There was a list of financial incentives and programs for renovation provided by the applicant, but no indication of how those programs would impact their renovation budget.

I don't think these claims can be supported by facts (from City Council meeting Packet):  
387 of 401: "No reasonable developer would acquire these buildings with the thought of renovating them" There is not evidence provided to support this claim. Only the applicant's own spreadsheet which lacks detail.

609 NE 3rd Street (HL 6-22) – Response to requests for additional information

November 4, 2022

**APPLICANT RESPONSE:** The applicant has provided the following additional information as described in Attachments 4-8:

- Phillip Higgins, a licensed commercial real estate broker, has provided a memo addressing existing net income, net income of a fully-leased building at market rate, and an evaluation of the existing rental/lease market. This memo includes high-level profit and loss information. See Attachment 4.
- 2022 Yamhill County Tax Assessor data including Assessed Value, Taxable Value, and Real Market Value and property taxes paid between 2018 and 2022 has been provided. See Attachment 5.
- An estimate of the cost of rehabilitation of the property from Hugh Construction, which is an entity separate from Hugh Development, provided the enclosed pro-forma showing the costs and likely returns from rehabilitation of the three structures. While no other contractors could provide an estimate without a more developed renovation plan set, **the contractors Hugh consulted confirmed that Hugh Construction's estimate was reasonable.** See Attachment 6.
- A report of available economic incentives for rehabilitation of the existing buildings is included as Attachment 7.
- A report by Johnson Economics comparing the economic value of the project vs. preservation of the buildings is enclosed as Attachment 8.

It is difficult to provide a independent review of the applicant's spreadsheets because they lack detail. For instance, in the above excerpt from the record, you see that the applicant states that : "no other contractors could provide an estimate without a more developed renovation plan set". This make it also not feasible for the public to independently verify the accuracy of the renovation budgets proposed, or to ask meaningful questions. Perhaps more detailed budgets should have been provided. The only verification is that "the contractors Hugh consulted confirmed that Hugh Construction's estimate was reasonable." But I don't know how they could do that if they didn't know what the plan was. The question is if there are alternatives for a more reasonable priced renovation. My professional opinion is that, yes, there most definitely are. However, it requires deeper study, design work, and creatively exploring solutions, and there is no example provided of this occurring in the record. There are claims that other buyers came with architects, but again, there is no evidence provided as to why they did not pursue renovation projects. There are a multitude of possible reasons, so of which I hope are addressed in other testimonies.

Thank you,  
Nathan Cooprider



4/18/23  
DA

April 16, 2023

McMinnville City Council  
230 NE 2<sup>nd</sup> Street  
McMinnville, OR 97128

Dear McMinnville City Council,

Thank you so much for your service and the countless volunteer hours you contribute to weigh important decisions on behalf of our entire community. We appreciate your efforts to consider all the variables in complex situations and know that unless people step up and provide you with real time information, it's difficult to factor the impacts of your decision making.

We feel it's important to raise the issue of the state of our hospitality workforce and enter it into public record as a part of the demolition applications put forth for three historic buildings in downtown McMinnville. The developer of the Gwendolyn Hotel project has laid out several benefits to the city of McMinnville which they feel outweigh the value of the three historic buildings they are asking to demolish—the creation of 72 hospitality jobs has been a key point in their application. As members of our local restaurant community, we do not see this as a benefit to our community, but rather feel strongly it will wreak havoc on an already broken system. We fear that a project of this scale will destabilize our local workforce and hurt our existing small businesses.

McMinnville is in the throes of a hospitality workforce crisis. Our local restaurant industry was badly damaged during the pandemic, and we have not yet recovered our most important asset: our people. We currently have a broken workforce pipeline and do not have the workers we need to operate our businesses in a strong and stable way.

McMinnville's brand of tourism is based on food and beverage, and yet the restaurant industry in our community continues to struggle. This past December we saw three restaurants close—Red Fox Bakery, Community Plate and Red Hills Kitchen. Additionally, Rib Slayer sold, and the new owner ultimately decided to let the lease go rather than reopen. This month Pura Vida announced they would no longer serve dinner, and Cypress, the new restaurant at the Atticus Hotel, has been very open about a lack of employees stalling their opening and reducing the days they will be able to operate.

In every one of these situations, the difficulty of finding and maintaining a skilled workforce has been a core issue. Our existing small businesses do not have the people they need and every time a new restaurant opens it puts further strain on an already broken system. This is a well-known and well documented issue in our industry. Last year Visit McMinnville's own CEO, Jeff Knapp, won an award from the governor for his work to bring this issue to the forefront and start working towards long term solutions to a problem that is crippling at the ground level for small businesses. Travel Oregon has made the hospitality workforce crisis a key issue in their ten-year strategic plan, and the hospitality industry as a whole is lobbying at the state level for more funding for workforce resources, education and training.

We know that for most of our lives job creation has been the key to stability for communities, but these are not normal times. While most industries have ongoing workforce struggles, the struggle for hospitality workers remains pervasive and unique. Job creation sounds like a good thing until you understand the real-world impacts for a small town.

Thank you again for all your hard work, and for considering the challenges of operating a hospitality business in our community. We hope you understand our concern about how a project of the Gwendolyn Hotel's scale will negatively impact our local workforce and small business community.

Respectfully,

Scott & Courtney Cunningham  
Jeremy Whyte, Kyle Munroe  
**Pizza Capo**

Cindy Lorenzen  
**The Sage Restaurant**

Patrick Bruce  
**Thistle**

Diana Riggs  
Kari Kihara  
**Mac Market**

Michelle Grannis  
Travis Bird, Henry Kibit  
**Cypress Restaurant**

Kristen Schofield  
**Harvest Fresh**

Carmen Pierano  
**Nick's Italian Café**

Kathy Stoler  
**La Rambla**

4/18/23  
DA

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# Willoheart Enterprises

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## MEMORANDUM

**Date:** April 17, 2022

**To:** Mayor Drabkin and the McMinnville City Council

**From:** Katherine Huit, Historian, CRM

**Subject:** Gwendolyn Hotel – Appeal of Planning Commission decision, applications HL-6-22, HL-7-22, HL-8-22, and DDR-2-22

Honorable Mayor and City Council,

I come to you as a professional historian, Certified Records Manager, and life-long resident of McMinnville. I've been writing about McMinnville as a unique and progressive city for many years, with my most recent effort resulting in the publication of *At Your Service: The Story of McMinnville Water and Light, One of the Oldest Municipal Utilities in the West*. I entered the heritage field as a professional about the same time as McMinnville's old town became a recognized National Register-listed Historic District and I've held roles as a museum curator, museum executive director, director and government relations chair for the Oregon Museum Association, staff for the Heritage Division of Oregon's State Historic Preservation Office and throughout the last 35 years, as a heritage consultant when the time and opportunity presented itself. During the early years of my career, I sat in a smaller space on this very property before a different mayor and city council, to do the same thing I'm to do today. Then it was about saving the historic Cozine House at a time when it faced the wrecking ball. History shows our efforts paid off and today the Cozine House is the home of the McMinnville Downtown Association. Today, I bring testimony to you because I believe in the incredible benefits of historic preservation on many levels and, perhaps more importantly, I strongly believe that McMinnville's Downtown Historic District is in jeopardy. My strong beliefs also led my testimonies before the Historic Landmarks Committee (9/5/2022) and McMinnville's Planning Commission (3/2 and 3/16/2023), included as part of the record.



The Historic Cozine House before restoration



The Historic Cozine House after restoration

The first survey of historic structures in this city took place during America's bicentennial year, 1976, which is also the 100<sup>th</sup> anniversary of the incorporation of McMinnville as a town. Many volunteers partnered with city staff to conduct additional surveys in 1980 and 1983/84, resulting in the Historic Resources Inventory.

After about a decade of hard work defining and identifying historic properties, and creating comprehensive plans for the preservation and protection of the same, the City of McMinnville committed to creating a downtown historic district, which not only benefitted local heritage preservation and tourism, but also focused national attention upon McMinnville as one of the best main streets in America. Those early efforts resulted in a long-term commitment embedded in the McMinnville City Code. Today, the city uses several ordinances to guide its work relevant to historic preservation, including Ordinance 5034 (relevant to Downtown Design Standards and Guidelines (Chapter 17.59); Historic Preservation (Chapter 17.65) and the Applications and Review Process (Chapter 17.72) for the Preservation of Historic Resources in McMinnville and properties in the Historic Downtown District); Ordinance 5035 (relevant to the Historic Landmarks Committee, previously part of Ordinance 4401); and Ordinance 5068 (McMinnville Historic Preservation Plan, Chapter III (Cultural, Historical, and Educational Resources) of the McMinnville Comprehensive Plan and adopted as an appendix to the same). The Historic Landmarks Committee reviewed Ordinance 5034 in 2016 and 2017, ensuring its alignment with Oregon Administrative Rule 660-023-0200 (known as the Historic Resources rules), which also aligns and complies with the Oregon Statewide Planning Program’s Goal 5. After Planning Commission review and approval, the amended Ordinance 5034 made its way to the City Council, which received and reviewed all relevant information and agreed the ordinance conformed to the applicable Comprehensive Plan goals / policies and McMinnville’s Zoning Ordinance. The City Council passed the Ordinance 5034 amendments unanimously on August 8, 2017. Mayor Scott Hill, Planning Commissioner Chair Roger Hall and Planning Director Heather Richards all signed the decision approval. A specific finding in the Ordinance 5034 states, “*Goal IV 4 and Policy 38.00 are satisfied in that the amendments to the Downtown Design Standards and Guidelines chapter of the McMinnville Zoning Ordinance will allow for the City to ensure that buildings are renovated and rehabilitated to meet the already adopted standards. The historic character of the downtown area is one of the reasons that the downtown area is a cultural center of McMinnville. Having a thorough review process in place will ensure that alterations to buildings in the downtown area will meet design standards and continue to contribute to the cultural and historical character of the downtown area.*” This is a fact.

Oregon’s Statewide Preservation Plan seeks to increase the number of listings in the National Register, maintained by the National Park Service under the authority of the National Historic Preservation Act (NHPA) of 1966. The 57-year-old NHPA advocates for the past and helps to save landscapes and structures that “*serve[d] as witnesses to our national narrative. The quality of life in our cities and towns has been improved by a greater appreciation—reflected in the law—of such intangible qualities as aesthetics, identity, and the legacy of the past.*” (see [National Historic Preservation Act - Historic Preservation \(U.S. National Park Service\) \(nps.gov\)](#)). Congress amended the NHPA in 1976 to include an avenue for funding and again in 2016, codifying it under Title 54 of the United States Code, subtitle III – National Preservation Programs, Division A – Historic Preservation (see attached nhpa.pdf). The latter amended NHPA changed the term of downtown historic district to *historic conservation district*.

Historic Districts are areas that have been determined to possess special character and related development patterns of an environment specific to a period of time. Structures that are a part of a National Register Historic Downtown District receive recognition as such by the National Park Service and the Secretary of the Interior sanctions this recognition. McMinnville’s Ordinance 5034 defines a Historic District as *a geographical definable area of local, state, or national historical significance, the boundaries of which have specifically been adopted by the City Council.*

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Properties listed in the National Register are, among other things:

- Recognized as significant to the nation, state, or community;
- Eligible for federal and state tax benefits;
- Qualify for historic preservation grants when funds are available;
- Eligible for leniency in meeting certain building code requirements;
- Subject to local laws pertaining to the conservation and protection of historic resources.

State law in Oregon requires local governments to *offer a minimal level of protection for properties listed in the National Register of Historic Places*; the decisions about how to accomplish that goal reside with local governments, which also have the authority to create and regulate local historic districts and landmarks.

***WHY are the preservation standards and codes important to uphold?***

1. **Historical significance:** Historic buildings, structures, and landmarks are an irreplaceable part of our cultural heritage, and preserving them ensures that we maintain our connection to our past and retain important historical information. *Testimonial and documentary evidence shows the O'Dell, News Register and Bennette buildings (three structures) as the earliest to serve the emerging automobile industry. This is a proven fact. Further, three intact structures of this type together on the same block are rare due to urban renewal activities across the United States.*
2. **Economic value:** Historic properties can be a source of economic growth, as they can attract tourism and bring in revenue for their preservation and maintenance. *Since established as a National Register-listed downtown historic district, McMinnville has become one of the most loved and visited main streets in the United States.*
3. **Social value:** Preservation of historic properties can unite and strengthen communities by promoting a sense of pride and shared history. *In a time of social media dominance over the lives of many people, socializing in a real and treasured environment is truly an important part of community strength, especially when folks see and feel the history around them.*
4. **Environmental benefits:** Preservation of historic properties promotes sustainable development by reducing the need for new construction, which can have negative environmental impacts. *In a time of concerning climate change, it is important for the city to participate in supporting adaptive reuse over new construction.*
5. **Educational value:** Preservation of historic properties can serve as a valuable educational resource for current and future generations, providing an opportunity to learn about history, architecture, and art. *Understanding our history provides a strengthened ability for appreciating and participation in an on-going dialog about current issues. The more we know about each other, the better we understand and grow collaboratively as a community. Notably, youth who know the history of their communities and that experience preserved historic spaces are more likely to become the civic leaders of tomorrow.*

Certainly, since 1987, property owners of structures located within McMinnville's Downtown Historic District have realized several, if not all, the benefits that came with National Register listing and recognition, and the city also realized many benefits that came with this recognition, including the much-sought-after resulting tourism spotlight, which brings in needed tax dollars. Our downtown is one of which we are very proud.

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For successful listing on the National Register, an historic district must be significant to American history, architecture, engineering, archeology or culture; and possess integrity – or convey its historical significance. The district must also be *at least 50 years old* with a *majority* of buildings retaining their historic character. In writing the nomination, one must define the district's boundary and describe the physical features, attributes, architectural style(s) and cultural context of the properties within that boundary. Further, as cited in NHPA, 36 CFR §60.6:

- (e) For Multiple Resource and Thematic Group Format submission, each district, site, building, structure and object included in the submission is treated as a separate nomination for the purpose of notification and to provide owners of private property the opportunity to concur in or object in writing to the nomination in accord with this section.
- (f) The commenting period following notifications can be waived only when all property owners and the chief elected local official have advised the State in writing that they agree to the waiver.
- (g) Upon notification, any owner or owners of a private property who wish to object shall submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of the private property, as appropriate, and objects to the listing. In nominations with multiple ownership of a single private property or of districts, the property will not be listed if a majority of the owners object to listing. Upon receipt of notarized objections respecting a district or single private property with multiple owners, it is the responsibility of the State Historic Preservation Officer to ascertain whether a majority of owners of private property have objected. If an owner whose name did not appear on the list certifies in a written notarized statement that the party is the sole or partial owner of a nominated private property such owner shall be counted by the State Historic Preservation Officer in determining whether a majority of owners has objected. Each owner of private property in a district has one vote regardless of how many properties or what part of one property that party owns and regardless of whether the property contributes to the significance of the district.

And ...

- (n) If the owner of a private property or the majority of such owners for a district or single property with multiple owners have objected to the nomination prior to the submittal of a nomination, the State Historic Preservation Officer shall submit the nomination to the Keeper only for a determination of eligibility pursuant to subsection (s) of this section.

National Register nomination for Listing 28b - known today as the News Register Building:

28b ADDRESS: 619 East Third Street  
CLASSIFICATION: Secondary Significant Contributing  
OWNER: Francis Fenton Estate  
536 E. 5th Street  
McMinnville, Oregon 97128  
ASSESSOR MAP: 4421 BC TAX LOT: 4300  
PLAT: Rowland's Addition LOT: 3, 6 BLOCK: 7  
YEAR BUILT: Between 1912-1928 STYLE: Commercial  
ALTERATIONS: 1976 (moderate) USE: Commercial

DESCRIPTION: This rectangular buff and red brick two-story structure has a pedimented parapet with a raised stucco or cast stone cornice with dentils. A large projecting pressed metal frieze with modillions extends across the entire facade. The second floor is divided into five bays with each bay containing a pair of one over one double-hung wood sash windows. The windows are topped with a row of stretcher brick and squares of cast stone are located at each corner of each window. A low relief beltcourse divides the stories. The first floor transom level has been filled in with scored stucco. New aluminum framed plate glass windows and door have been installed in the recessed storefront. Located at the easternmost end of the facade is the entrance to the second floor. Two large metal posts divide the three storefront bays. The facade is buff brick and the sides and back are red brick. This building does not appear on the Sanborn Fire Insurance Company maps for McMinnville until 1928. A smaller building, a garage, shows on the map on this site prior to this time. The building has been joined to another building at its rear, which faces Fourth Street.

National Register nomination for Listing 29 - known today as the Bennette Building:

29 ADDRESS: 641 East Third Street  
CLASSIFICATION: Secondary Significant Contributing  
OWNER: Joyce and Robert Morton  
ASSESSOR MAP: 4421 BC TAX LOT: 4200  
PLAT: Rowland's Addition LOT: 2, 7 BLOCK: 7  
YEAR BUILT: ca. 1923 STYLE: Modernistic  
ALTERATIONS: 1975 (moderate) USE: Commercial

DESCRIPTION: This rectangular one-story painted brick structure has a flat parapet with a corbelled cornice and six bays articulated by seven pilasters. Five pilasters extend to the ground and two end at the transom level. The storefront is divided into four bays with the western bay containing a large garage door. The next bay to the east has a wood frame plate glass window with plywood covered transom and bulkhead. The next bay contains a wood frame glass door with sidelights and a transom which has been painted out. The bay to the east has a wood frame plate glass window with painted out transom. The sill and bulkhead are brick.

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National Register nomination for Listing 30 - known today as the O'Dell Building:

30 ADDRESS: 609 East Third Street  
CLASSIFICATION: Primary Significant Contributing  
OWNER: Frances Fenton et al  
5 E. 5th Street  
McMinnville, Oregon 97128  
ASSESSOR MAP: 4421 BC TAX LOT: 4500  
PLAT: Rowland's Addition LOT: 5 BLOCK: 7  
YEAR BUILT: 1904 STYLE: Commercial  
ALTERATIONS: 1933, 1950's (moderate) USE: Commercial

DESCRIPTION: This rectangular two-story stuccoed corner building has a flat roof with a raised stucco cornice line. The second floor consists of three bays on Third Street. The two eastern bays contain paired wood sash windows each with three vertical lights. The bay at the western end contains a series of three wood windows with three vertical lights. Each bay is recessed approximately four inches and each window is recessed another four inches and has a projecting stuccoed sill. The second floor windows on the west facade are identical in type to those on the Third Street facade but occur in a different configuration. This facade has four bays and the window series from north to south is three, two, one, one. A stuccoed beltcourse divides the stories. Two piers on the Third Street facade remain intact (one has been removed). The east end of the Third Street ground floor facade contains an intact storefront one bay wide with an original wood frame plate glass window with a six light transom and stuccoed sill and bulkhead. The west end of the Third Street facade has been cut away across two bays and the entrance recessed two bays towards the north. An entrance was installed which faces west and has a wood sash glass and transomed entrance and storefront window. A wood storefront was also installed facing south which has several openings. The south end of the west facade is also cut away and the bay is divided by the addition of a new pier. The three remaining bays on this facade are divided by piers which extend from the cornice through to the ground. Next to the cut away bay (north) is an original wooden storefront window with a four-light transom and stucco bulkheads and sills. The next bay to the north contains a five-light transom and plate glass window divided into three vertical lights. The far north bay contains a wooden garage door.

This building was constructed for Frank W. Fenton, a prominent McMinnville attorney, whose photograph still appears upstairs. A photograph dating from 1904 shows the building has exposed brickwork and a double row of dentils above the windows. The present cutaway portion was an enclosed storefront.

Prior to the 1920's, Tony Christianson and Russell Turner had a battery shop in the building. Dick Wilson and Charles Newman ran a Plymouth agency in the building in the 1920's. Odell's Garage moved to this location in 1933.

According to the National Historic Preservation Act of 1966 (NHPA), 36 CFR §60.2(c):

- (c) If a property is listed in the National Register, certain provisions of the Tax Reform Act of 1976 as amended by the Revenue Act of 1978 and the Tax Treatment Extension Act of 1980 may apply. These provisions encourage the preservation of depreciable historic structures by allowing favorable tax treatments for rehabilitation, and discourage destruction of historic buildings by eliminating certain otherwise available Federal tax provisions both for demolition of historic structures and for new construction on the site of demolished historic buildings. Owners of historic buildings may benefit from the investment tax credit provisions of the Revenue Act of 1978. The Economic Recovery Tax Act of 1981 generally replaces the rehabilitation tax incentives under these laws beginning January 1, 1982 with a 25% investment tax credit for rehabilitations of historic commercial, industrial and residential buildings. This can be combined with a 15-year cost recovery period for the adjusted basis of the historic building. Historic buildings with certified rehabilitations receive additional tax savings by their exemption from any requirement to reduce the basis of the building by the amount of the credit. The denial of accelerated depreciation for a building built on the site of a demolished historic building is repealed effective January 1, 1982. The Tax Treatment Extension Act of 1980 includes provisions regarding charitable contributions for conservation purposes of partial interests in historically important land areas or structures.

Eligibility requirements state that buildings listed as part of an historic district are eligible for rehabilitation tax credits *if they contribute* “to the historic character of the district and thus qualify as a “certified historic structure” (see attached Introduction to Mainstreet Commercial Buildings). Property owners can figure substantial rehabilitation costs using the following formula:

$$A - B - C + D = \text{adjusted basis}$$

*A = purchase price of the property*  
*B = the part of the purchase price attributed to the land cost*  
*C = depreciation taken for an income-producing property*  
*D = cost of any capital improvements made since purchase*

Clearly, based on testimony and supporting documentation that is part of the record for this matter, this is the case for the O'Dell, News Register and Bennette buildings – all three structures have benefitted from being a part of the National Register-listed McMinnville Historic Downtown District.



It is interesting to note as well, criteria for certifications of rehabilitation and the Internal Revenue Service connection as cited under NHPA, 36 CFR §67.6:

### § 67.6 Certifications of rehabilitation.

- (a) Owners who want rehabilitation projects for certified historic structures to be certified by the Secretary as being consistent with the historic character of the structure, and, where applicable, the district in which the structure is located, thus qualifying as a certified rehabilitation, shall comply with the procedures listed below. A fee, as described in § 67.11, for reviewing all proposed, ongoing, or completed rehabilitation work is charged by the Secretary. No certification decisions will be issued on any application until the appropriate remittance is received.
  - (1) To initiate review of a rehabilitation project for certification purposes, an owner must complete part 2 of the Historic Preservation Certification Application according to instructions accompanying the application. These instructions explain in detail the documentation required for certification of a rehabilitation project. The application may describe a proposed rehabilitation project, a project in progress, or a completed project. In all cases, documentation, including photographs adequate to document the appearance of the structure(s), both on the exterior and on the interior, and its site and environment prior to rehabilitation must accompany the application. The social security or taxpayer identification number(s) of all owners must be provided in the application. Other documentation, such as window surveys or cleaning specifications, may be required by reviewing officials to evaluate certain rehabilitation projects. Plans for any attached, adjacent, or related new construction must also accompany the application. Where necessary documentation is not provided, review and evaluation may not be completed and a denial of certification will be issued on the basis of lack of information. Owners are strongly encouraged to submit part 2 of the application prior to undertaking any rehabilitation work. Owners who undertake rehabilitation projects without prior approval from the Secretary do so strictly at their own risk. Because the circumstances of each rehabilitation project are unique to the particular certified historic structure involved, certifications that may have been granted to other rehabilitations are not specifically applicable and may not be relied on by owners as applicable to other projects.
  - (2) A project does not become a certified rehabilitation until it is completed and so designated by the NPS. A determination that the completed rehabilitation of a property not yet designated a certified historic structure meets the Secretary's Standards for Rehabilitation does not constitute a certification of rehabilitation. When requesting certification of a completed rehabilitation project, the owner shall submit a Request for Certification of Completed Work (NPS Form 10-168c) and provide the project completion date and a signed statement that the completed rehabilitation project meets the Secretary's Standards for Rehabilitation and is consistent with the work described in part 2 of the Historic Preservation Certification Application. Also required in requesting certification of a completed rehabilitation project are costs attributed to the rehabilitation, photographs adequate to document the completed rehabilitation, and the social security or taxpayer identification number(s) of all owners.

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- (b) A rehabilitation project for certification purposes encompasses all work on the interior and exterior of the certified historic structure(s) and its site and environment, as determined by the Secretary, as well as related demolition, new construction or rehabilitation work which may affect the historic qualities, integrity or site, landscape features, and environment of the certified historic structure(s). More specific considerations in this regard are as follows:
- (1) All elements of the rehabilitation project must meet the Secretary's ten Standards for Rehabilitation (§ 67.7); portions of the rehabilitation project not in conformance with the Standards may not be exempted. In general, an owner undertaking a rehabilitation project will not be held responsible for prior rehabilitation work not part of the current project, or rehabilitation work that was undertaken by previous owners or third parties.
  - (2) However, if the Secretary considers or has reason to consider that a project submitted for certification does not include the entire rehabilitation project subject to review hereunder, the Secretary may choose to deny a rehabilitation certification or to withhold a decision on such a certification until such time as the Internal Revenue Service, through a private letter ruling, has determined, pursuant to these regulations and applicable provisions of the Internal Revenue Code and income tax regulations, the proper scope of the rehabilitation project to be reviewed by the Secretary. Factors to be taken into account by the Secretary and the Internal Revenue Service in this regard include, but are not limited to, the facts and circumstance of each application and
    - (i) whether previous demolition, construction or rehabilitation work irrespective of ownership or control at the time was in fact undertaken as part of the rehabilitation project for which certification is sought, and
    - (ii) whether property conveyances, reconfigurations, ostensible ownership transfers or other transactions were transactions which purportedly limit the scope of a rehabilitation project for the purpose of review by the Secretary without substantially altering beneficial ownership or control of the property. The fact that a property may still qualify as a certified historic structure after having undergone inappropriate rehabilitation, construction or demolition work does not preclude the Secretary or the Internal Revenue Service from determining that such inappropriate work is part of the rehabilitation project to be reviewed by the Secretary.
  - (3) Conformance to the Standards will be determined on the basis of the application documentation and other available information by evaluating the property as it existed prior to the commencement of the rehabilitation project, regardless of when the property becomes or became a certified historic structure.

And ...

- (e) Completed projects may be inspected by an authorized representative of the Secretary to determine if the work meets the Standards for Rehabilitation. The Secretary reserves the right to make inspections at any time up to five years after completion of the rehabilitation and to revoke a certification, after giving the owner 30 days to comment on the matter, if it is determined that the rehabilitation project was not undertaken as represented by the owner in his or her application and supporting documentation, or the owner, upon obtaining certification, undertook further unapproved project work inconsistent with the Secretary's Standards for Rehabilitation. The tax consequences of a revocation of certification will be determined by the Secretary of the Treasury.

Recently, during the rehabilitation of the Jamison / Taylor-Dale Hardware Building, Architect Ernie Munch brought forth an error in the National Register document for the McMinnville Downtown Historic District (Listings 39b and 39c). This discovery resulted in dropping the listing from the building to the site via the presentation of tangible documentary evidence – a discovered Willys Overland hubcap dating to a period later than the listed construction date of the structure. This fact is a part of written and oral testimony in the record for this matter. The City of McMinnville struck the property from its Historic Resources Inventory. It did not, however, bring this matter to the attention of the State Historic Preservation Office (SHPO) and ultimately the National Park Service (NPS). Unless a local government brings errors and changes to SHPO's and the NPS's attention through amendments, they do not become an official part of the record, which will cause confusion in the future. *This applies to all demolished properties within the McMinnville Downtown Historic District. As a historic preservationist, I don't believe it is enough to simply drop the property from and update the local Historic Resources Inventory.* The city should consult with the professionals at SHPO, who may have connections with alternative solutions.

Records indicate there have been no amendments made to correct errors or to remove any properties from the National Register-listed McMinnville Downtown Historic District, including the Home Laundry Building at the southeast corner of Second and Cows streets (destroyed by fire and demolished in 1995); the property at 608-610 NE Third Street (listed as 39b and 39c); and the old service garage building at Fourth and Ford streets behind the O'Dell Building (demolished in the early 2000s). (See also attached email from SHPO.)

Oregon Historic Sites Database

Search Database View Statewide Map Report Menu

Select 1 of the options below

Select County: McMinnville

McMinnville Downtown Historic

include demolished resources

only National Register properties

Print

Architectural Survey Data for McMinnville

Address/ Historic Name	Current Other Names	Eval/ NR	Yr(t) Built	Materials	Arch Classif/Styles	Other	Orig Use/ Plan(Type)	RLS/ILS Dates	Listed Date
[District] McMinnville, Yamhill County		ES	1884	Unknown		Other: Undefined	COMMERCIAL- General		09-14-1987
McMinnville Downtown Historic District		NRJ	1937						

1 Records Found

There are a total of 66 buildings in the district. However, 321-323 E 3rd is listed as only one building rather than two as in the nomination, covering the total listing to 65, 611, 317 1st and 421 21. Errors are corrected and listed separately, but have been combined into one building. The following addresses are shared by 2 buildings: 448 E 3rd St, 216 E 3rd St.

NHPA, 36 CFR §60.15 describes the process for removing properties from the National Register:

**§ 60.15 Removing properties from the National Register.**

(a) Grounds for removing properties from the National Register are as follows:

- (1) The property has ceased to meet the criteria for listing in the National Register because the qualities which caused it to be originally listed have been lost or destroyed, or such qualities were lost subsequent to nomination and prior to listing;
- (2) Additional information shows that the property does not meet the National Register criteria for evaluation;
- (3) Error in professional judgment as to whether the property meets the criteria for evaluation; or

And ...

(c) Any person or organization may petition in writing for removal of a property from the National Register by setting forth the reasons the property should be removed on the grounds established in paragraph (a) of this section. With respect to nominations determined eligible for the National Register because the owners of private property object to listing, anyone may petition for reconsideration of whether or not the property meets the criteria for evaluation using these procedures. Petitions for removal are submitted to the Keeper by the State Historic Preservation Officer for State nominations, the Federal Preservation Officer for Federal nominations, and directly to the Keeper from persons or local governments where there is no approved State Historic Preservation Program.

And ...

(k) The Keeper may remove a property from the National Register on his own motion on the grounds established in paragraph (a) of this section, except for those properties listed in the National Register prior to December 13, 1980, which may only be removed from the National Register on the grounds established in paragraph (a)(1) of this section. In such cases, the Keeper will notify the nominating authority, the affected owner(s) and the applicable chief elected local official and provide them an opportunity to comment. Upon removal, the Keeper will notify the nominating authority of the basis for the removal. The State Historic Preservation Officer, Federal Preservation Officer, or person or local government which nominated the property shall notify the owner(s) and the chief elected local official of the removal.

(l) No person shall be considered to have exhausted administrative remedies with respect to removal of a property from the National Register until the Keeper has denied a petition for removal pursuant to this section.

I could find no record in the testimony or supporting documentation of the Gwendolyn Hotel proposal indicating that the property owners of the O'Dell, News Register or Bennette buildings have ever tried to remove their properties from the National Register McMinnville Downtown Historic District.

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Further, the Bennette Building's written description, as submitted and accepted as part of the National Register nomination for listing McMinnville's downtown as a historic district, indicates it is one building, not two. In essence, *the request on record calls for demolishing three buildings, not two and-a-half structures, listed as contributing resources to the historic district*.

In conclusion, according to Oregon law, cities and counties are authorized to establish historic districts and design review programs to protect and enhance their historic resources. Any demolition or construction must comply with the historic district guidelines and regulations established by the local government, which should align with state and federal guidelines. Additionally, the state of Oregon has a historic preservation program that works to protect and promote the preservation of historic resources, including buildings, sites, and districts, and seeks to expand its National Register-listed properties. The National Register program provides technical assistance, grants, and tax incentives to property owners and communities to support their efforts in preserving historic resources. While properties under consideration for demolition must go through the review process *prior to* demolition, once the local government learns of a demolition proposal best practices should also trigger communication with SHPO and the NPS to ensure the property owner has, indeed, explored all avenues of preservation.

In the case of the O'Dell, News Register and Bennette buildings, best practices indicate that demolishing all three of these buildings will disrupt the contiguous nature of the McMinnville Downtown Historic District. Previous demolitions focused on single properties, not multiple properties situated contiguously on the same block, facing Third Street. If allowed, this opens a precedent that could very well lower the level of district eligibility or at the very least reduce the boundary of the Historic District.

I encourage the city to consider what mechanisms are in place to prevent the future demolition of contributing properties located further east of the O'Dell, News Register and Bennette buildings. With the desire to create future districts within the city, has the city considered this type of activity and future requests, and if so, how can we best encourage preservation over new development? What is the purpose of creating an historic district in the first place? Why not just encourage property owners to list their own buildings?

Should a property owner in the McMinnville Downtown Historic District find it necessary to sell their property, there are great avenues available to find the right heritage-minded buyer. For example, [Historic Real Estate from CIRCA and the National Trust | National Trust for Historic Preservation \(savingplaces.org\)](#).

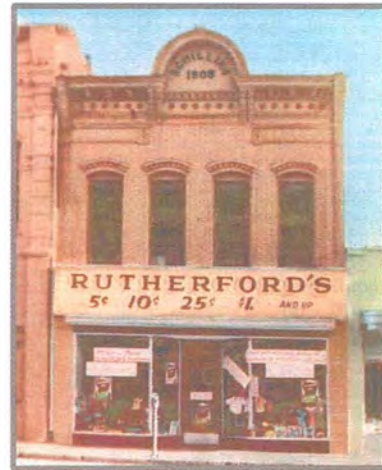
Although listed as a part of the McMinnville Downtown Historic District, the Harper Jamison Building, which houses Oregon Stationers, is not a contributing resource; however, as shown below, the renovation investment made by the building's owner, completed in 2008, contributes to the character, charm and contiguous nature of the Historic District. In fact, the renovation work received an award from the McMinnville Downtown Association in 2009 for Outstanding Exterior Renovation. The renovation included dramatic façade improvements bringing it much closer to its historic façade and awning appearance, as show in the images below.

McMinnville Downtown Association Annual Awards Master

Award Category	2009 Annual Meeting - 2008 Awards	2010 Annual Meeting - 2009 Awards	2011 Annual Meeting - 2010 Awards	2012 Annual Meeting - 2011 Awards	2013 Annual Meeting - 2012 Awards	2014 Annual Meeting - 2013 Awards	2015 Annual Meeting - 2014 Awards	2016 Annual Meeting - 2015 Awards	2017 Annual Meeting - 2016 Awards	2018 Annual Meeting - 2017 Awards	2019 Annual Meeting - 2018 Awards	2020 Annual Meeting - 2019 Awards	2021 Annual Meeting - 2020 Awards	2022 Annual Meeting - 2021 Awards	2023 Annual Meeting - 2022 Awards
Downtown Champion	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	3rd on 3rd	N/A	N/A	N/A	N/A
Outstanding Curb Appeal	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Third Street Books	N/A	N/A	N/A	N/A
Outstanding Marketing & Promotion	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	Third Street Books	Cupcake Couture	Bono Yoga	The Atticus Hotel	Pura Vida	Visit McMinnville	R. Stuart & Co
Outstanding Customer Service	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	R. Stuart & Co	Oregon Knitting Co	Local Flow	Pura Vida	Third Street Books	Pizza Capo	Hoosicott
Outstanding Associate Member	N/A	N/A	N/A	N/A	McMinnville Water & Light	Linfield College	Buchanan Centers	Pacific Frame & Gentry	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Volunteer of the Year	James Ruggles	Don Lutz	Cassie Sollars	Rob Stephenson	Jennifer & Gary Froot	Kyle Faulk	Randy Sollars	Zack Geary	Tiffany Brabb	Taylor Grubbs	Zero Waste	Matthee Brown	RoseMarie Caughran	Beth Caster	McMinnville Garden Club
Outstanding Window Display	Accessory Appeal	Twist	Red Berry	Ranch Records	Boersma's Sewing Center	La Beta Casa / Cupcake Couture	Twist	Poseyland	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Outstanding New Signage	Cupcake Couture	City of McMinnville	Parnassus Books	Danger Valley	The Old Oak	Left by West	The BettefMonk	Ransom Wine Co	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Outstanding Interior Renovation	1893 Building / JCP Penney Building	Thistle	3rd Street Flats	R.J. Studio	The Sage	Perano & Daughters / Vina Arcanum / Nici's	3rd Street Flats	AmeriTitle	Local Flow	Found Objects	Library Children's Room	N/A	N/A	N/A	N/A
Outstanding Exterior Renovation	Harper Jamison Building	Nick's Italian Cafe	Potter's House for Mac Stage	R.J. Studio	McMinnville Bank Building	Tommy's Bicycle Shop	The Gem Creole Saloon	Wild Haven/ Olive Chevrolet Mural	Elizabeth Chambers Celler	Gerardi's	N/A	N/A	N/A	N/A	N/A



The owner of the Schilling Building has done a marvelous job of restoring the structure, making it warm and inviting for both diners on the first floor, but also travelers who can find some respite on the second floor



The old Gem Saloon building seen in the image at the upper left underwent restoration around the turn of the century to become what we know today as the 1905 Schilling Building. It later served as the home of Rutherford's after the turn of the 20<sup>th</sup> century (above), and in the late 20<sup>th</sup> century as home of the Waterbed Factory before going on the market (at far left). The careful and detailed work on the building's exterior took this building into the 21<sup>st</sup> century with renewed appreciation for its beauty and the interior is warm and inviting to locals and visitors alike.



I also urge consideration of the following before and after photo of the Odd Fellows building restored by Barbara Sidway and her team. Barbara co-founded of the National Trust's Main Street program. This building is located directly to the west of the three properties involved in the Gwendolyn Hotel proposal:



The image to the left shows the Odd Fellows Building prior to restoration. Note the application of plaster, which covers the original brick work and other features of this historic structure. The image below shows the building in its early years.



The image to the right shows the Odd Fellows Building after restoration. Note the original brick work and other details are now visible and completely enhance the beauty of this historic structure.





On the same block as the O'Dell, News Register and Bennette buildings, we find a wonderful business known as The Bindery housed in a circa 1920s warehouse building. This one-story structure sits at 610 NE 4<sup>th</sup> Street, directly behind the News Register Building, and today serves as a designated assembly space, which can be one of the more complicated development concepts due to life safety codes, including seismic retrofitting. This is a wonderful example of a successful adaptive reuse of an historic warehouse building in McMinnville's Downtown Historic District.



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The projects illustrated above demonstrate that it is entirely possible to restore buildings in our downtown historic district and that small structures can and do attract both tourists and locals to the McMinnville Downtown Historic District.

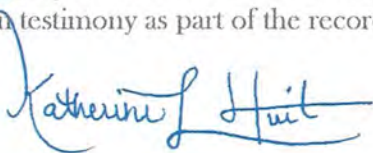
As an aside, I've experienced several earthquakes over my lifetime in McMinnville. Since 1890, record keeping shows four strong quakes centered in Oregon, running between 5 and 5.6 on the Richter Scale. Portland experienced a magnitude 5 quake in 1892, McMinnville another magnitude 5 in 1896, the Portland neighborhood of Bridgeton a 5.2 magnitude quake in 1960, and the "Spring Break Quake" of March 25, 1993, which occurred at Scotts Mills, measured 5.6. Oregonians have also experienced regional activity, such as the magnitude 7.1 quake of April 13, 1949, centered in Olympia, Washington and the magnitude 6.8 Nisqually earthquake of February 28, 2001, centered in Puget Sound. The rolling motion of the 1993 "spring break quake" woke me from a sound sleep. That earthquake rendered the old Columbus School, located on Baker across from Walgreens and near Linfield, too dangerous to continue its role as a school house. In 2001, while working at the Evergreen Museum, I witnessed the nearly complete south curtainwall (all glass) of the new aviation building expand and contract as the ground rolled like a wave on the Pacific Ocean. I watched it roll toward and under me. Yet, for all the discussion about the possible failure of the O'Dell, News Register and Bennette buildings in a large earthquake, I found no testimony or supporting documentation to show that recent - or past - earthquakes caused significant damage to any buildings in the downtown historic district, let alone the O'Dell, News Register or Bennette buildings.

McMinnville's Historic Downtown District is one of 16 eligible significant historic downtown districts in the State of Oregon and one of 13 listed in the National Register of Historic Places (see attached Oregon Historic Sites Search Results List). Part of the reason for its listing as a historic district came from the nature of contiguous structures from Baker Street to the Southern Pacific Railroad tracks. Demolishing three, north-facing buildings that sit in a row on the same block will disrupt the contiguous nature of the District as it stands today. It will never be the same afterward. To quote National Register of Historic Places Historian Paul Lusignan, in his email to city planner Heather Richards, which is a part of the record, *"I do think the city will look back on the demolition, if it happens, sadly unless the infill is very compatible and not more parking lots. That may be where they should place more effort - requiring some compensation of the loss by having stronger input into the replacement."* One of the past demolitions of a contributing resource took place circa 2001 at the corner of Fourth and Ford, and is, indeed, today a parking lot. The proposed replacement for the O'Dell, News Register and Bennette buildings is on that same block, and while certainly not a parking lot, it is not compatible with the contiguous flow and character of old town McMinnville.

I encourage the City of McMinnville to incorporate a mechanism that triggers a discussion with SHPO and / or the NPS about possible future demolition of properties listed in the McMinnville Downtown Historic District. These agencies are advocates of historic preservation and have capable staff willing to discuss options with property owners and local governments.

I urge you to deny the demolition of the O'Dell, News Register and Bennette buildings.

In memory of those who came before us with a vision for our future, which is today, I submit the above written testimony as part of the record for this matter.



# The National Historic Preservation Act

As amended through December 16, 2016  
and Codified in Title 54 of the United States Code

[The National Historic Preservation Act ("Act") became law on October 15, 1966, Public Law 89-665, and was codified in title 16 of the United States Code. Various amendments followed through the years. On December 19, 2014, Public Law 13-287 moved the Act's provisions from title 16 of the United States Code to title 54, with minimal and non-substantive changes to the text of the Act and a re-ordering of some of its provisions. This document shows the provisions of the Act as they now appear in title 54 of the United States Code.

The Act's name (the "National Historic Preservation Act") is found in the notes of the very first section of title 54. 54 U.S.C. § 100101 note. While Public Law 13-287 did not repeal the Act's findings, for editorial reasons those findings were not included in the text of title 54. The findings are still current law. However, rather than citing to the U.S. Code, when referring to the findings one may cite to: "Section 1 of the National Historic Preservation Act, Pub. L. No. 89-665, as amended by Pub. L. No. 96-515." For ease of use, this document reproduces the text of those findings before proceeding to the title 54 text.

Finally, the attachment at the end of this document attempts to assist those preservation stakeholders who for many years have referred to the Act's various provisions according to the section numbers used in the 1966 public law and subsequent amendments ("old sections"). The attachment cross-references each of the old sections to the corresponding outdated title 16 legal cite and current title 54 legal cite.]

## Section 1 of the National Historic Preservation Act, Pub. L. No. 89-665, as amended by Pub. L. No. 96-515:

... (b) The Congress finds and declares that—

- (1) the spirit and direction of the Nation are founded upon and reflected in its historic heritage;
- (2) the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people;
- (3) historic properties significant to the Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency;
- (4) the preservation of this irreplaceable heritage is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans;
- (5) in the face of ever-increasing extensions of urban centers, highways, and residential, commercial, and industrial developments, the present governmental and nongovernmental historic preservation programs and activities are inadequate to insure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our Nation;
- (6) the increased knowledge of our historic resources, the establishment of better means of identifying and administering them, and the encouragement of their preservation will improve the planning and execution of Federal and federally assisted projects and will assist economic growth and development; and
- (7) although the major burdens of historic preservation have been borne and major efforts initiated by private agencies and individuals, and both should continue to play a vital role, it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation programs and activities, to give maximum encouragement to agencies and individuals undertaking preservation by private means, and to assist State and local governments

and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programs and activities.

**Title 54 of the United States Code**  
**Subtitle III—National Preservation Programs**  
**Division A—Historic Preservation**

**Subdivision 1—General Provisions**

**Chapter 3001—Policy**

Sec.  
300101. Policy

**54 U.S.C. § 300101. Policy**

It is the policy of the Federal Government, in cooperation with other nations and in partnership with States, local governments, Indian tribes, Native Hawaiian organizations, and private organizations and individuals, to—

- (1) use measures, including financial and technical assistance, to foster conditions under which our modern society and our historic property can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations;
- (2) provide leadership in the preservation of the historic property of the United States and of the international community of nations and in the administration of the national preservation program;
- (3) administer federally owned, administered, or controlled historic property in a spirit of stewardship for the inspiration and benefit of present and future generations;
- (4) contribute to the preservation of nonfederally owned historic property and give maximum encouragement to organizations and individuals undertaking preservation by private means;
- (5) encourage the public and private preservation and utilization of all usable elements of the Nation's historic built environment; and
- (6) assist State and local governments, Indian tribes and Native Hawaiian organizations, and the National Trust to expand and accelerate their historic preservation programs and activities.

**Chapter 3003—Definitions**

Sec.  
300301. Agency.  
300302. Certified local government.  
300303. Council.  
300304. Cultural park.  
300305. Historic conservation district.  
300306. Historic Preservation Fund.  
300307. Historic preservation review commission.  
300308. Historic property.  
300309. Indian tribe.  
300310. Local government.

- 300311. National Register.
- 300312. National Trust.
- 300313. Native Hawaiian.
- 300314. Native Hawaiian organization.
- 300315. Preservation or historic preservation.
- 300316. Secretary.
- 300317. State.
- 300318. State historic preservation review board.
- 300319. Tribal land.
- 300320. Undertaking.
- 300321. World Heritage Convention.

**§ 300301. Agency**

In this division, the term “agency” has the meaning given the term in section 551 of title 5.

**§ 300302. Certified local government**

In this division, the term “certified local government” means a local government whose local historic preservation program is certified pursuant to chapter 3025 of this title.

**§ 300303. Council**

In this division, the term “Council” means the Advisory Council on Historic Preservation established by section 304101 of this title.

**§ 300304. Cultural park**

In this division, the term “cultural park” means a definable area that—

- (A) is distinguished by historic property, prehistoric property, and land related to that property; and
- (B) constitutes an interpretive, educational, and recreational resource for the public at large.

**§ 300305. Historic conservation district**

In this division, the term “historic conservation district” means an area that contains—

- (1) historic property;
- (2) buildings having similar or related architectural characteristics;
- (3) cultural cohesiveness; or
- (4) any combination of features described in paragraphs (1) to (3).

**§ 300306. Historic Preservation Fund**

In this division, the term “Historic Preservation Fund” means the Historic Preservation Fund established under section 303101 of this title.

**§ 300307. Historic preservation review commission**

In this division, the term “historic preservation review commission” means a board, council, commission, or other similar collegial body—

(1) that is established by State or local legislation as provided in section 302503(a)(2) of this title; and

(2) the members of which are appointed by the chief elected official of a jurisdiction (unless State or local law provides for appointment by another official) from among—

(A) professionals in the disciplines of architecture, history, architectural history, planning, prehistoric and historic archeology, folklore, cultural anthropology, curation, conservation, and landscape architecture, or related disciplines, to the extent that those professionals are available in the community; and

(B) other individuals who have demonstrated special interest, experience, or knowledge in history, architecture, or related disciplines and will provide for an adequate and qualified commission.

**§ 300308. Historic property**

In this division, the term “historic property” means any prehistoric or historic district, site, building, structure, or object included on, or eligible for inclusion on, the National Register, including artifacts, records, and material remains relating to the district, site, building, structure, or object.

**§ 300309. Indian tribe**

In this division, the term “Indian tribe” means an Indian tribe, band, nation, or other organized group or community, including a Native village, Regional Corporation or Village Corporation (as those terms are defined in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602)), that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**§ 300310. Local government**

In this division, the term “local government” means a city, county, township, municipality, or borough, or any other general purpose political subdivision of any State.

**§ 300311. National Register**

In this division, the term “National Register” means the National Register of Historic Places maintained under chapter 3021 of this title.

**§ 300312. National Trust**

In this division, the term “National Trust” means the National Trust for Historic Preservation in the United States established under section 312102 of this title.

**§ 300313. Native Hawaiian**

In this division, the term “Native Hawaiian” means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes Hawaii.

**§ 300314. Native Hawaiian organization**

(a) IN GENERAL.—In this division, the term “Native Hawaiian organization” means any organization that—

- (1) serves and represents the interests of Native Hawaiians;
- (2) has as a primary and stated purpose the provision of services to Native Hawaiians; and
- (3) has demonstrated expertise in aspects of historic preservation that are culturally significant to Native Hawaiians.

(b) INCLUSIONS.—In this division, the term “Native Hawaiian organization” includes the Office of Hawaiian Affairs of Hawaii and Hui Malama I Na Kupuna O Hawai'i Nei, an organization incorporated under the laws of the State of Hawaii.

**§ 300315. Preservation or historic preservation**

In this division, the term “preservation” or “historic preservation” includes—

- (1) identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, research, interpretation, and conservation;
- (2) education and training regarding the foregoing activities; or
- (3) any combination of the foregoing activities.

**§ 300316. Secretary**

In this division, the term “Secretary” means the Secretary acting through the Director.

**§ 300317. State**

In this division, the term “State” means—

- (1) a State, the District of Columbia, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands; and
- (2) the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

**§ 300318. State historic preservation review board**

In this division, the term “State historic preservation review board” means a board, council, commission, or other similar collegial body established as provided in section 302301(2) of this title—

- (1) the members of which are appointed by the State Historic Preservation Officer (unless otherwise provided for by State law);
- (2) a majority of the members of which are professionals qualified in history, prehistoric and historic archeology, architectural history, architecture, folklore, cultural anthropology, curation, conservation, landscape architecture, and related disciplines; and

(3) that has the authority to—

- (A) review National Register nominations and appeals from nominations;
- (B) review appropriate documentation submitted in conjunction with the Historic Preservation Fund;
- (C) provide general advice and guidance to the State Historic Preservation Officer; and
- (D) perform such other duties as may be appropriate.

**§ 300319. Tribal land**

In this division, the term “tribal land” means—

- (1) all land within the exterior boundaries of any Indian reservation; and
- (2) all dependent Indian communities.

**§ 300320. Undertaking**

In this division, the term “undertaking” means a project, activity, or program funded in whole or in part under the direct or indirect jurisdiction of a Federal agency, including—

- (1) those carried out by or on behalf of the Federal agency;
- (2) those carried out with Federal financial assistance;
- (3) those requiring a Federal permit, license, or approval; and
- (4) those subject to State or local regulation administered pursuant to a delegation or approval by a Federal agency.

**§ 300321. World Heritage Convention**

In this division, the term “World Heritage Convention” means the Convention concerning the Protection of the World Cultural and Natural Heritage, done at Paris November 23, 1972 (27 UST 37).

## **Subdivision 2—Historic Preservation Program**

### **Chapter 3021—National Register of Historic Places**

Sec.

302101. Maintenance by Secretary.

302102. Inclusion of properties on National Register.

302103. Criteria and regulations relating to National Register, National Historic Landmarks, and World Heritage List.

302104. Nominations for inclusion on National Register.

302105. Owner participation in nomination process.

302106. Retention of name.

302107. Regulations.

302108. Review of threats to historic property.



**§ 302101. Maintenance by Secretary**

The Secretary may expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.

**§ 302102. Inclusion of properties on National Register**

(a) IN GENERAL.—A property that meets the criteria for National Historic Landmarks established pursuant to section 302103 of this title shall be designated as a National Historic Landmark and included on the National Register, subject to the requirements of section 302107 of this title.

(b) HISTORIC PROPERTY ON NATIONAL REGISTER ON DECEMBER 12, 1980.—All historic property included on the National Register on December 12, 1980, shall be deemed to be included on the National Register as of their initial listing for purposes of this division.

(c) HISTORIC PROPERTY LISTED IN FEDERAL REGISTER OF FEBRUARY 6, 1979, OR PRIOR TO DECEMBER 12, 1980, AS NATIONAL HISTORIC LANDMARKS.—All historic property listed in the Federal Register of February 6, 1979, or prior to December 12, 1980, as National Historic Landmarks are declared by Congress to be National Historic Landmarks of national historic significance as of their initial listing in the Federal Register for purposes of this division and chapter 3201 of this title, except that in the case of a National Historic Landmark district for which no boundaries had been established as of December 12, 1980, boundaries shall first be published in the Federal Register.

**§ 302103. Criteria and regulations relating to National Register, National Historic Landmarks, and World Heritage List**

The Secretary, in consultation with national historical and archeological associations, shall—

- (1) establish criteria for properties to be included on the National Register and criteria for National Historic Landmarks; and
- (2) promulgate regulations for—
  - (A) nominating properties for inclusion on, and removal from, the National Register and the recommendation of properties by certified local governments;
  - (B) designating properties as National Historic Landmarks and removing that designation;
  - (C) considering appeals from recommendations, nominations, removals, and designations (or any failure or refusal by a nominating authority to nominate or designate);
  - (D) nominating historic property for inclusion in the World Heritage List in accordance with the World Heritage Convention;
  - (E) making determinations of eligibility of properties for inclusion on the National Register; and
  - (F) notifying the owner of a property, any appropriate local governments, and the general public, when the property is being considered for inclusion on the National

Register, for designation as a National Historic Landmark, or for nomination to the World Heritage List.

**§ 302104. Nominations for inclusion on National Register**

(a) **NOMINATION BY STATE.**—Subject to the requirements of section 302107 of this title, any State that is carrying out a program approved under chapter 3023 shall nominate to the Secretary property that meets the criteria promulgated under section 302103 of this title for inclusion on the National Register. Subject to section 302107 of this title, any property nominated under this subsection or under section 306102 of this title shall be included on the National Register on the date that is 45 days after receipt by the Secretary of the nomination and the necessary documentation, unless the Secretary disapproves the nomination within the 45-day period or unless an appeal is filed under subsection (c).

(b) **NOMINATION BY PERSON OR LOCAL GOVERNMENT.**—Subject to the requirements of section 302107 of this title, the Secretary may accept a nomination directly from any person or local government for inclusion of a property on the National Register only if the property is located in a State where there is no program approved under chapter 3023 of this title. The Secretary may include on the National Register any property for which such a nomination is made if the Secretary determines that the property is eligible in accordance with the regulations promulgated under section 302103 of this title. The determination shall be made within 90 days from the date of the nomination unless the nomination is appealed under subsection (c).

(c) **NOMINATION BY FEDERAL AGENCY.**—Subject to the requirements of section 302107 of this title, the regulations promulgated under section 302103 of this title, and appeal under subsection (d) of this section, the Secretary may accept a nomination directly by a Federal agency for inclusion of property on the National Register only if—

(1) completed nominations are sent to the State Historic Preservation Officer for review and comment regarding the adequacy of the nomination, the significance of the property and its eligibility for the National Register;

(2) within 45 days of receiving the completed nomination, the State Historic Preservation Officer has made a recommendation regarding the nomination to the Federal Preservation Officer, except that failure to meet this deadline shall constitute a recommendation to not support the nomination;

(3) the chief elected officials of the county (or equivalent governmental unit) and municipal political jurisdiction in which the property is located are notified and given 45 days in which to comment;

(4) the Federal Preservation Officer forwards it to the Keeper of the National Register of Historic Places after determining that all procedural requirements have been met, including those in paragraphs (1) through (3) above; the nomination is adequately documented; the nomination is technically and professionally correct and sufficient; and may include an opinion as to whether the property meets the National Register criteria for evaluation;

(5) notice is provided in the Federal Register that the nominated property is being considered for listing on the National Register that includes any comments and the recommendation of the State Historic Preservation Officer and a declaration whether the State Historic Preservation Officer has responded within the 45 day-period of review provided in paragraph (2); and

(6) the Secretary addresses in the Federal Register any comments from the State Historic Preservation Officer that do not support the nomination of the property on the National Register before the property is included in the National Register.

(d) APPEAL.—Any person or local government may appeal to the Secretary—

(1) a nomination of any property for inclusion on the National Register; and

(2) the failure of a nominating authority to nominate a property in accordance with this chapter.

**§ 302105. Owner participation in nomination process**

(a) REGULATIONS.—The Secretary shall promulgate regulations requiring that before any property may be included on the National Register or designated as a National Historic Landmark, the owner of the property, or a majority of the owners of the individual properties within a district in the case of a historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property for inclusion or designation. The regulations shall include provisions to carry out this section in the case of multiple ownership of a single property.

(b) WHEN PROPERTY SHALL NOT BE INCLUDED ON NATIONAL REGISTER OR DESIGNATED AS NATIONAL HISTORIC LANDMARK.—If the owner of any privately owned property, or a majority of the owners of privately owned properties within the district in the case of a historic district, object to inclusion or designation, the property shall not be included on the National Register or designated as a National Historic Landmark until the objection is withdrawn.

(c) REVIEW BY SECRETARY.—The Secretary shall review the nomination of the property when an objection has been made and shall determine whether or not the property is eligible for inclusion or designation. If the Secretary determines that the property is eligible for inclusion or designation, the Secretary shall inform the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local official, and the owner or owners of the property of the Secretary's determination.

**§ 302106. Retention of name**

Notwithstanding section 43(c) of the Act of July 5, 1946 (known as the Trademark Act of 1946) (15 U.S.C. 1125(c)), buildings and structures on or eligible for inclusion on the National Register (either individually or as part of a historic district), or designated as an individual landmark or as a contributing building in a historic district by a unit of State or local government, may retain the name historically associated with the building or structure.

**§ 302107. Regulations**

The Secretary shall promulgate regulations—

(1) ensuring that significant prehistoric and historic artifacts, and associated records, subject to subchapter I of chapter 3061, chapter 3125, or the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470aa et seq.) are deposited in an institution with adequate long-term curatorial capabilities;

(2) establishing a uniform process and standards for documenting historic property by public agencies and private parties for purposes of incorporation into, or complementing, the national historical architectural and engineering records in the Library of Congress; and

(3) certifying local governments, in accordance with sections 302502 and 302503 of this title, and for the transfer of funds pursuant to section 302902(c)(4) of this title.

### § 302108. Review of threats to historic property

At least once every 4 years, the Secretary, in consultation with the Council and with State Historic Preservation Officers, shall review significant threats to historic property to—

- (1) determine the kinds of historic property that may be threatened;
- (2) ascertain the causes of the threats; and
- (3) develop and submit to the President and Congress recommendations for appropriate action.

## Chapter 3023—State Historic Preservation Programs

Sec.

302301. Regulations.

302302. Program evaluation.

302303. Responsibilities of State Historic Preservation Officer.

302304. Contracts and cooperative agreements.

### § 302301. Regulations

The Secretary, in consultation with the National Conference of State Historic Preservation Officers and the National Trust, shall promulgate regulations for State Historic Preservation Programs. The regulations shall provide that a State program submitted to the Secretary under this chapter shall be approved by the Secretary if the Secretary determines that the program provides for—

- (1) the designation and appointment by the chief elected official of the State of a State Historic Preservation Officer to administer the program in accordance with section 302303 of this title and for the employment or appointment by the officer of such professionally qualified staff as may be necessary for those purposes;
- (2) an adequate and qualified State historic preservation review board designated by the State Historic Preservation Officer unless otherwise provided for by State law; and
- (3) adequate public participation in the State Historic Preservation Program, including the process of recommending properties for nomination to the National Register.

### § 302302. Program evaluation

(a) WHEN EVALUATION SHOULD OCCUR.—Periodically, but not less than every 4 years after the approval of any State program under section 302301 of this title, the Secretary, in consultation with the Council on the appropriate provisions of this division, and in cooperation with the State Historic Preservation Officer, shall evaluate the program to determine whether it is consistent with this division.

(b) DISAPPROVAL OF PROGRAM.—If, at any time, the Secretary determines that a major aspect of a State program is not consistent with this division, the Secretary shall disapprove the program and suspend in whole or in part any contracts or cooperative agreements with the State and the State Historic Preservation Officer under this division, until the program is consistent with this division, unless the Secretary determines that the program will be made consistent with this division within a reasonable period of time.

(c) OVERSIGHT.—The Secretary, in consultation with State Historic Preservation Officers, shall establish oversight methods to ensure State program consistency and quality without imposing undue review burdens on State Historic Preservation Officers.

(d) STATE FISCAL AUDIT AND MANAGEMENT SYSTEM.—

(1) SUBSTITUTION FOR COMPARABLE FEDERAL SYSTEMS.—At the discretion of the Secretary, a State system of fiscal audit and management may be substituted for comparable Federal systems so long as the State system—

(A) establishes and maintains substantially similar accountability standards; and

(B) provides for independent professional peer review.

(2) FISCAL AUDITS AND REVIEW BY SECRETARY.—The Secretary—

(A) may conduct periodic fiscal audits of State programs approved under this subdivision as needed; and

(B) shall ensure that the programs meet applicable accountability standards.

**§ 302303. Responsibilities of State Historic Preservation Officer**

(a) IN GENERAL.—It shall be the responsibility of the State Historic Preservation Officer to administer the State Historic Preservation Program.

(b) PARTICULAR RESPONSIBILITIES.—It shall be the responsibility of the State Historic Preservation Officer to—

(1) in cooperation with Federal and State agencies, local governments, and private organizations and individuals, direct and conduct a comprehensive statewide survey of historic property and maintain inventories of the property;

(2) identify and nominate eligible property to the National Register and otherwise administer applications for listing historic property on the National Register;

(3) prepare and implement a comprehensive statewide historic preservation plan;

(4) administer the State program of Federal assistance for historic preservation within the State;

(5) advise and assist, as appropriate, Federal and State agencies and local governments in carrying out their historic preservation responsibilities;

(6) cooperate with the Secretary, the Council, other Federal and State agencies, local governments, and private organizations and individuals to ensure that historic property is taken into consideration at all levels of planning and development;

(7) provide public information, education, and training and technical assistance in historic preservation;

(8) cooperate with local governments in the development of local historic preservation programs and assist local governments in becoming certified pursuant to chapter 3025;

(9) consult with appropriate Federal agencies in accordance with this division on—

(A) Federal undertakings that may affect historic property; and

(B) the content and sufficiency of any plans developed to protect, manage, or reduce or

mitigate harm to that property; and

(10) advise and assist in the evaluation of proposals for rehabilitation projects that may qualify for Federal assistance.

**§ 302304. Contracts and cooperative agreements**

(a) STATE.—A State may carry out all or any part of its responsibilities under this chapter by contract or cooperative agreement with a qualified nonprofit organization or educational institution.

(b) SECRETARY.—

(1) IN GENERAL.—

(A) AUTHORITY TO ASSIST SECRETARY.—Subject to paragraphs (3) and (4), the Secretary may enter into contracts or cooperative agreements with a State Historic Preservation Officer for any State authorizing the Officer to assist the Secretary in carrying out one or more of the following responsibilities within that State:

- (i) Identification and preservation of historic property.
- (ii) Determination of the eligibility of property for listing on the National Register.
- (iii) Preparation of nominations for inclusion on the National Register.
- (iv) Maintenance of historical and archeological data bases.
- (v) Evaluation of eligibility for Federal preservation incentives.

(B) AUTHORITY TO MAINTAIN NATIONAL REGISTER.— Nothing in subparagraph (A) shall be construed to provide that any State Historic Preservation Officer or any other person other than the Secretary shall have the authority to maintain the National Register for properties in any State.

(2) REQUIREMENTS.—The Secretary may enter into a contract or cooperative agreement under paragraph (1) only if—

- (A) the State Historic Preservation Officer has requested the additional responsibility;
- (B) the Secretary has approved the State historic preservation program pursuant to sections 302301 and 302302 of this title;
- (C) the State Historic Preservation Officer agrees to carry out the additional responsibility in a timely and efficient manner acceptable to the Secretary and the Secretary determines that the Officer is fully capable of carrying out the responsibility in that manner;
- (D) the State Historic Preservation Officer agrees to permit the Secretary to review and revise, as appropriate in the discretion of the Secretary, decisions made by the Officer pursuant to the contract or cooperative agreement; and
- (E) the Secretary and the State Historic Preservation Officer agree on the terms of additional financial assistance to the State, if there is to be any, for the costs of carrying

out that responsibility.

(3) ESTABLISH CONDITIONS AND CRITERIA.—For each significant program area under the Secretary's authority, the Secretary shall establish specific conditions and criteria essential for the assumption by a State Historic Preservation Officer of the Secretary's duties in each of those programs.

(4) PRESERVATION PROGRAMS AND ACTIVITIES NOT DIMINISHED.— Nothing in this chapter shall have the effect of diminishing the preservation programs and activities of the Service.

## Chapter 3025—Certification of Local Governments

Sec.

302501. Definitions.

302502. Certification as part of State program.

302503. Requirements for certification.

302504. Participation of certified local governments in National Register nominations.

302505. Eligibility and responsibility of certified local government.

### § 302501. Definitions

In this chapter:

(1) DESIGNATION.—The term "designation" means the identification and registration of property for protection that meets criteria established by a State or locality for significant historic property within the jurisdiction of a local government.

(2) PROTECTION.—The term "protection" means protection by means of a local review process under State or local law for proposed demolition of, changes to, or other action that may affect historic property designated pursuant to this chapter.

### § 302502. Certification as part of State program

Any State program approved under this subdivision shall provide a mechanism for the certification by the State Historic Preservation Officer of local governments to carry out the purposes of this division and provide for the transfer, in accordance with section 302902(c)(4) of this title, of a portion of the grants received by the States under this division, to those local governments.

### § 302503. Requirements for certification

(a) APPROVED STATE PROGRAM.—Any local government shall be certified to participate under this section if the applicable State Historic Preservation Officer, and the Secretary, certify that the local government—

(1) enforces appropriate State or local legislation for the designation and protection of historic property;

(2) has established an adequate and qualified historic preservation review commission by State or local legislation;

(3) maintains a system for the survey and inventory of historic property that furthers the purposes of chapter 3023;

(4) provides for adequate public participation in the local historic preservation program, including the process of recommending properties for nomination to the National Register; and

(5) satisfactorily performs the responsibilities delegated to it under this division.

(b) NO APPROVED STATE PROGRAM.—Where there is no State program approved under sections 302301 and 302302 of this title, a local government may be certified by the Secretary if the Secretary determines that the local government meets the requirements of subsection (a). The Secretary may make grants to the local government certified under this subsection for purposes of this subdivision.

#### **§ 302504. Participation of certified local governments in National Register nominations**

(a) NOTICE.—Before a property within the jurisdiction of a certified local government may be considered by a State to be nominated to the Secretary for inclusion on the National Register, the State Historic Preservation Officer shall notify the owner, the applicable chief local elected official, and the local historic preservation commission.

(b) REPORT.—The local historic preservation commission, after reasonable opportunity for public comment, shall prepare a report as to whether the property, in the Commission's opinion, meets the criteria of the National Register. Within 60 days of notice from the State Historic Preservation Officer, the chief local elected official shall transmit the report of the commission and the recommendation of the local official to the State Historic Preservation Officer.

(c) RECOMMENDATION.—

(1) PROPERTY NOMINATED TO NATIONAL REGISTER.—Except as provided in paragraph (2), after receipt of the report and recommendation, or if no report and recommendation are received within 60 days, the State shall make the nomination pursuant to section 302104 of this title. The State may expedite the process with the concurrence of the certified local government.

(2) PROPERTY NOT NOMINATED TO NATIONAL REGISTER.—If both the commission and the chief local elected official recommend that a property not be nominated to the National Register, the State Historic Preservation Officer shall take no further action, unless, within 30 days of the receipt of the recommendation by the State Historic Preservation Officer, an appeal is filed with the State. If an appeal is filed, the State shall follow the procedures for making a nomination pursuant to section 302104 of this title. Any report and recommendations made under this section shall be included with any nomination submitted by the State to the Secretary.

#### **§ 302505. Eligibility and responsibility of certified local government**

Any local government—

(1) that is certified under this chapter shall be eligible for funds under section 302902(c)(4) of this title; and

(2) that is certified, or making efforts to become certified, under this chapter shall carry out any responsibilities delegated to it in accordance with such terms and conditions as the Secretary considers necessary or advisable.

## **Chapter 3027—Historic Preservation Programs and Authorities for Indian Tribes and Native Hawaiian Organizations**

Sec.

302701. Program to assist Indian tribes in preserving historic property.



302702. Indian tribe to assume functions of State Historic Preservation Officer.

302703. Apportionment of grant funds.

302704. Contracts and cooperative agreements.

302705. Agreement for review under tribal historic preservation regulations.

302706. Eligibility for inclusion on National Register.

#### **§ 302701. Program to assist Indian tribes in preserving historic property**

(a) ESTABLISHMENT OF PROGRAM.—The Secretary shall establish a program and promulgate regulations to assist Indian tribes in preserving their historic property.

(b) COMMUNICATION AND COOPERATION.—The Secretary shall foster communication and cooperation between Indian tribes and State Historic Preservation Officers in the administration of the national historic preservation program to—

(1) ensure that all types of historic property and all public interests in historic property are given due consideration; and

(2) encourage coordination among Indian tribes, State Historic Preservation Officers, and Federal agencies in historic preservation planning and in the identification, evaluation, protection, and interpretation of historic property.

(c) TRIBAL VALUES.—The program under subsection (a) shall be developed in a manner to ensure that tribal values are taken into account to the extent feasible. The Secretary may waive or modify requirements of this subdivision to conform to the cultural setting of tribal heritage preservation goals and objectives.

(d) SCOPE OF TRIBAL PROGRAMS.—The tribal programs implemented by specific tribal organizations may vary in scope, as determined by each Indian tribe's chief governing authority.

(e) CONSULTATION.—The Secretary shall consult with Indian tribes, other Federal agencies, State Historic Preservation Officers, and other interested parties concerning the program under subsection (a).

#### **§ 302702. Indian tribe to assume functions of State Historic Preservation Officer**

An Indian tribe may assume all or any part of the functions of a State Historic Preservation Officer in accordance with sections 302302 and 302303 of this title, with respect to tribal land, as those responsibilities may be modified for tribal programs through regulations issued by the Secretary, if—

(1) the Indian tribe's chief governing authority so requests;

(2) the Indian tribe designates a tribal preservation official to administer the tribal historic preservation program, through appointment by the Indian tribe's chief governing authority or as a tribal ordinance may otherwise provide;

(3) the tribal preservation official provides the Secretary with a plan describing how the functions the tribal preservation official proposes to assume will be carried out;

(4) the Secretary determines, after consulting with the Indian tribe, the appropriate State Historic Preservation Officer, the Council (if the Indian tribe proposes to assume the functions of the State Historic Preservation Officer with respect to review of undertakings under section 306108 of this title), and other Indian tribes, if any, whose tribal or aboriginal land may be affected by conduct of the tribal preservation program, that—

(A) the tribal preservation program is fully capable of carrying out the

functions specified in the plan provided under paragraph (3);

(B) the plan defines the remaining responsibilities of the Secretary and the State Historic Preservation Officer; and

(C) the plan provides, with respect to properties neither owned by a member of the Indian tribe nor held in trust by the Secretary for the benefit of the Indian tribe, at the request of the owner of the properties, that the State Historic Preservation Officer, in addition to the tribal preservation official, may exercise the historic preservation responsibilities in accordance with sections 302302 and 302303 of this title; and

(5) based on satisfaction of the conditions stated in paragraphs (1), (2), (3), and (4), the Secretary approves the plan.

#### **§ 302703. Apportionment of grant funds**

In consultation with interested Indian tribes, other Native American organizations, and affected State Historic Preservation Officers, the Secretary shall establish and implement procedures for carrying out section 302902(c)(1)(A) of this title with respect to tribal programs that assume responsibilities under section 302702 of this title.

#### **§ 302704. Contracts and cooperative agreements**

At the request of an Indian tribe whose preservation program has been approved to assume functions and responsibilities pursuant to section 302702 of this title, the Secretary shall enter into a contract or cooperative agreement with the Indian tribe permitting the assumption by the Indian tribe of any part of the responsibilities described in section 302304(b) of this title on tribal land, if—

(1) the Secretary and the Indian tribe agree on additional financial assistance, if any, to the Indian tribe for the costs of carrying out those authorities;

(2) the Secretary finds that the tribal historic preservation program has been demonstrated to be sufficient to carry out the contract or cooperative agreement and this division; and

(3) the contract or cooperative agreement specifies the continuing responsibilities of the Secretary or of the appropriate State Historic Preservation Officers and provides for appropriate participation by—

(A) the Indian tribe's traditional cultural authorities;

(B) representatives of other Indian tribes whose traditional land is under the jurisdiction of the Indian tribe assuming responsibilities; and

(C) the interested public.

#### **§ 302705. Agreement for review under tribal historic preservation regulations**

The Council may enter into an agreement with an Indian tribe to permit undertakings on tribal land to be reviewed under tribal historic preservation regulations in place of review under regulations promulgated by the Council to govern compliance with section 306108 of this title, if the Council, after consultation with the Indian tribe and appropriate State Historic Preservation Officers, determines that the tribal preservation regulations will afford historic property consideration equivalent to that afforded by the Council's regulations.

### § 302706. Eligibility for inclusion on National Register

(a) IN GENERAL.—Property of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.

(b) CONSULTATION.—In carrying out its responsibilities under section 306108 of this title, a Federal agency shall consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to property described in subsection (a).

(c) HAWAII.—In carrying out responsibilities under section 302303 of this title, the State Historic Preservation Officer for Hawaii shall—

(1) consult with Native Hawaiian organizations in assessing the cultural significance of any property in determining whether to nominate the property to the National Register;

(2) consult with Native Hawaiian organizations in developing the cultural component of a preservation program or plan for the property; and

(3) enter into a memorandum of understanding or agreement with Native Hawaiian organizations for the assessment of the cultural significance of a property in determining whether to nominate the property to the National Register and to carry out the cultural component of the preservation program or plan.

## Chapter 3029—Grants

Sec.

302901. Awarding of grants and availability of grant funds.

302902. Grants to States.

302903. Grants to National Trust.

302904. Direct grants for the preservation of properties included on National Register. 302905.

Religious property.

302906. Grants and loans to Indian tribes and nonprofit organizations representing ethnic or minority groups.

302907. Grants to Indian tribes and Native Hawaiian organizations.

302908. Grants to the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

302909. Prohibited use of grant amounts.

302910. Recordkeeping.

### § 302901. Awarding of grants and availability of grant funds

(a) IN GENERAL.—No grant may be made under this division unless application for the grant is submitted to the Secretary in accordance with regulations and procedures prescribed by the Secretary.

(b) GRANT NOT TREATED AS TAXABLE INCOME.—No grant made pursuant to this division shall be treated as taxable income for purposes of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.).

(c) AVAILABILITY.—The Secretary shall make funding available to individual States and the National Trust as soon as practicable after execution of a grant agreement. For purposes of administration, grants to individual States and the National Trust each shall be deemed to be one grant and shall be administered by the Service as one grant.

### § 302902. Grants to States

(a) IN GENERAL.—The Secretary shall administer a program of matching grants to the States for the purposes of carrying out this division.

(b) CONDITIONS.—

(1) IN GENERAL.—No grant may be made under this division—

(A) unless the application is in accordance with the comprehensive statewide historic preservation plan that has been approved by the Secretary after considering its relationship to the comprehensive statewide outdoor recreation plan prepared pursuant to chapter 2003 of this title;

(B) unless the grantee has agreed to make reports, in such form and containing such information, as the Secretary may from time to time require;

(C) unless the grantee has agreed to assume, after completion of the project, the total cost of the continued maintenance, repair, and administration of the property in a manner satisfactory to the Secretary; or

(D) until the grantee has complied with such further terms and conditions as the Secretary may consider necessary or advisable.

(2) WAIVER.—The Secretary may waive the requirements of subparagraphs (A) and (C) of paragraph (1) for any grant under this division to the National Trust.

(3) AMOUNT LIMITATION.—

(A) IN GENERAL.—No grant may be made under this division for more than 60 percent of the aggregate costs of carrying out projects and programs under the administrative control of the State Historic Preservation Officer as specified in section 302303 of this title in any one fiscal year.

(B) SOURCE OF STATE SHARE OF COSTS.—Except as permitted by other law, the State share of the costs referred to in subparagraph (A) shall be contributed by non-Federal sources.

(4) RESTRICTION ON USE OF REAL PROPERTY TO MEET NONFEDERAL SHARE OF COST OF PROJECT.—No State shall be permitted to utilize the value of real property obtained before October 15, 1966, in meeting the non-Federal share of the cost of a project for which a grant is made under this division.

(c) APPORTIONMENT OF GRANT AMOUNTS.—

(1) BASES FOR APPORTIONMENT.—The amounts appropriated and made available for grants to the States—

(A) for the purposes of this division shall be apportioned among the States by the Secretary on the basis of needs as determined by the Secretary; and

(B) for projects and programs under this division for each fiscal year shall be apportioned among the States as the Secretary determines to be appropriate.

(2) NOTIFICATION.—The Secretary shall notify each State of its apportionment under paragraph (1)(B) within 30 days after the date of enactment of legislation appropriating funds under this division.

(3) REAPPORTIONMENT.—Any amount of any apportionment that has not been paid or obligated by the Secretary during the fiscal year in which the notification is given or during the 2 fiscal years after that fiscal year shall be reapportioned by the Secretary in accordance with paragraph (1)(B). The Secretary shall analyze and revise as necessary the method of apportionment. The method and any revision shall be published by the Secretary in the Federal Register.

(4) TRANSFER OF FUNDS TO CERTIFIED LOCAL GOVERNMENTS.— Not less than 10 percent of the annual apportionment distributed by the Secretary to each State for the purposes of carrying out this division shall be transferred by the State, pursuant to the requirements of this division, to certified local governments for historic preservation projects or programs of the certified local governments. In any year in which the total annual apportionment to the States exceeds \$65,000,000, 50 percent of the excess shall also be transferred by the States to certified local governments.

(5) GUIDELINES FOR USE AND DISTRIBUTION OF FUNDS TO CERTIFIED LOCAL GOVERNMENTS.— The Secretary shall establish guidelines for the use and distribution of funds under paragraph (4) to ensure that no certified local government receives a disproportionate share of the funds available, and may include a maximum or minimum limitation on the amount of funds distributed to any single certified local government. The guidelines shall not limit the ability of any State to distribute more than 10 percent of its annual apportionment under paragraph (4), nor shall the Secretary require any State to exceed the 10 percent minimum distribution to certified local governments.

(d) ADMINISTRATIVE COSTS.—The total direct and indirect administrative costs charged for carrying out State projects and programs shall not exceed 25 percent of the aggregate costs (except in the case of a grant to the Federated States of Micronesia, the Republic of the Marshall Islands, or the Republic of Palau).

#### **§ 302903. Grants to National Trust**

(a) SECRETARY OF THE INTERIOR.—The Secretary may administer grants to the National Trust consistent with the purposes of its charter and this division.

(b) SECRETARY OF HOUSING AND URBAN DEVELOPMENT.—The Secretary of Housing and Urban Development may make grants to the National Trust, on terms and conditions and in amounts (not exceeding \$90,000 with respect to any one structure) as the Secretary of Housing and Urban Development considers appropriate, to cover the costs incurred by the National Trust in renovating or restoring structures that the National Trust considers to be of historic or architectural value and that the National Trust has accepted and will maintain (after the renovation or restoration) for historic purposes.

#### **§ 302904. Direct grants for the preservation of properties included on National Register**

(a) ADMINISTRATION OF PROGRAM.—The Secretary shall administer a program of direct grants for the preservation of properties included on the National Register.

(b) AVAILABLE AMOUNT.—Funds to support the program annually shall not exceed 10 percent of the amount appropriated annually for the Historic Preservation Fund.

(c) USES OF GRANTS.—

(1) IN GENERAL.—Grants under this section may be made by the Secretary, in consultation with the appropriate State Historic Preservation Officer—

(A) for the preservation of—

(i) National Historic Landmarks that are threatened with demolition or impairment; and

(ii) historic property of World Heritage significance;

(B) for demonstration projects that will provide information concerning professional methods and techniques having application to historic property;

(C) for the training and development of skilled labor in trades and crafts, and in analysis and curation, relating to historic preservation; and

(D) to assist individuals or small businesses within any historic district included on the National Register to remain within the district.

(2) LIMIT ON CERTAIN GRANTS.—A grant may be made under subparagraph (A) or (D) of paragraph (1) only to the extent that the project cannot be carried out in as effective a manner through the use of an insured loan under section 303901 of this title.

#### **§ 302905. Religious property**

(a) IN GENERAL.—Grants may be made under this chapter for the preservation, stabilization, restoration, or rehabilitation of religious property listed on the National Register if the purpose of the grant—

(1) is secular;

(2) does not promote religion; and

(3) seeks to protect qualities that are historically significant.

(b) EFFECT OF SECTION.—Nothing in this section shall be construed to authorize the use of any funds made available under this subdivision for the acquisition of any religious property listed on the National Register.

#### **§ 302906. Grants and loans to Indian tribes and nonprofit organizations representing ethnic or minority groups**

The Secretary may, in consultation with the appropriate State Historic Preservation Officer, make grants or loans or both under this subdivision to Indian tribes and to nonprofit organizations representing ethnic or minority groups for the preservation of their cultural heritage.

#### **§ 302907. Grants to Indian tribes and Native Hawaiian organizations**

The Secretary shall administer a program of direct grants to Indian tribes and Native Hawaiian organizations for the purpose of carrying out this division as it pertains to Indian tribes and Native Hawaiian organizations. Matching fund requirements may be modified. Federal funds available to an Indian tribe or Native Hawaiian organization may be used as matching funds for the purposes of the Indian tribe's or Native Hawaiian organization's conducting its responsibilities pursuant to this subdivision.

**§ 302908. Grants to the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau**

(a) **IN GENERAL.**—As part of the program of matching grant assistance from the Historic Preservation Fund to States, the Secretary shall administer a program of direct grants to the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau in furtherance of the Compact of Free Association between the United States and the Federated States of Micronesia and the Marshall Islands, approved by the Compact of Free Association Act of 1985 (48 U.S.C. 1901 et seq., 2001 et seq.), and the Compact of Free Association between the United States and Palau, approved by the Joint Resolution entitled “Joint Resolution to approve the ‘Compact of Free Association’ between the United States and Government of Palau, and for other purposes” (48 U.S.C. 1931 et seq.) or any successor enactment.

(b) **GOAL OF PROGRAM.**—The goal of the program shall be to establish historic and cultural preservation programs that meet the unique needs of each of those nations so that at the termination of the compacts the programs shall be firmly established.

(c) **BASIS OF ALLOCATING AMOUNTS.**—The amounts to be made available under this subsection shall be allocated by the Secretary on the basis of needs as determined by the Secretary.

(d) **WAIVERS AND MODIFICATIONS.**—The Secretary may waive or modify the requirements of this subdivision to conform to the cultural setting of those nations. Matching funds may be waived or modified.

**§ 302909. Prohibited use of grant amounts**

No part of any grant made under this subdivision shall be used to compensate any person intervening in any proceeding under this division.

**§ 302910. Recordkeeping**

A recipient of assistance under this division shall keep—

- (1) such records as the Secretary shall prescribe, including records that fully disclose—
  - (A) the disposition by the recipient of the proceeds of the assistance;
  - (B) the total cost of the project or undertaking in connection with which the assistance is given or used; and
  - (C) the amount and nature of that portion of the cost of the project or undertaking supplied by other sources; and
- (2) such other records as will facilitate an effective audit.

## Chapter 3031—Historic Preservation Fund

Sec.

303101. Establishment.

303102. Content.

303103. Use and availability.

### § 303101. Establishment

To carry out this division (except chapter 3041) and chapter 3121, there is established in the Treasury the Historic Preservation Fund.

### § 303102. Funding

For each of fiscal years 2012 to 2023, \$150,000,000 shall be deposited in the Historic Preservation Fund from revenues due and payable to the United States under section 9 of the Outer Continental Shelf Lands Act (43 U.S.C. 1338), section 7433(b) of title 10, or both, notwithstanding any provision of law that those proceeds shall be credited to miscellaneous receipts of the Treasury.

### § 303103. Use and availability

Amounts in the Historic Preservation Fund shall be used only to carry out this division and shall be available for expenditure only when appropriated by Congress. Any amount not appropriated shall remain available in the Historic Preservation Fund until appropriated for those purposes. Appropriations made pursuant to this section may be made without fiscal year limitation.

## Chapters 3033 Through 3037—Reserved

## Chapter 3039—Miscellaneous

Sec.

303901. Loan insurance program for preservation of property included on National Register.

303902. Training in, and dissemination of information concerning, professional methods and techniques for preservation of historic property.

303903. Preservation education and training program.

### § 303901. Loan insurance program for preservation of property included on National Register

(a) ESTABLISHMENT.—The Secretary shall establish and maintain a program by which the Secretary may, on application of a private lender, insure loans (including loans made in accordance with a mortgage) made by the lender to finance any project for the preservation of a property included on the National Register.

(b) LOAN QUALIFICATIONS.—A loan may be insured under this section if—

- (1) the loan is made by a private lender approved by the Secretary as financially sound and able to service the loan properly;
- (2) the amount of the loan, and interest rate charged with respect to the loan, do not exceed the amount and rate established by the Secretary by regulation;
- (3) the Secretary has consulted the appropriate State Historic Preservation Officer concerning the preservation of the historic property;
- (4) the Secretary has determined that the loan is adequately secured and there is reasonable assurance of repayment;



(5) the repayment period of the loan does not exceed the lesser of 40 years or the expected life of the asset financed;

(6) the amount insured with respect to the loan does not exceed 90 percent of the loss sustained by the lender with respect to the loan; and

(7) the loan, the borrower, and the historic property to be preserved meet such other terms and conditions as may be prescribed by the Secretary by regulation, especially terms and conditions relating to the nature and quality of the preservation work.

(c) CONSULTATION.—The Secretary shall consult with the Secretary of the Treasury regarding the interest rate of loans insured under this section.

(d) LIMITATION ON AMOUNT OF UNPAID PRINCIPAL BALANCE OF LOANS.—The aggregate unpaid principal balance of loans insured under this section may not exceed the amount that has been deposited in the Historic Preservation Fund but which has not been appropriated for any purpose.

(e) INSURANCE CONTRACTS.—Any contract of insurance executed by the Secretary under this section may be assignable, shall be an obligation supported by the full faith and credit of the United States, and shall be incontestable except for fraud or misrepresentation of which the holder had actual knowledge at the time it became a holder.

(f) CONDITIONS AND METHODS OF PAYMENT AS RESULT OF LOSS.—The Secretary shall specify, by regulation and in each contract entered into under this section, the conditions and method of payment to a private lender as a result of losses incurred by the lender on any loan insured under this section.

(g) PROTECTION OF FINANCIAL INTERESTS OF FEDERAL GOVERNMENT.—In entering into any contract to insure a loan under this section, the Secretary shall take steps to ensure adequate protection of the financial interests of the Federal Government. The Secretary may—

(1) in connection with any foreclosure proceeding, obtain, on behalf of the Federal Government, the historic property securing a loan insured under this section; and

(2) operate or lease the historic property for such period as may be necessary to protect the interest of the Federal Government and to carry out subsection (h).

(h) CONVEYANCE TO GOVERNMENTAL OR NONGOVERNMENTAL ENTITY OF PROPERTY ACQUIRED BY FORECLOSURE.—

(1) ATTEMPT TO CONVEY TO ENSURE PROPERTY'S PRESERVATION AND USE.—In any case in which historic property is obtained pursuant to subsection (g), the Secretary shall attempt to convey the property to any governmental or nongovernmental entity under conditions that will ensure the property's continued preservation and use. If, after a reasonable time, the Secretary, in consultation with the Council, determines that there is no feasible and prudent means to convey the property and to ensure its continued preservation and use, the Secretary may convey the property at the fair market value of its interest in the property to any entity without restriction.

(2) DISPOSITION OF FUNDS.—Any funds obtained by the Secretary in connection with the conveyance of any historic property pursuant to paragraph (1) shall be deposited in the Historic Preservation Fund and shall remain available in the Historic Preservation Fund until appropriated by Congress to carry out this division.

(i) ASSESSMENT OF FEES IN CONNECTION WITH INSURING LOANS.—The Secretary may assess appropriate and reasonable fees in connection with insuring loans under this

section. The fees shall be deposited in the Historic Preservation Fund and shall remain available in the Historic Preservation Fund until appropriated by Congress to carry out this division.

(j) TREATMENT OF LOANS AS NON-FEDERAL FUNDS.—Notwithstanding any other provision of law, any loan insured under this section shall be treated as non-Federal funds for the purposes of satisfying any requirement of any other provision of law under which Federal funds to be used for any project or activity are conditioned on the use of non-Federal funds by the recipient for payment of any portion of the costs of the project or activity.

(k) INELIGIBILITY OF DEBT OBLIGATION FOR PURCHASE OR COMMITMENT TO PURCHASE BY, OR SALE OR ISSUANCE TO, FEDERAL FINANCING BANK.—No debt obligation that is made or committed to be made, or that is insured or committed to be insured, by the Secretary under this section shall be eligible for purchase by, or commitment to purchase by, or sale or issuance to, the Federal Financing Bank.

**§ 303902. Training in, and dissemination of information concerning, professional methods and techniques for preservation of historic property**

The Secretary shall develop and make available to Federal agencies, State and local governments, private organizations and individuals, and other nations and international organizations pursuant to the World Heritage Convention, training in, and information concerning, professional methods and techniques for the preservation of historic property and for the administration of the historic preservation program at the Federal, State, and local level. The Secretary shall also develop mechanisms to provide information concerning historic preservation to the general public including students.

**§ 303903. Preservation education and training program**

The Secretary, in consultation with the Council and other appropriate Federal, tribal, Native Hawaiian, and non-Federal organizations, shall develop and implement a comprehensive preservation education and training program. The program shall include—

- (1) standards and increased preservation training opportunities for Federal workers involved in preservation-related functions;
- (2) preservation training opportunities for other Federal, State, tribal and local government workers, and students;
- (3) technical or financial assistance, or both, to historically black colleges and universities, to tribal colleges, and to colleges with a high enrollment of Native Americans or Native Hawaiians, to establish preservation training and degree programs; and
- (4) where appropriate, coordination with the National Center for Preservation Technology and Training of—
  - (A) distribution of information on preservation technologies;
  - (B) provision of training and skill development in trades, crafts, and disciplines related to historic preservation in Federal training and development programs; and
  - (C) support for research, analysis, conservation, curation, interpretation, and display related to preservation.

## Subdivision 3—Advisory Council on Historic Preservation

### Chapter 3041—Advisory Council on Historic Preservation

Sec.

304101. Establishment;  
vacancies.

304102. Duties of Council.

304103. Cooperation between Council and instrumentalities of executive branch of Federal Government.

304104. Compensation of members of Council.

304105. Administration.

304106. International Centre for the Study of the Preservation and Restoration of Cultural Property.

304107. Transmittal of legislative recommendations, testimony, or comments to any officer or agency of the United States prior to submission to Congress.

304108. Regulations, procedures, and guidelines.

304109. Budget submission.

304110. Report by Secretary to Council.

304111. Reimbursements from State and local agencies.

304112. Effectiveness of Federal grant and assistance programs.

#### § 304101. Establishment; vacancies

(a) ESTABLISHMENT.— There is established as an independent agency of the United States Government an Advisory Council on Historic Preservation, which shall be composed of the following members:

- (1) A Chairman appointed by the President selected from the general public.
- (2) The Secretary.
- (3) The Architect of the Capitol.
- (4) The Secretary of Agriculture and the heads of 7 other agencies of the United States (other than the Department of the Interior), the activities of which affect historic preservation, designated by the President.
- (5) One Governor appointed by the President.
- (6) One mayor appointed by the President.
- (7) The President of the National Conference of State Historic Preservation Officers.
- (8) The General Chairman of the National Association of Tribal Historic Preservation Officers.
- (9) The Chairman of the National Trust.
- (10) Four experts in the field of historic preservation appointed by the President from architecture, history, archeology, and other appropriate disciplines.
- (11) Three members from the general public, appointed by the President.
- (12) One member of an Indian tribe or Native Hawaiian organization who represents the interests of the Indian tribe or Native Hawaiian organization of which he or she is a member, appointed by the President.

(b) DESIGNATION OF SUBSTITUTES.— Each member of the Council specified in paragraphs (2) to (5) and (7) through (9) of subsection (a) may designate another officer of the department, agency, or

organization to serve on the Council instead of the member, except that, in the case of paragraphs (2) and (4), no officer other than an Assistant Secretary or an officer having major department wide or agency-wide responsibilities may be designated.

(c) TERM OF OFFICE.—Each member of the Council appointed under paragraphs (10) through (12) of subsection (a) shall serve for a term of 4 years from the expiration of the term of the member's predecessor. The members appointed under paragraphs (5) and (6) shall serve for the term of their elected office but not in excess of 4 years. An appointed member, other than the Chairman of the Council, may not serve more than 2 terms. An appointed member whose term has expired shall serve until that member's successor has been appointed.

(d) VACANCIES.—A vacancy in the Council shall not affect its powers, but shall be filled, not later than 60 days after the vacancy commences, in the same manner as the original appointment (and for the balance of the unexpired term).

(e) CHAIRMAN.—

(1) After January 20, 2017, the Chairman shall—

(A) be appointed by the President, by and with the advice and consent of the Senate;

(B) serve at the will of the President;

(C) serve full time; and

(D) be compensated at the rate provided for Level V of the Executive Schedule Pay Rates under section 5316 of title 5.

(2) The Chairman shall serve for a term of 4 years and may be reappointed once, for a total of not more than 8 years of service as Chairman, except that a Chairman whose appointment has expired under this paragraph shall serve until his or her successor has been appointed. The term of a Chairman shall start (regardless of actual appointment date) on January 20 after each general Presidential election. The first Chairman appointed after the date of enactment of this paragraph shall have a first term commencing on January 20, 2017, and ending on January 19, 2021.

(3) The Chairmen before the first appointment of a Chairman in accordance with paragraph (1) of this subsection shall receive \$100 per diem when engaged in the performance of the duties of the Council, and shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council.

(f) DESIGNATION OF VICE CHAIRMAN.—The President shall designate a Vice Chairman from the members appointed under paragraph (5), (6), (10), or (11) of subsection (a). The Vice Chairman shall perform the functions of the Chairman during the absence or disability of the Chairman or when the office is vacant.

(g) QUORUM.—Thirteen members of the Council shall constitute a quorum.

#### § 304102. Duties of Council

(a) DUTIES.—The Council shall—

(1) advise the President and Congress on matters relating to historic preservation, recommend measures to coordinate activities of Federal, State, and local agencies and private institutions and individuals relating to historic preservation, and advise on the dissemination of information pertaining to those activities;

(2) encourage, in cooperation with the National Trust and appropriate private agencies, public interest and participation in historic preservation;

(3) recommend the conduct of studies in such areas as—

(A) the adequacy of legislative and administrative statutes and regulations pertaining to historic preservation activities of State and local governments; and

(B) the effects of tax policies at all levels of government on historic preservation;

(4) advise as to guidelines for the assistance of State and local governments in drafting legislation relating to historic preservation;

(5) encourage, in cooperation with appropriate public and private agencies and institutions, training and education in the field of historic preservation;

(6) review the policies and programs of Federal agencies and recommend to Federal agencies methods to improve the effectiveness, coordination, and consistency of those policies and programs with the policies and programs carried out under this division; and

(7) inform and educate Federal agencies, State and local governments, Indian tribes, other nations and international organizations and private groups and individuals as to the Council's authorized activities.

(b) ANNUAL REPORT.—The Council annually shall submit to the President a comprehensive report of its activities and the results of its studies and shall from time to time submit additional and special reports as it deems advisable. Each report shall propose legislative enactments and other actions as, in the judgment of the Council, are necessary and appropriate to carry out its recommendations and shall provide the Council's assessment of current and emerging problems in the field of historic preservation and an evaluation of the effectiveness of the programs of Federal agencies, State and local governments, and the private sector in carrying out this division.

#### **§ 304103. Cooperation between Council and instrumentalities of executive branch of Federal Government**

The Council may secure directly from any Federal agency information, suggestions, estimates, and statistics for the purpose of this chapter. Each Federal agency may furnish information, suggestions, estimates, and statistics to the extent permitted by law and within available funds.

#### **§ 304104. Compensation of members of Council**

The members of the Council specified in paragraphs (2), (3), and (4) of section 304101(a) of this title shall serve without additional compensation. The Chairman of the Council shall be compensated as provided in subsection (e) of section 304101. The other members of the Council shall receive \$100 per diem when engaged in the performance of the duties of the Council. All members of the Council shall receive reimbursement for necessary traveling and subsistence expenses incurred by them in the performance of the duties of the Council.

#### **§ 304105. Administration**

(a) EXECUTIVE DIRECTOR.—There shall be an Executive Director of the Council who shall be appointed by the Chairman with the concurrence of the Council in the competitive service at a rate within the General Schedule, in the competitive service at a rate that may exceed the rate prescribed for the highest rate established for grade 15 of the General Schedule under section 5332 of title 5, or in the

Senior Executive Service under section 3393 of title 5. The Executive Director shall report directly to the Chairman and perform such functions and duties as the Chairman may prescribe.

(b) GENERAL COUNSEL AND APPOINTMENT OF OTHER ATTORNEYS.—

(1) GENERAL COUNSEL.—The Council shall have a General Counsel, who shall be appointed by the Executive Director. The General Counsel shall report directly to the Executive Director and serve as the Council's legal advisor.

(2) APPOINTMENT OF OTHER ATTORNEYS.—The Executive Director shall appoint other attorneys as may be necessary to—

(A) assist the General Counsel;

(B) represent the Council in court when appropriate, including enforcement of agreements with Federal agencies to which the Council is a party;

(C) assist the Department of Justice in handling litigation concerning the Council in court; and

(D) perform such other legal duties and functions as the Executive Director and the Council may direct.

(c) APPOINTMENT AND COMPENSATION OF OFFICERS AND EMPLOYEES.—The Executive Director of the Council may appoint and fix the compensation of officers and employees in the competitive service who are necessary to perform the functions of the Council at rates not to exceed that prescribed for the highest rate for grade 15 of the General Schedule under section 5332 of title 5. The Executive Director, with the concurrence of the Chairman, may appoint and fix the compensation of not to exceed 5 employees in the competitive service at rates that exceed that prescribed for the highest rate established for grade 15 of the General Schedule under section 5332 of title 5 or in the Senior Executive Service under section 3393 of title 5.

(d) APPOINTMENT AND COMPENSATION OF ADDITIONAL PERSONNEL.— The Executive Director may appoint and fix the compensation of such additional personnel as may be necessary to carry out the Council's duties, without regard to the civil service laws and chapter 51 and subchapter III of chapter 53 of title 5.

(e) EXPERT AND CONSULTANT SERVICES.—The Executive Director may procure expert and consultant services in accordance with section 3109 of title 5.

(f) FINANCIAL AND ADMINISTRATIVE SERVICES.—

(1) SERVICES TO BE PROVIDED BY SECRETARY, AGENCY, OR PRIVATE ENTITY.—Financial and administrative services (including those related to budgeting, accounting, financial reporting, personnel and procurement) shall be provided the Council by the Secretary or, at the discretion of the Council, another agency or private entity that reaches an agreement with the Council, for which payments shall be made in advance, or by reimbursement, from funds of the Council in such amounts as may be agreed on by the Chairman of the Council and the head of the agency or the authorized representative of the private entity that will provide these services.

(2) FEDERAL AGENCY REGULATIONS RELATING TO COLLECTION APPLY.—When a Federal agency affords those services, the regulations of that agency under section 5514(b) of title 5 for the collection of indebtedness of personnel resulting from erroneous payments shall apply to the collection of erroneous payments made to or on behalf of a Council employee, and regulations of

that agency under sections 1513(d) and 1514 of title 31 for the administrative control of funds shall apply to appropriations of the Council. The Council shall not be required to prescribe those regulations.

(g) FUNDS, PERSONNEL, FACILITIES, AND SERVICES.—

(1) PROVIDED BY FEDERAL AGENCY.—Any Federal agency may provide the Council, with or without reimbursement as may be agreed on by the Chairman and the agency, with such funds, personnel, facilities, and services under its jurisdiction and control as may be needed by the Council to carry out its duties, to the extent that the funds, personnel, facilities, and services are requested by the Council and are otherwise available for that purpose. Any funds provided to the Council pursuant to this subsection shall be obligated by the end of the fiscal year following the fiscal year in which the funds are received by the Council.

(2) OBTAINING ADDITIONAL PROPERTY, FACILITIES, AND SERVICES AND RECEIVING DONATIONS OF MONEY.—To the extent of available appropriations, the Council may obtain by purchase, rental, donation, or otherwise additional property, facilities, and services as may be needed to carry out its duties and may receive donations of money for that purpose. The Executive Director may accept, hold, use, expend, and administer the property, facilities, services, and money for the purposes of this division.

(h) RIGHTS, BENEFITS, AND PRIVILEGES OF TRANSFERRED EMPLOYEES.—Any employee in the competitive service of the United States transferred to the Council under section 207 of the National Historic Preservation Act (Public Law 89–665) retains all the rights, benefits, and privileges pertaining to the competitive service held prior to the transfer.

(i) EXEMPTION FROM FEDERAL ADVISORY COMMITTEE ACT.—The Council is exempt from the Federal Advisory Committee Act (5 U.S.C. App.).

(j) PROVISIONS THAT GOVERN OPERATIONS OF COUNCIL.—Subchapter II of chapter 5 and chapter 7 of title 5 shall govern the operations of the Council.

**§ 304106. International Centre for the Study of the Preservation and Restoration of Cultural Property**

(a) AUTHORIZATION OF PARTICIPATION.—The participation of the United States as a member in the International Centre for the Study of the Preservation and Restoration of Cultural Property is authorized.

(b) OFFICIAL DELEGATION.—The Council shall recommend to the Secretary of State, after consultation with the Smithsonian Institution and other public and private organizations concerned with the technical problems of preservation, the members of the official delegation that will participate in the activities of the international Centre for the Study of the Preservation and Restoration of Cultural Property on behalf of the United States. The Secretary of State shall appoint the members of the official delegation from the persons recommended to the Secretary of State by the Council.

**§ 304107. Transmittal of legislative recommendations, testimony, or comments to any officer or agency of the United States prior to submission to Congress**


No officer or agency of the United States shall have any authority to require the Council to submit its legislative recommendations, or testimony, or comments on legislation to any officer or agency of the United States for approval, comments, or review, prior to the submission of the recommendations, testimony, or comments to Congress. When the Council voluntarily seeks to obtain the comments or review of any officer or agency of the United States, the Council shall include a description of the actions in its legislative recommendations, testimony, or comments on legislation that it transmits to Congress.





Kind regards,

Katherine Huit | Historian, CRM

*Willoheart*  *Enterprises*

Heirloom Preservation & Storytelling

[www.willoheart.com](http://www.willoheart.com) | [katherine.huit@willoheart.com](mailto:katherine.huit@willoheart.com)

(503) 434-9853

**katherine.huit@willoheart.com**

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**From:** OLGUIN Robert \* OPRD <Robert.OLGUIN@opr.oregon.gov>  
**Sent:** Friday, April 7, 2023 5:25 PM  
**To:** katherine.huit@willoheart.com  
**Subject:** RE: Two Questions

Hi Katherine,

Good to chat with you earlier on the phone and glad to hear about the progress on the nomination.

Regarding your question about submitting a public records request, here is the link to do that. <https://www.oregon.gov/opr/AO/Pages/AU-records.aspx> When you complete the form make sure you are clear in what you are after, it just makes it easier for us to make sure we provide you what you want. It sounds like you are most interested in all the correspondence files that we have. The rest of a nomination file typically includes all nomination materials (maps, photos, etc.), sometimes research notes (newspaper clippings, etc.), and occasionally other items, which you of course are welcome to request but might not include what you are looking for.

As for your questions below, there have not been any amendments approved by the NPS since the 1987 listing, so the evaluations in that nomination document reflect the current nomination status and no properties have been removed from the NR listing. What you provided below for each contributing status, (the first two being secondary significant contributing and the last being primary significant contributing), is what the nomination indicates.



Robert Olguin | National Register Program Coordinator  
Heritage Division, Oregon Parks and Recreation Department  
State Historic Preservation Office  
725 Summer St. NE, Suite C, Salem, Oregon 97301  
(503) 602-2468

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**From:** katherine.huit@willoheart.com <katherine.huit@willoheart.com>  
**Sent:** Thursday, April 6, 2023 7:17 AM  
**To:** OLGUIN Robert \* OPRD <Robert.OLGUIN@opr.oregon.gov>  
**Subject:** Two Questions

Hi Robert,

I have a couple questions about some historic properties in McMinnville's Downtown Historic District, which was recognized as such in 1987 by the National Park Service.

First, are the following structures still listed as part of McMinnville's Downtown Historic District and recognized as contributing historic resources by the National Park Service?

- 28b (Address: 619 East Third Street, Secondary Significant Contributing)
- 29 (Address: 641 East Third Street, Secondary Significant Contributing)
- 30 (Address: 609 East Third Street, Primary Significant Contributing)

Second, is there anything that has happened since 1987, which removed any structures recognized by the National Park Service as part of the McMinnville Downtown Historic District?

I appreciate your time and look forward to your reply.

# Frequently Asked Questions

## How is a tax credit different from a deduction?

A tax credit usually saves you more in income tax. Unlike a deduction, which reduces your taxable income, a credit is a dollar-for-dollar reduction in the amount of taxes you owe.

## Can I receive federal tax credits for fixing up my personal residence?

In general, the tax credits are not available for rehabilitating your personal home. If you live in the upper floor and rent out the first floor, the money spent on rehabilitating the rental portion can be used, provided you meet the adjusted basis test. Contact your State Historic Preservation Office (SHPO) to determine the availability of any state credits or other tax incentives for personal residences.

## If I have already begun my project, is it too late to get the credit?

As long as your building is in a registered historic district and you submit your Part 1 of the application prior to completing the project, then you may apply for the tax credits. However, you are strongly encouraged to submit rehabilitation plans (Part 2 of the application) prior to construction. In doing so, you ensure that any required changes are identified early and the resulting cost and inconvenience are minimized.

## Can anyone help me through this process?

Help is available through a variety of resources. SHPOs and local historic preservation organizations, including state or local Main Street programs, are the best place to begin if you have questions. Advice is available on the National Park Service website ([www.nps.gov/tps/](http://www.nps.gov/tps/)) or through many SHPO websites. Some people choose to hire a professional consultant, but for most small Main Street projects owners complete the process themselves.

## How long does it take to get approval of my proposed project?

You should submit your rehabilitation plans (Part 2 of the application) well in advance of beginning work – many states recommend six months prior – to allow time if additional information is needed by the SHPO or National Park Service. When original submittals contain sufficient information, reviews by the NPS are generally completed in 30 days, once received from the SHPO.

## When can I claim the tax credit?

A credit may be claimed in the same year the building is placed in service. Where the building is never out of service, the credit is usually taken in the year in which the rehabilitation is completed.

## How are the Federal and local reviews different?

Local commissions develop their own guidelines that are particular to the district and the community's preservation goals. Under the Federal tax credit program, the Secretary of the Interior's *Standards for Rehabilitation* are applied uniformly to projects from across the country. Work on both the exterior and the interior of a building is reviewed by the SHPO and NPS, while local review commissions generally only consider exterior work.

## Are there any application fees?

It depends on the cost of your project. For information on current fees, visit our web site at [www.nps.gov/tps/tax-incentives/application-process.htm](http://www.nps.gov/tps/tax-incentives/application-process.htm).



Approval by the National Park Service for purposes of federal tax credits is a separate and different process from that of approval by a local architectural review commission for purposes of obtaining a certificate of appropriateness.

To locate your State Historic Preservation Office visit [www.ncshpo.org](http://www.ncshpo.org)

*This booklet was prepared by Daniel Bruechert, Technical Preservation Services Branch, Heritage Preservation Service, National Park Service, with the assistance of Charles Fisher, National Park Service. Thanks are extended to Elizabeth Creveling and Jennifer Parker of the National Park Service for their collaboration and Michael Auer for his review. All photographs are from National Park Service files unless otherwise indicated.*

*First-time user guides for owners of small buildings interested in the federal rehabilitation tax credits are prepared pursuant to the National Preservation Act, as amended, which directs the Secretary of the Interior to develop and make available information concerning the preservation of historic properties. This and other guidance on rehabilitating small buildings can be found on our web site at [www.nps.gov/tps](http://www.nps.gov/tps).*

# Rehabilitating Your Main Street Building

The Historic Rehabilitation Tax Credit Program was created to encourage the rehabilitation and re-use of historic structures while preserving the historic character of individual buildings and districts. Many historic districts in small towns and cities have Main Streets of small shops and other commercial buildings, typically one to four stories high. The variety of architectural styles reflects the popular taste of different eras and the image an entrepreneur wanted to project.

The commercial storefront is usually one of the most significant elements of a Main Street building. In its simplest form, a storefront traditionally consisted of several display windows in a wood or metal frame, set above a bulkhead and below a glass transom, and an entranceway to the store on the first floor. It was also common for a second doorway to be located on one end of the storefront to provide access to the floors above. A sign and a canopy or awning often embellished the storefront.

When the historic storefront has survived largely unaltered, it should be repaired whenever possible, rather than replaced, in order to preserve both the historic appearance and historic materials. Similarly, a later storefront installed during the historic district's period of significance that may have acquired significance in its own right should be repaired. Where the existing storefront is not significant or has deteriorated beyond repair, the following guidance applies, in most cases, when designing a compatible replacement (for further guidance see Preservation Brief 11: *Rehabilitating Historic Storefronts*):

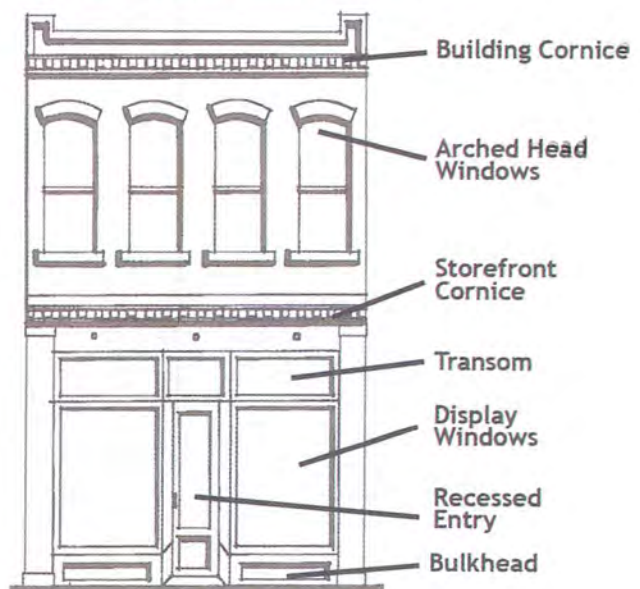
- Relate the new storefront to the design of the building.
- Correctly proportion display windows so as to consist predominantly of glass, typically with a transom above and bulkhead below.
- Retain, where possible, the location of the historic storefront entrances and any separate outside entrance to the upper floors. Duplicate the historic doors or replace with doors that are sized to the opening. (This usually requires a custom-made door to achieve the necessary height and width; avoid doors that have a residential appearance.)
- Ensure that replacement storefronts that aim to recapture the historic design are finished so as to be consistent with the historic appearance.
- With non-historic or replacement storefronts of a compatible design, avoid unpainted wood surfaces as well as in most cases bright metallic or bronze anodized metal finish.
- Design and attach signage and any canopies in a manner so as to avoid damage to the historic material and to be compatible with the features and appearance of the building facade.

Besides the storefront, windows on the upper floors and the roof cornice usually help define the historic character of small commercial buildings. Repair historic windows when possible, adding exterior or interior storm windows as needed. If the historic windows are beyond repair, suitable replacements are ones that match the appearance and materials of the old units.

Depending on the level of historic integrity, the interiors of Main Street commercial buildings on both the upper and lower floors often contribute to the historic character through their historic spaces, features, and/or finishes. Main Street buildings typically had a large open floorplan on all or part of the first floor, making it easily adaptable to numerous uses. While retaining the open plan is recommended, it may be possible to divide portions of the space, provided the sense of openness is preserved. Many commercial buildings retain their historic decorative ceilings, such as pressed metal, and their finished walls. These finished appearances should not be dramatically altered. Throughout the building avoid the removal of plaster to expose masonry walls or removing a pressed metal ceiling to expose the above floor joists. In most cases, mechanical ductwork is best concealed, rather than being left exposed, since exposed mechanicals can visually impact a historic space. Where ducts must be exposed, they should be painted to blend in with the ceiling.

When more floor space is needed, it is often possible to add to the rear of Main Street buildings and still qualify as a "certified rehabilitation." Rooftop additions to most small commercial buildings are not appropriate. While costs associated with new additions are not eligible for the rehabilitation credit, the work is still reviewed by the National Park Service.

## Typical Storefront Details



Drawing courtesy of Winter & Company

**Part 2** of the application is where you describe the condition of the building prior to rehabilitation and the proposed work. Three forms of information are needed: a description or **narrative** for each main building feature (see sample left, below); ample **photographs** showing the condition and views of the property prior to beginning work (exterior and interior as well as the surrounding site); and architectural plans or **drawings** that include existing floor plans and proposed changes. If no work is planned for a major feature (such as windows, roof, 2nd floor plan, etc.), include a statement to that effect in the application and still provide photographs.

You are strongly encouraged to submit **Parts 1 and 2** during the early planning stages of the project. This provides the opportunity to make changes with minimal inconvenience or additional expense if some aspect of the work is determined not to meet the *Standards for Rehabilitation*. Completing work without Part 2 approval may result in incompatible work and denial of your project.

**Part 3** of the application is a Request for Certification of Completed Work. This is a presentation of the finished rehabilitation and, once approved by the National Park Service, serves as documentation to the Internal Revenue Service that your project is a “certified rehabilitation.” Approval of the Part 3 application is a condition for obtaining federal rehabilitation tax credits.

## Describing Your Project

Material and information to provide in your application include:

- *historic district map*
- *site plan*
- *photographs*
- *floor plans*
- *elevation drawings* (if exterior changes are planned)

On a copy of the *historic district map*, indicate where your building is located.

*Photographs* are essential in conveying what the building looks like prior to your rehabilitation. Think of the pictures as providing a “virtual tour” of your property. Include pictures showing each exterior side, the building’s relationship to surrounding structures, and close-ups of such primary exterior features as display windows, doors, and other character-defining features. On the interior, provide views of the main spaces on each floor, and include details like decorative ceilings, stairs, interior doors, and window trim. Document deteriorated conditions, such as crumbling brickwork or water stained plaster.

Number each photograph on the back and write the building’s address and a brief description of the image. Include a *floor plan* with the number of each photograph and an arrow pointing in the direction it was taken. Please indicate if the image is pre- or post-rehabilitation.

*Elevation drawings* often will be needed where major changes to the exterior of the building are planned. For example, a drawing should show the size, design, and details of a proposed new storefront. *Floor plans* of the existing room layouts are important and, where changes are proposed, *floor plans* showing the new layout are needed as well.

Supplemental material may also be helpful in describing your project. For example, product literature or a simple sketch might best detail a new side entrance door.

Remember that the SHPO and National Park Service reviewers who will be evaluating the application will probably be seeing your building for the first time through the material you provide. Your application should communicate: (a) the appearance of the building prior to beginning work; (b) the building’s condition on both the interior and the exterior prior to work; and (c) your proposed rehabilitation work.

## Photo Documentation

Good quality photos (4 x 6 or larger) are needed. If using digital images, print in high-resolution on photo quality paper. Images printed on regular copy paper are discouraged due to the general lack of clarity and detail.

Label and number each photo and reference it in the application. In addition, key the picture to a floor plan with an arrow indicating the direction in which it was taken.



Photo 3, Pre-Rehab  
2147 Hamilton Rd.  
City, State  
  
Front facade with cornice  
detail and mismatched mortar  
used in earlier repointing.

Example: Photo and label on reverse side.

# The Application

The Historic Preservation Certification Application (NPS Form 10-168) consists of 3 parts. This form can be downloaded from the web at [www.nps.gov/tps/tax-incentives/application.htm](http://www.nps.gov/tps/tax-incentives/application.htm).

**Part 1** of the application is a request to obtain a determination by the National Park Service that your building is a "certified historic structure." You will need to describe the physical appearance of the exterior and interior of the building, submit photographs, and provide a brief narrative on its history and significance to the historic district in which it is located. Part of this information is likely contained in the National Register Nomination for the district, which should be available from your local historic district commission, municipal planning office, or SHPO.

## HISTORIC PRESERVATION CERTIFICATION APPLICATION PART 1 - EVALUATION OF SIGNIFICANCE

Property name: Houseal Building NPS Project Number: \_\_\_\_\_

Property address: 316 Main Street, City, State

### 5. Description of physical appearance

The Houseal Building is a symmetrical two-story painted brick commercial building. The display windows are large plate-glass windows set in aluminum frames and have a metal-sided bulkhead. Each storefront has a recessed entry, with a pair of glass and aluminum doors circa 1960.

The segmented arched window openings on the second floor have had their sashes removed some time ago and have been boarded up with plywood. There is a simple three brick course cornice with a tall parapet wall. Above the cornice, "HOUSEAL BUILDING" is applied in painted wood letters.

The first floor interior consists of one large open space with structural posts running down the middle of the room, and an enclosed bathroom in the back right corner. It has wood floors and plaster walls. A dropped ceiling system obscures the original pressed metal still in place. A staircase along the left wall provides access to the second floor. The second floor interior has deteriorated due to water damage and has warped wood floors and plaster falling off the brick walls. Two rows of structural posts run from the front of the building to the rear and evidence indicates that there were historically two residential or office spaces separated by a central hallway.

Date of construction: c. 1890 Source of date: City Directories, Sanborn Fire Insurance Maps

Date(s) of alteration(s): Late 1940's, 1960's Source of date: \_\_\_\_\_

Has building been moved?  no  yes, specify date: \_\_\_\_\_

### 6. Statement of significance

The Houseal Building, a contributing building to the Downtown Historic District, is representative of the town's late 19<sup>th</sup> century commercial development and is within the district's period of significance, which ends in 1942. The building retains both its integrity of materials and historic form. The addition of aluminum doors and display windows occurred outside the period of significance of the district.



The photograph above shows the building described in the sample application prior to the rehabilitation work. Below left, the building is shown after its successful rehabilitation.

## HISTORIC PRESERVATION CERTIFICATION APPLICATION PART 2 - DESCRIPTION OF REHABILITATION

Property name: Houseal Building NPS Project Number: \_\_\_\_\_

Property address: 316 Main Street, City, State

Description of rehabilitation work: Reproduce this page as needed to describe all work or create a comparable format with this information: Use consecutively to describe all work, including building exterior and interior, additions, site work, landscaping, and new construction.

Number 1 Feature Brick Facade Date of Feature 1890

Describe existing feature and its condition

The building is constructed of red brick. It has been painted white sometime after the period of significance for the district. There is some brick spalling and a number of degraded mortar joints. The parapet cap was covered in Portland cement in a prior rehabilitation; there is some brick damage.

Photo numbers 1-4 Drawing numbers A-1

Describe work and impact on feature

The paint will be removed from the brick following the guidance found in Preservation Brief 1: Assessing, Cleaning, and Water-Repellent Treatments for Historic Masonry Buildings, using the gentlest means possible. The mortar joints will be repaired using a mortar that matches the composition and appearance of the historic. All work will be done in accordance with the guidance found in Preservation Brief 2: Repointing Mortar Joints in Historic Masonry Buildings. Any replacement bricks required for repairs will match the historic appearance. The Portland cement and top course of brick will be removed; a new brick course and copper parapet cap will be installed.

Number 2 Feature Storefront Date of Feature c. 1960

Describe existing feature and its condition

The storefront system is a replacement consisting of two symmetrical recessed entrances with large plate glass display windows set in aluminum frames. Metal siding encases the bulkhead and columns. The entrances are paired aluminum and glass doors. There is a canvas awning across the width of the building.

Photo numbers 1-4, 7, 8 Drawing numbers A-1, A-1.2

Describe work and impact on feature

This current storefront system will be replaced with a more historically compatible storefront. The brick bulkhead will be restored and a wooden storefront system that includes a transom will be installed. The two recessed entries will be retained in form. The paired doors will be replaced with a single wide glass door set in a wood frame. A new smaller retractable awning will be installed in a manner to reveal the decorative belt course above.



Fill out this form until all aspects of your project are fully described. Be sure to indicate details like proposed finishes (drywall, plaster, etc.) and planned methods of repair.

# Three Steps

## to Determine if a Project is Eligible for Tax Credits

### First: Does your building contribute to a historic district recognized by the National Park Service?

The easiest way to determine if your building is located in a historic district is to contact your local historic district commission, municipal planning office, or State Historic Preservation Office (SHPO). Recognized historic districts, for purposes of federal tax credits, include those listed in the *National Register of Historic Places* (maintained by the National Park Service) and certain local historic districts that are certified by the National Park Service. Over one million buildings are already listed in the National Register, either individually or as part of historic districts.

If your property is located in one of these districts, it still must be designated by the National Park Service as a structure that *contributes* to the historic character of the district and thus qualifies as a “certified historic structure.” Not every building in a district is contributing. For example, when historic districts are designated, they are usually associated with a particular time period, such as “1820 to 1935.” In this case, a building constructed in 1950 would *not contribute* and would not be eligible for a 20% rehabilitation tax credit. Within this same district, an 1892 building might not contribute to the historic character if it was almost completely changed in the 1950s.

### Second: Will your rehabilitation be “substantial”?

The cost of a project must exceed the greater of \$5,000 or the building’s adjusted basis. The following formula will help you determine if your project will meet the substantial rehabilitation test:

$$A - B - C + D = \text{adjusted basis}$$

*A* = purchase price of the property

*B* = the part of the purchase price attributed to the land cost

*C* = depreciation taken for an income-producing property

*D* = cost of any capital improvements made since purchase

For example, Mr. Dillon has owned a downtown building for a number of years. He originally purchased the property for \$150,000, and of that purchase price \$40,000 was attributed to the cost of the land. Over the years, Mr. Dillon has depreciated the building for tax purposes by a total of \$60,000. He recently replaced the roof at a cost of \$8,000. Mr. Dillon’s adjusted basis would be \$58,000. Since he intends to spend \$60,000 to fix a leaking basement wall; upgrade the heating/air conditioning systems; and repair the deteriorated storefront, the rehabilitation would qualify as a substantial project. If he completes the application process and receives approval, Mr. Dillon will be eligible for a 20% credit on the cost of his rehabilitation, or a \$12,000 credit.



**Retaining historic character:** The historic tin ceiling was retained during the rehabilitation for this Main Street clothing store.

Some expenses associated with a project may not qualify for the tax credit, such as an addition off the back of the building, new kitchen appliances, or paved parking.

### Third: How does your project become “certified”?

To qualify for the tax credits you need to complete a 3-part application. In Part 1 of the application, you provide information to help the National Park Service determine if your building qualifies as a “certified historic structure.” In Part 2, you describe the condition of the building and the planned rehabilitation work. The proposed work will be evaluated based on the Secretary of the Interior’s *Standards for Rehabilitation* – a set of 10 widely accepted standards of practice for historic preservation. Part 3 of the application is submitted after completion of the project and is used by the National Park Service to certify that the project as completed meets the Standards and is a “certified rehabilitation.”

The three parts of the application should be completed in order. You will need to submit 2 copies of each part to your SHPO. One copy will be forwarded by the SHPO with a recommendation to the National Park Service, which will issue the final decision for each part of the application. You are strongly encouraged to submit Part 2 before beginning work, because if your initial project proposal does not meet the Standards, you still have the opportunity to modify the plans and avoid incompatible work.

To learn more about the Standards, visit the National Park Service website at [www.nps.gov/tps](http://www.nps.gov/tps) or contact your State Historic Preservation Office (SHPO).

# Introduction to Federal Tax Credits for Rehabilitating Historic Buildings Main Street Commercial Buildings



National Park Service  
U.S. Department of the Interior  
Technical Preservation Services



- *Do you own a commercial building located in a historic district?*
- *Does it need to be fixed up?*
- *Will it be used for a business or rental housing?*

If you answered **YES** to all three questions, then you should be aware of a program that offers significant federal tax incentives for rehabilitating historic buildings.

## The Program

Administered by the National Park Service in conjunction with State Historic Preservation Offices (SHPO), the **Federal Historic Preservation Tax Incentives program** offers a 20% federal tax credit for qualified rehabilitation expenses. Thousands of property owners across the country have already utilized these tax incentives to rehabilitate historic commercial buildings and similar properties.

### *Why does the program exist?*

Recognizing the importance of preserving our building heritage and the need to encourage the rehabilitation of deteriorated properties, Congress created in 1976 federal tax incentives to promote historic preservation and community revitalization. These tax incentives have successfully spurred the rehabilitation of historic structures of every period, size, style, and type.



## Tax Credit Basics

- In general, a tax credit is a dollar-for-dollar reduction in the amount of taxes you owe.
- The amount of credit under this program equals 20% of the qualifying costs of your rehabilitation.
- A project must be “substantial” in that your qualifying rehabilitation expenses must exceed the greater of \$5,000 or the adjusted basis of the building.
- Your building needs to be certified as a historic structure by the National Park Service.
- Rehabilitation work has to meet the Secretary of the Interior’s *Standards for Rehabilitation* as determined by the National Park Service.

The process is straight-forward, and the tax savings can be significant. For example, a property owner planning a project estimated to cost \$60,000 could realize a tax credit of \$12,000 on their federal income taxes.

Applicants are encouraged to consult their accountant or tax advisor to make sure that this federal tax credit is beneficial to them. For additional information on the Historic Preservation Tax Incentives visit the website of the National Park Service at [www.nps.gov/tps/tax-incentives.htm](http://www.nps.gov/tps/tax-incentives.htm).

Monroe, MI 1910. Awnings were a prominent building feature on many of America’s Main Streets. Photo: Walter P. Reuther Library, Wayne State University.



Section 401*	16 U.S.C. 470a-1	54 U.S.C. 307101 (a) through (d). * = These are legislative provisions that were enacted to codify requirements of the World Heritage Convention, and were included among the National Historic Preservation Act Amendments of 1980. However, they were not technically part of the National Historic Preservation Act. Their "Section 401" and "Section 402" numbering in the first column refers to their section numbers under the public law that enacted the 1980 amendments, rather than their numbering for the National Historic Preservation Act itself. However, their "old section" names are included since, particularly in the case of "Section 402," below, those are section names that have been popularly used by practitioners.
Section 402*	16 U.S.C. 470a-2	54 U.S.C. 307101 (e). See "*" notes, above. This is the section that imposes requirements similar to "Section 106" regarding projects outside the United States.

	16 U.S.C. 470w(4)	54 U.S.C. 300309
	16 U.S.C. 470w(5)	54 U.S.C. 300308
	16 U.S.C. 470w(6)	54 U.S.C. 300311
	16 U.S.C. 470w(7)	54 U.S.C. 300320
	16 U.S.C. 470w(8)	54 U.S.C. 300315
	16 U.S.C. 470w(9)	54 U.S.C. 300304
	16 U.S.C. 470w(10)	54 U.S.C. 300305
	16 U.S.C. 470w(11)	54 U.S.C. 300316
	16 U.S.C. 470w(12)	54 U.S.C. 300318
	16 U.S.C. 470w(13)	54 U.S.C. 300307
	16 U.S.C. 470w(14)	54 U.S.C. 300319
	16 U.S.C. 470w(15)	54 U.S.C. 300302
	16 U.S.C. 470w(16)	54 U.S.C. 300303
	16 U.S.C. 470w(17)	54 U.S.C. 300313
	16 U.S.C. 470w(18)	54 U.S.C. 300314
<b>Section 302</b>	16 U.S.C. 470w-1	54 U.S.C. 307106
<b>Section 303</b>	16 U.S.C. 470w-2	54 U.S.C. 307107
<b>Section 304</b>	16 U.S.C. 470w-3	54 U.S.C. 307103
<b>Section 305</b>	16 U.S.C. 470w-4	54 U.S.C. 307105
<b>Section 306</b>	16 U.S.C. 470w-5(a) (1st sentence)	54 U.S.C. 305502
	16 U.S.C. 470w-5(a) (last sentence)	54 U.S.C. 305503
	16 U.S.C. 470w-5(b)	54 U.S.C. 305502
	16 U.S.C. 470w-5(c)	54 U.S.C. 305504
	16 U.S.C. 470w-5(d)	Repealed as obsolete. It provided for the renovation of the site on which the National Museum for the Building Arts is located.
	16 U.S.C. 470w-5(e)	54 U.S.C. 305505
	16 U.S.C. 470w-5(f)	54 U.S.C. 305501
<b>Section 307</b>	16 U.S.C. 470w-6	54 U.S.C. 307102
<b>Section 308</b>	16 U.S.C. 470w-7(a)	54 U.S.C. 305102
	16 U.S.C. 470w-7(b)	54 U.S.C. 305103
	16 U.S.C. 470w-7(c)	54 U.S.C. 305104
	16 U.S.C. 470w-7(d)	54 U.S.C. 305105
	16 U.S.C. 470w-7(e)	54 U.S.C. 305101
<b>Section 309</b>	16 U.S.C. 470w-8	54 U.S.C. 305106
<b>Section 401</b>	16 U.S.C. 470x	Not repealed but omitted from the text of title 54. It provides the following findings regarding the National Center for Preservation Technology and Training provisions: "The Congress finds and declares that, given the complexity of technical problems encountered in preserving historic properties and the lack of adequate distribution of technical information to preserve such properties, a national initiative to coordinate and promote research, distribute information, and provide training about preservation skills and technologies would be beneficial." It may be cited as Pub. L. No. 102-175, title XL, § 4022, 106 Stat. 4765 (1992).
<b>Section 402</b>	16 U.S.C. 470x-1	54 U.S.C. 305301
<b>Section 403</b>	16 U.S.C. 470x-2	54 U.S.C. 305302
<b>Section 404</b>	16 U.S.C. 470x-3	54 U.S.C. 305303
<b>Section 405</b>	16 U.S.C. 470x-4	54 U.S.C. 305304
<b>Section 406</b>	16 U.S.C. 470x-5	54 U.S.C. 305305
<b>Section 407</b>	16 U.S.C. 470x-6	54 U.S.C. 305306

	16 U.S.C. 470b(e)	54 U.S.C. 302902
<b>Section 103</b>	16 U.S.C. 470c	54 U.S.C. 302902
<b>Section 104</b>	16 U.S.C. 470d	54 U.S.C. 303901
<b>Section 105</b>	16 U.S.C. 470e	54 U.S.C. 302910
<b>Section 106</b>	16 U.S.C. 470f	54 U.S.C. 306108
<b>Section 107</b>	16 U.S.C. 470g	54 U.S.C. 307104
<b>Section 108</b>	16 U.S.C. 470h (1st paragraph)	54 U.S.C. 303101
	16 U.S.C. 470h (last paragraph 1st sentence)	54 U.S.C. 303102
	16 U.S.C. 470h (last paragraph last sentence)	54 U.S.C. 303103
<b>Section 109</b>	16 U.S.C. 470h-1	54 U.S.C. 307108
<b>Section 110</b>	16 U.S.C. 470h-2(a)(1)	54 U.S.C. 306101
	16 U.S.C. 470h-2(a)(2)	54 U.S.C. 306102
	16 U.S.C. 470h-2(b)	54 U.S.C. 306103
	16 U.S.C. 470h-2(c)	54 U.S.C. 306104
	16 U.S.C. 470h-2(d)	54 U.S.C. 306105
	16 U.S.C. 470h-2(e)	54 U.S.C. 306106
	16 U.S.C. 470h-2(f)	54 U.S.C. 306107
	16 U.S.C. 470h-2(g)	54 U.S.C. 306109
	16 U.S.C. 470h-2(h)	54 U.S.C. 306110
	16 U.S.C. 470h-2(i)	54 U.S.C. 306111
	16 U.S.C. 470h-2(j)	54 U.S.C. 306112
	16 U.S.C. 470h-2(k)	54 U.S.C. 306113
	16 U.S.C. 470h-2(l)	54 U.S.C. 306114
<b>Section 111</b>	16 U.S.C. 470h-3(a), (b)	54 U.S.C. 306121
	16 U.S.C. 470h-3(c)	54 U.S.C. 306122
<b>Section 112</b>	16 U.S.C. 470h-4	54 U.S.C. 306131
<b>Section 113 (Repealed)</b>	16 U.S.C. 470h-5	Repealed as obsolete. It provided that the Secretary study the suitability and feasibility of alternatives for controlling illegal interstate and international traffic in antiquities and not later than 18 months after October 30, 1992, submit to Congress a report detailing the Secretary's findings and recommendations from the study.
<b>Section 201</b>	16 U.S.C. 470i	54 U.S.C. 304101
<b>Section 202</b>	16 U.S.C. 470j	54 U.S.C. 304102
<b>Section 203</b>	16 U.S.C. 470k	54 U.S.C. 304103
<b>Section 204</b>	16 U.S.C. 470l	54 U.S.C. 304104
<b>Section 205</b>	16 U.S.C. 470m	54 U.S.C. 304105
<b>Section 206</b>	16 U.S.C. 470n	54 U.S.C. 304106
<b>Section 207 (Repealed)</b>	16 U.S.C. 470o	Repealed as obsolete. It provided that personnel, property, records, and unexpended balances of funds be transferred by the Department of the Interior to the Advisory Council on Historic Preservation within 60 days of the effective date of Public Law 94-422, which was approved on September 28, 1976.
<b>Section 208</b>	16 U.S.C. 470p	54 U.S.C. 304105
<b>Section 209</b>	16 U.S.C. 470q	54 U.S.C. 304105
<b>Section 210</b>	16 U.S.C. 470r	54 U.S.C. 304107
<b>Section 211</b>	16 U.S.C. 470s	54 U.S.C. 304108
<b>Section 212</b>	16 U.S.C. 470t(a) (1st sentence)	54 U.S.C. 304109
	16 U.S.C. 470t(a) (last sentence)	Repealed as unnecessary. It authorized to be appropriated amounts necessary to carry out this part.
	16 U.S.C. 470t(b)	54 U.S.C. 304109
<b>Section 213</b>	16 U.S.C. 470u	54 U.S.C. 304110
<b>Section 214</b>	16 U.S.C. 470v	54 U.S.C. 304108
<b>Section 215</b>	16 U.S.C. 470v-1	54 U.S.C. 304111
<b>Section 216</b>	16 U.S.C. 470v-2	54 U.S.C. 304112
<b>Section 301</b>	16 U.S.C. 470w(1)	54 U.S.C. 300301
	16 U.S.C. 470w(2)	54 U.S.C. 300317
	16 U.S.C. 470w(3)	54 U.S.C. 300310

Old Section Name	Old Title 16 Legal Cite	Current Title 54 Legal Cite	
Section 1	16 U.S.C. 470(a)	54 U.S.C. 100101 note. It provides the short title: the "National Historic Preservation Act."	
	16 U.S.C. 470(b)	Not repealed but omitted from the text of title 54. It provides findings for the National Historic Preservation Act. It is still valid law and may be cited as: Section 1 of the National Historic Preservation Act, Pub. L. No. 89-665, as amended by Pub. L. No. 96-515.	
Section 2	16 U.S.C. 470-1	54 U.S.C. 300101	
Section 101	16 U.S.C. 470a(a)(1)(A) (1st sentence)	54 U.S.C. 302101	
	16 U.S.C. 470a(a)(1)(A) (last sentence)	54 U.S.C. 302106	
	16 U.S.C. 470a(a)(1)(B)	54 U.S.C. 302102	
	16 U.S.C. 470a(a)(2)	54 U.S.C. 302103	
	16 U.S.C. 470a(a)(3) through (5)	54 U.S.C. 302104	
	16 U.S.C. 470a(a)(6)	54 U.S.C. 302105	
	16 U.S.C. 470a(a)(7)	54 U.S.C. 302107	
	16 U.S.C. 470a(a)(8)	54 U.S.C. 302108	
	16 U.S.C. 470a(b)(1)	54 U.S.C. 302301	
	16 U.S.C. 470a(b)(2)	54 U.S.C. 302302	
	16 U.S.C. 470a(b)(3)	54 U.S.C. 302303	
	16 U.S.C. 470a(b)(4)	54 U.S.C. 302304	
	16 U.S.C. 470a(b)(5)	Repealed as obsolete. It provided that any State historic preservation program in effect under prior authority of law could be treated as an approved program for purposes of 16 U.S.C. 470a(b) until the earlier of the date on which the Secretary approved a program submitted by the State under 16 U.S.C. 470a(b) or 3 years after December 12, 1992.	
	16 U.S.C. 470a(b)(6)	54 U.S.C. 302304	
	16 U.S.C. 470a(c)(1) (1st sentence)	54 U.S.C. 302502	
	16 U.S.C. 470a(c)(1) (2d, last sentences)	54 U.S.C. 302503	
	16 U.S.C. 470a(c)(2)	54 U.S.C. 302504	
	16 U.S.C. 470a(c)(3)	54 U.S.C. 302505	
	16 U.S.C. 470a(c)(4)	54 U.S.C. 302501	
	16 U.S.C. 470a(d)(1)	54 U.S.C. 302701	
	16 U.S.C. 470a(d)(2)	54 U.S.C. 302702	
	16 U.S.C. 470a(d)(3)	54 U.S.C. 302703	
	16 U.S.C. 470a(d)(4)	54 U.S.C. 302704	
	16 U.S.C. 470a(d)(5)	54 U.S.C. 302705	
	16 U.S.C. 470a(d)(6)	54 U.S.C. 302706	
	16 U.S.C. 470a(e)(1)	54 U.S.C. 302902	
	16 U.S.C. 470a(e)(2)	54 U.S.C. 302903	
	16 U.S.C. 470a(e)(3)(A)	54 U.S.C. 302904	
	16 U.S.C. 470a(e)(3)(B)	54 U.S.C. 302906	
	16 U.S.C. 470a(e)(3)(C)	54 U.S.C. 302904	
	16 U.S.C. 470a(e)(4)	54 U.S.C. 302905	
	16 U.S.C. 470a(e)(5)	54 U.S.C. 302907	
	16 U.S.C. 470a(e)(6)	54 U.S.C. 302908	
	16 U.S.C. 470a(f)	54 U.S.C. 302909	
	16 U.S.C. 470a(g), (h)	54 U.S.C. 306101	
	16 U.S.C. 470a(i)	54 U.S.C. 303902	
	16 U.S.C. 470a(j)	54 U.S.C. 303903	
	Section 102	16 U.S.C. 470b(a) (1st sentence paragraph (1))	54 U.S.C. 302901
		16 U.S.C. 470b(a) (1st sentence paragraphs (2) through (6))	54 U.S.C. 302902
		16 U.S.C. 470b(a) (2d sentence)	54 U.S.C. 302902
		16 U.S.C. 470b(a) (last sentence)	54 U.S.C. 302901
16 U.S.C. 470b(b)		54 U.S.C. 302902	
16 U.S.C. 470b(c)		Previously repealed.	
16 U.S.C. 470b(d) (relating to remaining cost of project)		54 U.S.C. 302902	
16 U.S.C. 470b(d) (relating to availability)	54 U.S.C. 302901		

**§ 307105. Attorney's fees and costs to prevailing parties in civil actions**

In any civil action brought in any United States district court by any interested person to enforce this division, if the person substantially prevails in the action, the court may award attorney's fees, expert witness fees, and other costs of participating in the civil action, as the court considers reasonable.

**§ 307106. Authorization for expenditure of appropriated funds**

Where appropriate, each Federal agency may expend funds appropriated for its authorized programs for the purposes of activities carried out pursuant to this division, except to the extent that appropriations legislation expressly provides otherwise.

**§ 307107. Donations and bequests of money, personal property, and less than fee interests in historic property**

(a) MONEY AND PERSONAL PROPERTY.—The Secretary may accept donations and bequests of money and personal property for the purposes of this division and shall hold, use, expend, and administer the money and personal property for those purposes.

(b) LESS THAN FEE INTEREST IN HISTORIC PROPERTY.—The Secretary may accept gifts or donations of less than fee interests in any historic property where the acceptance of an interest will facilitate the conservation or preservation of the historic property. Nothing in this section or in any provision of this division shall be construed to affect or impair any other authority of the Secretary under other provision of law to accept or acquire any property for conservation or preservation or for any other purpose.

**§ 307108. Privately donated funds**

(a) PROJECTS FOR WHICH FUNDS MAY BE USED.—In furtherance of the purposes of this division, the Secretary may accept the donation of funds that may be expended by the Secretary for projects to acquire, restore, preserve, or recover data from any property included on the National Register, as long as the project is owned by a State, any unit of local government, or any non-profit entity.

(b) CONSIDERATION OF FACTORS RESPECTING EXPENDITURE OF FUNDS.—

(1) IN GENERAL.—In expending the funds, the Secretary shall give due consideration to—

- (A) the national significance of the project;
- (B) its historical value to the community;
- (C) the imminence of its destruction or loss; and
- (D) the expressed intentions of the donor.

(2) FUNDS AVAILABLE WITHOUT REGARD TO MATCHING REQUIREMENTS.—Funds expended under this subsection shall be made available without regard to the matching requirements established by sections 302901 and 302902(b) of this title, but the recipient of the funds shall be permitted to utilize them to match any grants from the Historic Preservation Fund.

(c) TRANSFER OF UNOBLIGATED FUNDS.—The Secretary may transfer unobligated funds previously donated to the Secretary for the purposes of the Service, with the consent of the donor, and any funds so transferred shall be used or expended in accordance with this division.

(b) DISAPPROVAL OF REGULATION BY RESOLUTION OF CONGRESS.— The regulation shall not become effective if, within 90 calendar days of continuous session of Congress after the date of promulgation, both Houses of Congress adopt a concurrent resolution, the matter after the resolving clause of which is as follows: “That Congress disapproves the regulation promulgated by the Secretary dealing with the matter of , which regulation was transmitted to Congress on ,” the blank spaces in the resolution being appropriately filled.

(c) FAILURE OF CONGRESS TO ADOPT RESOLUTION OF DISAPPROVAL OF REGULATION.—If at the end of 60 calendar days of continuous session of Congress after the date of promulgation of a regulation, no committee of either House of Congress has reported or been discharged from further consideration of a concurrent resolution disapproving the regulation, and neither House has adopted such a resolution, the regulation may go into effect immediately. If, within the 60 calendar days, a committee has reported or been discharged from further consideration of such a resolution, the regulation may go into effect not sooner than 90 calendar days of continuous session of Congress after its promulgation unless disapproved as provided for.

(d) SESSIONS OF CONGRESS.—For purposes of this section—

(1) continuity of session is broken only by an adjournment sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of 60 and 90 calendar days of continuous session of Congress.

(e) CONGRESSIONAL INACTION OR REJECTION OF RESOLUTION OF DISAPPROVAL NOT DEEMED APPROVAL OF REGULATION.—Congressional inaction on or rejection of a resolution of disapproval shall not be deemed an expression of approval of the regulation.

#### **§ 307103. Access to information**

(a) AUTHORITY TO WITHHOLD FROM DISCLOSURE.—The head of a Federal agency, or other public official receiving grant assistance pursuant to this division, after consultation with the Secretary, shall withhold from disclosure to the public information about the location, character, or ownership of a historic property if the Secretary and the agency determine that disclosure may—

(1) cause a significant invasion of privacy;

(2) risk harm to the historic property; or

(3) impede the use of a traditional religious site by practitioners.

(b) ACCESS DETERMINATION.—When the head of a Federal agency or other public official determines that information should be withheld from the public pursuant to subsection (a), the Secretary, in consultation with the Federal agency head or official, shall determine who may have access to the information for the purpose of carrying out this division.

(c) CONSULTATION WITH COUNCIL.—When information described in subsection (a) has been developed in the course of an agency’s compliance with section 306107 or 306108 of this title, the Secretary shall consult with the Council in reaching determinations under subsections (a) and (b).

#### **§ 307104. Inapplicability of division to White House, Supreme Court building, or United States Capitol**

Nothing in this division applies to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.

Protection and Repatriation Act (25 U.S.C. 3002(a)(2)(B), (C)), give notice to and consult with the Indian tribe or Native Hawaiian organization.

## Subdivision 6—Miscellaneous

### Chapter 3071—Miscellaneous

Sec.

307101. World Heritage Convention.

307102. Effective date of regulations.

307103. Access to information.

307104. Inapplicability of division to White House, Supreme Court building, or United States Capitol.

307105. Attorney's fees and costs to prevailing parties in civil actions.

307106. Authorization for expenditure of appropriated funds.

307107. Donations and bequests of money, personal property, and less than fee interests in historic property.

307108. Privately donated funds.

#### § 307101. World Heritage Convention

(a) **AUTHORITY OF SECRETARY.**—In carrying out this section, the Secretary of the Interior may act directly or through an appropriate officer in the Department of the Interior.

(b) **PARTICIPATION BY UNITED STATES.**—The Secretary shall direct and coordinate participation by the United States in the World Heritage Convention in cooperation with the Secretary of State, the Smithsonian Institution, and the Council. Whenever possible, expenditures incurred in carrying out activities in cooperation with other nations and international organizations shall be paid for in such excess currency of the country or area where the expense is incurred as may be available to the United States.

(c) **NOMINATION OF PROPERTY TO WORLD HERITAGE COMMITTEE.**— The Secretary shall periodically nominate property that the Secretary determines is of international significance to the World Heritage Committee on behalf of the United States. No property may be nominated unless it has previously been determined to be of national significance. Each nomination shall include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment (including restrictive covenants, easements, or other forms of protection). Before making any nomination, the Secretary shall notify the Committee on Natural Resources of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(d) **NOMINATION OF NON-FEDERAL PROPERTY TO WORLD HERITAGE COMMITTEE REQUIRES WRITTEN CONCURRENCE OF OWNER.**—No non-Federal property may be nominated by the Secretary to the World Heritage Committee for inclusion on the World Heritage List unless the owner of the property concurs in the nomination in writing.

(e) **CONSIDERATION OF UNDERTAKING ON PROPERTY.**—Prior to the approval of any undertaking outside the United States that may directly and adversely affect a property that is on the World Heritage List or on the applicable country's equivalent of the National Register, the head of a Federal agency having direct or indirect jurisdiction over the undertaking shall take into account the effect of the undertaking on the property for purposes of avoiding or mitigating any adverse effect.

#### § 307102. Effective date of regulations

(a) **PUBLICATION IN FEDERAL REGISTER.**—No final regulation of the Secretary shall become effective prior to the expiration of 30 calendar days after it is published in the Federal Register during which either or both Houses of Congress are in session.

(A) all actions taken by employees or contractors of the agency meet professional standards under regulations developed by the Secretary in consultation with the Council, other affected agencies, and the appropriate professional societies of archeology, architecture, conservation, history, landscape architecture, and planning

(B) agency personnel or contractors responsible for historic property meet qualification standards established by the Office of Personnel Management in consultation with the Secretary and appropriate professional societies of archeology, architecture, conservation, curation, history, landscape architecture, and planning; and

(C) records and other data, including data produced by historical research and archeological surveys and excavations, are permanently maintained in appropriate databases and made available to potential users pursuant to such regulations as the Secretary shall promulgate.

(2) CONSIDERATIONS.—The standards referred to in paragraph (1)(B) shall consider the particular skills and expertise needed for the preservation of historic property and shall be equivalent requirements for the disciplines involved.

(3) REVISION.—The Office of Management and Budget shall revise qualification standards for the disciplines involved.

(b) GUIDELINES.—To promote the preservation of historic property eligible for listing on the National Register, the Secretary shall, in consultation with the Council, promulgate guidelines to ensure that Federal, State, and tribal historic preservation programs subject to this division include plans to—

(1) provide information to the owners of historic property (including architectural, curatorial, and archeological property) with demonstrated or likely research significance, about the need for protection of the historic property, and the available means of protection;

(2) encourage owners to preserve historic property intact and in place and offer the owners of historic property information on the tax and grant assistance available for the donation of the historic property or of a preservation easement of the historic property;

(3) encourage the protection of Native American cultural items (within the meaning of section 2 of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001)) and of property of religious or cultural importance to Indian tribes, Native Hawaiian organizations, or other Native American groups; and

(4) encourage owners that are undertaking archeological excavations to—

(A) conduct excavations and analyses that meet standards for federally-sponsored excavations established by the Secretary;

(B) donate or lend artifacts of research significance to an appropriate research institution;

(C) allow access to artifacts for research purposes; and

(D) prior to excavating or disposing of a Native American cultural item in which an Indian tribe or Native Hawaiian organization may have an interest under subparagraph (B) or (C) of section 3(a)(2) of the Native American Graves



**§ 306114. Documentation of decisions respecting undertakings**

With respect to any undertaking subject to section 306108 of this title that adversely affects any historic property for which a Federal agency has not entered into an agreement pursuant to regulations issued by the Council, the head of the agency shall document any decision made pursuant to section 306108 of this title. The head of the agency may not delegate the responsibility to document a decision pursuant to this section. Where an agreement pursuant to regulations issued by the Council has been executed with respect to an undertaking, the agreement shall govern the undertaking and all of its parts.

## **Subchapter II—Lease, Exchange, or Management of Historic Property**

**§ 306121. Lease or exchange**

(a) **AUTHORITY TO LEASE OR EXCHANGE.**—Notwithstanding any other provision of law, each Federal agency, after consultation with the Council—

(1) shall, to the extent practicable, establish and implement alternatives (including adaptive use) for historic property that is not needed for current or projected agency purposes; and

(2) may lease historic property owned by the agency to any person or organization, or exchange any property owned by the agency with comparable historic property, if the agency head determines that the lease or exchange will adequately ensure the preservation of the historic property.

(b) **PROCEEDS OF LEASE.**—Notwithstanding any other provision of law, the proceeds of a lease under subsection (a) may be retained by the agency entering into the lease and used to defray the costs of administration, maintenance, repair, and related expenses incurred by the agency with respect to that property or other property that is on the National Register that is owned by, or are under the jurisdiction or control of, the agency. Any surplus proceeds from the leases shall be deposited in the Treasury at the end of the 2d fiscal year following the fiscal year in which the proceeds are received.

**§ 306122. Contracts for management of historic property**

The head of any Federal agency having responsibility for the management of any historic property may, after consultation with the Council, enter into a contract for the management of the property. The contract shall contain terms and conditions that the head of the agency considers necessary or appropriate to protect the interests of the United States and ensure adequate preservation of the historic property.

## **Subchapter III—Protection and Preservation of Resources**

**§ 306131. Standards and guidelines**

(a) **STANDARDS.**—

(1) **IN GENERAL.**—Each Federal agency that is responsible for the protection of historic property (including archeological property) pursuant to this division or any other law shall ensure that—

the Federal agency shall afford the Council a reasonable opportunity to comment with regard to the undertaking.

**§ 306108. Effect of undertaking on historic property**

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property. The head of the Federal agency shall afford the Council a reasonable opportunity to comment with regard to the undertaking.

**§ 306109. Costs of preservation as eligible project costs**

A Federal agency may include the costs of preservation activities of the agency under this division as eligible project costs in all undertakings of the agency or assisted by the agency. The eligible project costs may include amounts paid by a Federal agency to a State to be used in carrying out the preservation responsibilities of the Federal agency under this division, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of the license or permit.

**§ 306110. Annual preservation awards program**

The Secretary shall establish an annual preservation awards program under which the Secretary may make monetary awards in amounts of not to exceed \$1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic property. The program may include the issuance of annual awards by the President to any citizen of the United States recommended for the award by the Secretary.

**§ 306111. Environmental impact statement**

Nothing in this division shall be construed to—

(1) require the preparation of an environmental impact statement where the statement would not otherwise be required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or

(2) provide any exemption from any requirement respecting the preparation of an environmental impact statement under that Act.

**§ 306112. Waiver of provisions in event of natural disaster or imminent threat to national security**

The Secretary shall promulgate regulations under which the requirements of this subchapter (except section 306108) may be waived in whole or in part in the event of a major natural disaster or an imminent threat to national security.

**§ 306113. Anticipatory demolition**

Each Federal agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant that, with intent to avoid the requirements of section 306108 of this title, has intentionally significantly adversely affected a historic property to which the grant would relate, or having legal power to prevent it, has allowed the significant adverse effect to occur, unless the agency, after consultation with the Council, determines that circumstances justify granting the assistance despite the adverse effect created or permitted by the applicant.

(5) the agency's procedures for compliance with section 306108 of this title—

(A) are consistent with regulations promulgated by the Council pursuant to section 304108(a) and (b) of this title;

(B) provide a process for the identification and evaluation of historic property for listing on the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on historic property will be considered; and

(c) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with section 3(c) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c)).

#### **§ 306103. Recordation of historic property prior to alteration or demolition**

Each Federal agency shall initiate measures to ensure that where, as a result of Federal action or assistance carried out by the agency, a historic property is to be substantially altered or demolished—

(1) timely steps are taken to make or have made appropriate records; and

(2) the records are deposited, in accordance with section 302107 of this title, in the Library of Congress or with such other appropriate agency as the Secretary may designate, for future use and reference.

#### **§ 306104. Agency Preservation Officer**

The head of each Federal agency (except an agency that is exempted under section 304108(c) of this title) shall designate a qualified official as the agency's Preservation Officer who shall be responsible for coordinating the agency's activities under this division. Each Preservation Officer may, to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under section 306101(c) of this title.

#### **§ 306105. Agency programs and projects**

Consistent with the agency's missions and mandates, each Federal agency shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this division and give consideration to programs and projects that will further the purposes of this division.

#### **§ 306106. Review of plans of transferees of surplus federally owned historic property**

The Secretary shall review and approve the plans of transferees of surplus federally owned historic property not later than 90 days after receipt of the plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

#### **§ 306107. Planning and actions to minimize harm to National Historic Landmarks**

Prior to the approval of any Federal undertaking that may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall to the maximum extent possible undertake such planning and actions as may be necessary to minimize harm to the landmark. The head of

## Subchapter I—In General

### § 306101. Assumption of responsibility for preservation of historic property

#### (a) IN GENERAL.—

(1) AGENCY HEAD RESPONSIBILITY.—The head of each Federal agency shall assume responsibility for the preservation of historic property that is owned or controlled by the agency.

(2) USE OF AVAILABLE HISTORIC PROPERTY.—Prior to acquiring, constructing, or leasing a building for purposes of carrying out agency responsibilities, a Federal agency shall use, to the maximum extent feasible, historic property available to the agency, in accordance with Executive Order No. 13006 (40 U.S.C. 3306 note).

(3) NECESSARY PRESERVATION.—Each Federal agency shall undertake, consistent with the preservation of historic property, the mission of the agency, and the professional standards established pursuant to subsection (c), any preservation as may be necessary to carry out this chapter.

(b) GUIDELINES FOR FEDERAL AGENCY RESPONSIBILITY FOR AGENCY-OWNED HISTORIC PROPERTY.—In consultation with the Council, the Secretary shall promulgate guidelines for Federal agency responsibilities under this subchapter (except section 306108).

(c) PROFESSIONAL STANDARDS FOR PRESERVATION OF FEDERALLY OWNED OR CONTROLLED HISTORIC PROPERTY.—The Secretary shall establish, in consultation with the Secretary of Agriculture, the Secretary of Defense, the Smithsonian Institution, and the Administrator of General Services, professional standards for the preservation of historic property in Federal ownership or control.

### § 306102. Preservation program

(a) ESTABLISHMENT.—Each Federal agency shall establish (except for programs or undertakings exempted pursuant to section 304108(c) of this title), in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register, and protection, of historic property.

(b) REQUIREMENTS.—The program shall ensure that—

(1) historic property under the jurisdiction or control of the agency is identified, evaluated, and nominated to the National Register;

(2) historic property under the jurisdiction or control of the agency is managed and maintained in a way that considers the preservation of their historic, archeological, architectural, and cultural values in compliance with section 306108 of this title and gives special consideration to the preservation of those values in the case of property designated as having national significance;

(3) the preservation of property not under the jurisdiction or control of the agency but potentially affected by agency actions is given full consideration in planning;

(4) the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and the private sector; and

relating to the building arts;

(2) foster educational programs relating to the history, practice, and contribution to society of the building arts, including promotion of imaginative educational approaches to enhance understanding and appreciation of all facets of the building arts;

(3) publicly display temporary and permanent exhibits illustrating, interpreting and demonstrating the building arts;

(4) sponsor or conduct research and study into the history of the building arts and their role in shaping our civilization; and

(5) encourage contributions to the building arts.

#### **§ 305504. Matching grants to Committee**

The Secretary shall provide matching grants to the Committee for its programs related to historic preservation. The Committee shall match the grants in such a manner and with such funds and services as shall be satisfactory to the Secretary, except that not more than \$500,000 may be provided to the Committee in any one fiscal year.

#### **§ 305505. Annual report**

The Committee shall submit an annual report to the Secretary and the Administrator of General Services concerning its activities under this chapter and shall provide the Secretary and the Administrator of General Services with such other information as the Secretary may consider necessary or advisable.

## **Subdivision 5—Federal Agency Historic Preservation Responsibilities**

### **Chapter 3061—Program Responsibilities and Authorities**

#### Subchapter I—In General

##### Sec.

306101. Assumption of responsibility for preservation of historic property.

~~306102.~~ Preservation program.

~~306103.~~ Recordation of historic property prior to alteration or demolition.

~~306104.~~ Agency Preservation Officer.

306105. Agency programs and projects.

306106. Review of plans of transferees of surplus federally owned historic property.

306107. Planning and actions to minimize harm to National Historic Landmarks.

306108. Effect of undertaking on historic property.

306109. Costs of preservation as eligible project costs.

306110. Annual preservation awards program.

306111. Environmental impact statement.

306112. Waiver of provisions in event of natural disaster or imminent threat to national security.

306113. Anticipatory demolition.

306114. Documentation of decisions respecting undertakings.

#### Subchapter II—Lease, Exchange, or Management of Historic Property

306121. Lease or exchange.

306122. Contracts for management of historic property.

#### Subchapter III—Protection and Preservation of Resources

306131. Standards and guidelines.

#### § 305306. Service preservation centers and offices

To improve the use of existing Service resources, the Secretary shall fully utilize and further develop the Service preservation (including conservation) centers and regional offices. The Secretary shall improve the coordination of the centers and offices within the Service, and shall, where appropriate, coordinate their activities with the Center and with other appropriate parties.

### Chapter 3055—National Building Museum

Sec.

305501. Definitions.

305502. Cooperative agreement to operate museum.

305503. Activities and functions.

305504. Matching grants to Committee.

305505. Annual report.

#### § 305501. Definitions

In this chapter:

(1) **BUILDING ARTS.**—The term “building arts” includes all practical and scholarly aspects of prehistoric, historic, and contemporary architecture, archeology, construction, building technology and skills, landscape architecture, preservation and conservation, building and construction, engineering, urban and community design and renewal, city and regional planning, and related professions, skills, trades, and crafts.

(2) **COMMITTEE.**—The term “Committee” means the Committee for a National Museum of the Building Arts, Incorporated, a nonprofit corporation organized and existing under the laws of the District of Columbia, or its successor.

#### § 305502. Cooperative agreement to operate museum

To provide a national center to commemorate and encourage the building arts and to preserve and maintain a nationally significant building that exemplifies the great achievements of the building arts in the United States, the Secretary and the Administrator of General Services shall enter into a cooperative agreement with the Committee for the operation of a National Building Museum in the Federal building located in the block bounded by Fourth Street, Fifth Street, F Street, and G Street, Northwest in Washington, District of Columbia. The cooperative agreement shall include provisions that—

(1) make the site available to the Committee without charge;

(2) provide, subject to available appropriations, such maintenance, security, information, janitorial, and other services as may be necessary to ensure the preservation and operation of the site; and

(3) prescribe reasonable terms and conditions by which the Committee can fulfill its responsibilities under this division.

#### § 305503. Activities and functions

The National Building Museum shall—

(1) collect and disseminate information concerning the building arts, including the establishment of a national reference center for current and historic documents, publications, and research

commitment to the purposes of the Center, in order to ensure an effective and efficient system of research, information distribution, and skills training in all the related historic preservation fields.

(b) GRANT REQUIREMENTS.—

(1) ALLOCATION.—Grants provided under this section shall be allocated in such a fashion as to reflect the diversity of the historic preservation fields and shall be geographically distributed.

(2) LIMIT ON AMOUNT A RECIPIENT MAY RECEIVE.—No grant recipient may receive more than 10 percent of the grants allocated under this section within any year.

(3) LIMIT ON ADMINISTRATIVE COSTS.—The total administrative costs, direct and indirect, charged for carrying out grants under this section may not exceed 25 percent of the aggregate costs.

(c) ELIGIBLE APPLICANTS.—Eligible applicants may include—

- (1) Federal and non-Federal laboratories;
- (2) accredited museums;
- (3) universities;
- (4) nonprofit organizations;
- (5) System units and offices and Cooperative Park Study Units of the System;
- (6) State Historic Preservation Offices;
- (7) tribal preservation offices; and
- (8) Native Hawaiian organizations.

(d) STANDARDS AND METHODS.—Grants shall be awarded in accordance with accepted professional standards and methods, including peer review of projects.

**§ 305305. General provisions**

(a) ACCEPTANCE OF GRANTS AND TRANSFERS.—The Center may accept—

- (1) grants and donations from private individuals, groups, organizations, corporations, foundations, and other entities; and
- (2) transfers of funds from other Federal agencies.

(b) CONTRACTS AND COOPERATIVE AGREEMENTS.—Subject to appropriations, the Center may enter into contracts and cooperative agreements with Federal, State, local, and tribal governments, Native Hawaiian organizations, educational institutions, and other public entities to carry out the Center's responsibilities under this chapter.

(c) ADDITIONAL FUNDS.—Funds appropriated for the Center shall be in addition to funds appropriated for Service programs, centers, and offices in existence on October 30, 1992.

(2) develop and facilitate training for Federal, State, and local resource preservation professionals, cultural resource managers, maintenance personnel, and others working in the preservation field;

(3) take steps to apply preservation technology benefits from ongoing research by other agencies and institutions;

(4) facilitate the transfer of preservation technology among Federal agencies, State and local governments, universities, international organizations, and the private sector; and

(5) cooperate with related international organizations including the International Council on Monuments and Sites, the International Center for the Study of Preservation and Restoration of Cultural Property, and the International Council on Museums.

(c) PROGRAMS.—The purposes shall be carried out through research, professional training, technical assistance, and programs for public awareness, and through a program of grants established under section 305304 of this title.

(d) EXECUTIVE DIRECTOR.—The Center shall be headed by an Executive Director with demonstrated expertise in historic preservation appointed by the Secretary with advice of the Board.

(e) ASSISTANCE FROM SECRETARY.—The Secretary shall provide the Center assistance in obtaining such personnel, equipment, and facilities as may be needed by the Center to carry out its activities.

#### § 305303. Preservation Technology and Training Board

(a) ESTABLISHMENT.—There is established a Preservation Technology and Training Board.

(b) DUTIES.—The Board shall—

(1) provide leadership, policy advice, and professional oversight to the Center;

(2) advise the Secretary on priorities and the allocation of grants among the activities of the Center; and

(3) submit an annual report to the President and Congress.

(c) MEMBERSHIP.—The Board shall be comprised of—

(1) the Secretary;

(2) 6 members appointed by the Secretary, who shall represent appropriate Federal, State, and local agencies, State and local historic preservation commissions, and other public and international organizations; and

(3) 6 members appointed by the Secretary on the basis of outstanding professional qualifications, who represent major organizations in the fields of archeology, architecture, conservation, curation, engineering, history, historic preservation, landscape architecture, planning, or preservation education.

#### § 305304. Preservation grants

(a) IN GENERAL.—The Secretary, in consultation with the Board, shall provide preservation technology and training grants to eligible applicants with a demonstrated institutional capability and



include all necessary covenants to protect the historical integrity of the historic light station and ensure that any Federal aid to navigation located at the historic light station is operated and maintained by the United States for as long as needed for that purpose.

(b) NET SALE PROCEEDS.—

(1) DISPOSITION AND USE OF FUNDS.—Net sale proceeds from the disposal of a historic light station—

(A) located on public domain land shall be transferred to the National Maritime Heritage Grants Program established under chapter 3087 in the Department of the Interior; and

(B) under the administrative control of the Secretary of Homeland Security—

(i) shall be credited to the Coast Guard's Operating Expenses appropriation account; and

(ii) shall be available for obligation and expenditure for the maintenance of light stations remaining under the administrative control of the Secretary of Homeland Security.

(2) AVAILABILITY OF FUNDS.—The funds referred to in paragraph (1)(B) shall remain available until expended and shall be available in addition to funds available in the Coast Guard's Operating Expense appropriation for that purpose.

## Chapter 3053—National Center for Preservation Technology and Training

Sec.

305301. Definitions.

305302. National Center for Preservation Technology and Training.

305303. Preservation Technology and Training Board.

305304. Preservation grants.

305305. General provisions.

305306. Service preservation centers and offices.

### § 305301. Definitions

In this chapter:

(1) BOARD.—The term "Board" means the Preservation Technology and Training Board established pursuant to section 305303 of this title.

(2) CENTER.—The term "Center" means the National Center for Preservation Technology and Training established pursuant to section 305302 of this title.

### § 305302. National Center for Preservation Technology and Training

(a) ESTABLISHMENT.—There is established within the Department of the Interior a National Center for Preservation Technology and Training. The Center shall be located at Northwestern State University of Louisiana in Natchitoches, Louisiana.

(b) PURPOSES.—The purposes of the Center shall be to—

(1) develop and distribute preservation and conservation skills and technologies for the identification, evaluation, conservation, and interpretation of historic property;

(6) at least 30 days before the reversion, the Administrator provides written notice to the owner that the historic light station or any part of the historic light station is needed for national security purposes.

(d) LIGHT STATIONS ORIGINALLY CONVEYED UNDER OTHER AUTHORITY.—On receiving notice of an executed or intended conveyance by an owner that received from the Federal Government under authority other than this division a historic light station in which the United States retains a reversionary or other interest and that is conveying it to another person by sale, gift, or any other manner, the Secretary shall review the terms of the executed or proposed conveyance to ensure that any new owner is capable of or is complying with any and all conditions of the original conveyance. The Secretary may require the parties to the conveyance and relevant Federal agencies to provide information as is necessary to complete the review. If the Secretary determines that the new owner has not complied or is unable to comply with those conditions, the Secretary shall immediately advise the Administrator, who shall invoke any reversionary interest or take other action as may be necessary to protect the interests of the United States.

#### § 305105. Description of property

(a) IN GENERAL.—The Administrator shall prepare the legal description of any historic light station conveyed under this chapter. The Administrator, in consultation with the Secretary of Homeland Security and the Secretary, may retain all right, title, and interest of the United States in and to any historical artifact, including any lens or lantern, that is associated with the historic light station and located at the historic light station at the time of conveyance. Wherever possible, the historical artifacts should be used in interpreting the historic light station. In cases where there is no method for preserving lenses and other artifacts and equipment in situ, priority should be given to preservation or museum entities most closely associated with the historic light station, if they meet loan requirements.

(b) ARTIFACTS.—Artifacts associated with, but not located at, a historic light station at the time of conveyance shall remain the property of the United States under the administrative control of the Secretary of Homeland Security.

(c) COVENANTS.—All conditions placed with the quitclaim deed of title to the historic light station shall be construed as covenants running with the land.

(d) SUBMERGED LAND.—No submerged land shall be conveyed under this chapter.

#### § 305106. Historic light station sales

(a) IN GENERAL.—

(1) WHEN SALE MAY OCCUR.—If no applicant is approved for the conveyance of a historic light station pursuant to sections 305101 through 305105 of this title, the historic light station shall be offered for sale.

(2) TERMS OF SALE.—Terms of the sales—

(A) shall be developed by the Administrator; and

(B) shall be consistent with the requirements of paragraphs (1) to (4) and (8) of subsection (a), and subsection (b), of section 305104 of this title.

(3) COVENANTS TO BE INCLUDED IN CONVEYANCE DOCUMENTS.—Conveyance documents shall

title 36, Code of Federal Regulations and the Secretary's Standards for Rehabilitation contained in section 67.7 of title 36, Code of Federal Regulations;

(5) the eligible entity to which the historic light station is conveyed shall make the historic light station available for education, park, recreation, cultural, or historic preservation purposes for the general public at reasonable times and under reasonable conditions;

(6) the eligible entity to which the historic light station is conveyed shall not sell, convey, assign, exchange, or encumber the historic light station, any part of the historic light station, or any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, including any lens or lantern, unless the sale, conveyance, assignment, exchange, or encumbrance is approved by the Secretary;

(7) the eligible entity to which the historic light station is conveyed shall not conduct any commercial activity at the historic light station, at any part of the historic light station, or in connection with any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, in any manner, unless the commercial activity is approved by the Secretary; and

(8) the United States shall have the right, at any time, to enter the historic light station without notice, for purposes of operating, maintaining, and inspecting any aid to navigation and for the purpose of ensuring compliance with this section, to the extent that it is not possible to provide advance notice.

(b) MAINTENANCE OF AID TO NAVIGATION.—Any eligible entity to which a historic light station is conveyed shall not be required to maintain any Federal aid to navigation associated with a historic light station, except any private aid to navigation permitted to the eligible entity under section 83 of title 14.

(c) REVERSION.—In addition to any term or condition established pursuant to this section, the conveyance of a historic light station shall include a condition that the historic light station, or any associated historic artifact conveyed to the eligible entity in conjunction with the historic light station conveyance, including any lens or lantern, at the option of the Administrator, shall revert to the United States and be placed under the administrative control of the Administrator, if—

(1) the historic light station, any part of the historic light station, or any associated historic artifact ceases to be available for education, park, recreation, cultural, or historic preservation purposes for the general public at reasonable times and under reasonable conditions that shall be set forth in the eligible entity's application;

(2) the historic light station or any part of the historic light station ceases to be maintained in a manner that ensures its present or future use as a site for a Federal aid to navigation;

(3) the historic light station, any part of the historic light station, or any associated historic artifact ceases to be maintained in compliance with this division, the Secretary of the Interior's Standards for the Treatment of Historic Properties contained in part 68 of title 36, Code of Federal Regulations, and other applicable laws;

(4) the eligible entity to which the historic light station is conveyed sells, conveys, assigns, exchanges, or encumbers the historic light station, any part of the historic light fixture, or any associated historic artifact, without approval of the Secretary;

(5) the eligible entity to which the historic light station is conveyed conducts any commercial activity at the historic light station, at any part of the historic light station, or in conjunction with any associated historic artifact, without approval of the Secretary; or

1998 (Public Law 105-383, 14 U.S.C. 93 note).

(2) HISTORIC LIGHT STATION LOCATED WITHIN A SYSTEM UNIT OR A REFUGE WITHIN NATIONAL WILDLIFE REFUGE SYSTEM.—

(A) APPROVAL OF SECRETARY REQUIRED.—A historic light station located within the exterior boundaries of a System unit or a refuge within the National Wildlife Refuge System shall be conveyed or sold only with the approval of the Secretary.

(B) CONDITIONS OF CONVEYANCE.—If the Secretary approves the conveyance of a historic light station described in subparagraph (A), the conveyance shall be subject to the conditions set forth in section 305104 of this title and any other terms or conditions that the Secretary considers necessary to protect the resources of the System unit or wildlife refuge.

(C) CONDITIONS OF SALE.—If the Secretary approves the sale of a historic light station described in subparagraph (A), the sale shall be subject to the conditions set forth in paragraphs (1) to (4) and (8) of subsection (a), and subsection (b), of section 305104 of this title and any other terms or conditions that the Secretary considers necessary to protect the resources of the System unit or wildlife refuge.

(D) COOPERATIVE AGREEMENTS.—The Secretary is encouraged to enter into cooperative agreements with appropriate eligible entities with respect to historic light stations described in subparagraph (A), as provided in this division, to the extent that the cooperative agreements are consistent with the Secretary's responsibilities to manage and administer the System unit or wildlife refuge.

§ 305104. Terms of conveyance

(a) IN GENERAL.—The conveyance of a historic light station shall be made subject to any conditions, including the reservation of easements and other rights on behalf of the United States, that the Administrator considers necessary to ensure that—

(1) the Federal aids to navigation located at the historic light station in operation on the date of conveyance remain the personal property of the United States and continue to be operated and maintained by the United States for as long as needed for navigational purposes;

(2) there is reserved to the United States the right to remove, replace, or install any Federal aid to navigation located at the historic light station as may be necessary for navigational purposes;

(3) the eligible entity to which the historic light station is conveyed shall not interfere or allow interference in any manner with any Federal aid to navigation or hinder activities required for the operation and maintenance of any Federal aid to navigation without the express written permission of the head of the agency responsible for maintaining the Federal aid to navigation;

(4) (A) the eligible entity to which the historic light station is conveyed shall, at its own cost and expense, use and maintain the historic light station in accordance with this division, the Secretary of the Interior's Standards for the Treatment of Historic Properties contained in part 68 of title 36, Code of Federal Regulations, and other applicable laws; and

(B) any proposed changes to the historic light station shall be reviewed and approved by the Secretary in consultation with the State Historic Preservation Officer of the State in which the historic light station is located, for consistency with section 800.5(a)(2)(vii) of

(4) HISTORIC LIGHT STATION.—The term “historic light station” includes the light tower, lighthouse, keeper’s dwelling, garages, storage sheds, oil house, fog signal building, boat house, barn, pumphouse, tramhouse support structures, piers, walkways, underlying and appurtenant land and related real property and improvements associated with a historic light station that is a historic property.

**§ 305102. Duties of Secretary in providing a national historic light station program**

To provide a national historic light station program, the Secretary shall—

- (1) collect and disseminate information concerning historic light stations;
- (2) foster educational programs relating to the history, practice, and contribution to society of historic light stations;
- (3) sponsor or conduct research and study into the history of light stations;
- (4) maintain a listing of historic light stations; and
- (5) assess the effectiveness of the program established by this chapter regarding the conveyance of historic light stations.

**§ 305103. Selection of eligible entity and conveyance of historic light stations**

(a) PROCESS AND POLICIES.—The Secretary and the Administrator shall maintain a process and policies for identifying, and selecting, an eligible entity to which a historic light station could be conveyed for education, park, recreation, cultural, or historic preservation purposes, and to monitor the use of the light station by the eligible entity.

(b) APPLICATION REVIEW.—

(1) IN GENERAL.—The Secretary shall—

(A) review all applications for the conveyance of a historic light station, when the agency with administrative jurisdiction over the historic light station has determined the property to be excess property (as that term is defined in section 102 of title 40); and

(B) forward to the Administrator a single approved application for the conveyance of the historic light station.

(2) CONSULTATION.—When selecting an eligible entity, the Secretary shall consult with the State Historic Preservation Officer of the State in which the historic light station is located.

(c) CONVEYANCE OR SALE OF HISTORIC LIGHT STATIONS.—

(1) CONVEYANCE BY ADMINISTRATOR.—Except as provided in paragraph (2), after the Secretary’s selection of an eligible entity, the Administrator shall convey, by quitclaim deed, without consideration, all right, title, and interest of the United States in and to a historic light station, subject to the conditions set forth in section 305104 of this title. The conveyance of a historic light station under this chapter shall not be subject to the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.) or section 416(d) of the Coast Guard Authorization Act of

(2) make recommendations to the head of any Federal agency that administers the program to further the consistency of the program with the purposes and policies of this division and to improve its effectiveness in carrying out those purposes and policies; and

(3) make recommendations to the President and Congress regarding the effectiveness of Federal grant and assistance programs in meeting the purposes and policies of this division, including recommendations with regard to appropriate funding levels.

## Subdivision 4—Other Organizations and Programs

### Chapter 3051—Historic Light Station Preservation

Sec.

305101. Definitions.

305102. Duties of Secretary in providing a national historic light station program.

305103. Selection of eligible entity and conveyance of historic light stations.

305104. Terms of conveyance.

305105. Description of property.

305106. Historic light station sales.

#### § 305101. Definitions

In this chapter:

(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of General Services.

(2) ELIGIBLE ENTITY.—The term “eligible entity” means—

(A) any department or agency of the Federal Government; or

(B) any department or agency of the State in which a historic light station is located, the local government of the community in which a historic light station is located, a nonprofit corporation, an educational agency, or a community development organization that—

(i) has agreed to comply with the conditions set forth in section 305104 of this title and to have the conditions recorded with the deed of title to the historic light station; and

(ii) is financially able to maintain the historic light station in accordance with the conditions set forth in section 305104 of this title.

(3) FEDERAL AID TO NAVIGATION.—

(A) IN GENERAL.—The term “Federal aid to navigation” means any device, operated and maintained by the United States, external to a vessel or aircraft, intended to assist a navigator to determine position or safe course, or to warn of dangers or obstructions to navigation.

(B) INCLUSIONS.—The term “Federal aid to navigation” includes a light, lens, lantern, antenna, sound signal, camera, sensor, piece of electronic navigation equipment, power source, or other piece of equipment associated with a device described in subparagraph (A).

**§ 304108. Regulations, procedures, and guidelines**

(a) IN GENERAL.—The Council may promulgate regulations as it considers necessary to govern the implementation of section 306108 of this title in its entirety.

(b) PARTICIPATION BY LOCAL GOVERNMENTS.—The Council shall by regulation establish such procedures as may be necessary to provide for participation by local governments in proceedings and other actions taken by the Council with respect to undertakings referred to in section 306108 of this title that affect the local governments.

(c) EXEMPTION FOR FEDERAL PROGRAMS OR UNDERTAKINGS.—The Council, with the concurrence of the Secretary, shall promulgate regulations or guidelines, as appropriate, under which Federal programs or undertakings may be exempted from any or all of the requirements of this division when the exemption is determined to be consistent with the purposes of this division, taking into consideration the magnitude of the exempted undertaking or program and the likelihood of impairment of historic property.

**§ 304109. Budget submission**

(a) TIME AND MANNER OF SUBMISSION.—The Council shall submit its budget annually as a related agency of the Department of the Interior.

(b) TRANSMITTAL OF COPIES TO CONGRESSIONAL COMMITTEES.— Whenever the Council submits any budget estimate or request to the President or the Office of Management and Budget, it shall concurrently transmit copies of that estimate or request to the Committee on Natural Resources and Committee on Appropriations of the House of Representatives and the Committee on Energy and Natural Resources and Committee on Appropriations of the Senate.

**§ 304110. Report by Secretary to Council**

To assist the Council in discharging its responsibilities under this division, the Secretary at the request of the Chairman shall provide a report to the Council detailing the significance of any historic property, describing the effects of any proposed undertaking on the affected property, and recommending measures to avoid, minimize, or mitigate adverse effects.

**§ 304111. Reimbursements from State and local agencies**

Subject to applicable conflict of interest laws, the Council may receive reimbursements from State and local agencies and others pursuant to agreements executed in furtherance of this division.

**§ 304112. Effectiveness of Federal grant and assistance programs**

(a) COOPERATIVE AGREEMENTS.—The Council may enter into a cooperative agreement with any Federal agency that administers a grant or assistance program for the purpose of improving the effectiveness of the administration of the program in meeting the purposes and policies of this division. The cooperative agreement may include provisions that modify the selection criteria for a grant or assistance program to further the purposes of this division or that allow the Council to participate in the selection of recipients, if those provisions are not inconsistent with the grant or assistance program's statutory authorization and purpose.

(b) REVIEW OF GRANT AND ASSISTANCE PROGRAMS.—The Council may—

- (1) review the operation of any Federal grant or assistance program to evaluate the effectiveness of the program in meeting the purposes and policies of this division;

Linda Leavitt <cookiesncats07@gmail.com>

4:39 PM (11 minutes ago)

to Heather.Richards

To the members,

I am a property owner on 3rd St and I am totally against the demolishing of the 3 buildings and building a new one on the site. This is a "Historical District"! The property/business owners on the street are so against this happening. We do not want outside investors coming in and ruining our special little town. We are a town that wants the downtown area to stay like it is. To tear down a historical building is so wrong. The pictures of the building that they plan to build is not a historical looking building at all. It is NOT a building that fits in here with our downtown area. Keep the look of the 3 buildings and they can be remodeled and redone as one man stated at the first meeting. Restructuring work is done all the time if needed. My building was built in the 1880's and it is sound. The investors were trying to tell us that it is unsafe and two of the people from McMinnville stated differently. Big investors are just money minded, they do not care about any of the residents or owners of McMinnville, only dollar signs and then leave. Several questions were asked to the investors and they did not have answers. They had been asked to do some changes and they were not done. A couple of the people had no idea of how to answer either. The idea of having a 5 story plus building built downtown is wrong. When asked if they would build on another street away from 3rd, they said they were only interested on 3rd. They were also asked if they were declined again would they leave and I believe they said they would leave. It is so sad to see big money investors come into a small town and try to get by with not really saying what will happen. One point, parking, underground, do they realize that it is a MAJOR undertaking hauling massive trucks of dirt from the site, let alone the noise, the traffic congestion, the amount of equipment and most of all.....the WATER! Yes, I said water. When the building across the street was being remodeled the workers found there was a definite water issue. They were asked to dig the basement down to make more room and the area kept filling up with water and they were constantly pumping it out. Do these investors know this, it seemed that they had mentioned that they had checked out things ahead of our meeting in March. It does not seem to be the case. Another issue is that we care for our historical town. We have great restaurants on 3rd as well and we do not need more. People come to McMinnville because it is a "small" town, the atmosphere is NOT like the big cities and we do not want it to be! Why would our planning department let this request go any farther than their office? I feel that they should have stopped this right in the beginning. Now we are asking you the city council members to make the right decision and tell the investors to go back and do the building where they came from. You are elected officials and we voted all of you in to work FOR the city, not go against our wishes. I would like to remind you all that there will be more elections and perhaps just maybe our decisions would be different in our voting that time. It is a downright sin to let outsiders with big money come into our town and destroy the downtown area. I have had conversations with many people and one question was asked.....WHY don't we put it to a vote citywide and let everyone vote? Many people feel they do not have a say, this way they would. I could go on and on about all the negative issues that come with the project, and I have a lot. I am remembering the massive upheaval we had when the other construction was ongoing. People could not park, could not get to their offices, to the shops, to the restaurants and so on. Covid took a toll on 3rd street and we are just now coming out of it. With this project it could very well cause some of the businesses to close. We CANNOT let that happen. I am just hoping that you as council members will do the right thing and STOP this project. Think of the parking while the project would be happening 3 and a half years is a massive time. PLEASE do the right thing for our town and stop this plan in front of you. I doubt if any of the people making this decision have property or businesses in the downtown area, so please make the right decision and keep our town as we love it. Send the message to the investors that we say NO!

Linda Leavitt  
Wright Family House



4/18/23  
RA

(3781)

G. S. WRIGHT et. ux. TO OCCIDENTAL LODGE NO. 30 I. O. O. F. of McMinnville,

KNOW ALL MEN BY THESE PRESENTS: That We, G. S. Wright and Cara H. Wright, his wife, of the County of Yamhill, State of Oregon, in consideration of One Dollar and other valuable consideration to us paid by Occidental Lodge No. 30, I. O. O. F. of McMinnville, Of the County of Yamhill and State of Oregon, have bargained and sold, and by these presents do grant, bargain, sell and convey unto said Occidental Lodge No. 30, I. O. O. F., its successors and assigns, all the following bounded and described real property situated in the County of Yamhill, and State of Oregon, to-wit:-

Part of Lot Numbered Seven in Block Numbered Two (2) in "Rowlands Addition" to the City of McMinnville, in the County of Yamhill and State of Oregon, and which said part is bounded as follows. to-wit:

Beginning at the Southeast corner of said Lot Numbered Seven (7); Thence running West Six and one half ( $6\frac{1}{2}$ ) inches to center of the East Wall of the Brick Building of said G. S. Wright, now located upon said lot Seven; Thence running North along the center line of said Brick Wall of said Brick building, Ninety feet; Thence running East Six and One Half ( $6\frac{1}{2}$ ) inches to East line of said Lot Numbered Seven; Thence South along the East line of said lot Seven, Ninety feet to the place of beginning, together with and including an undivided one half interest in, of and to said East Wall of said Brick building above referred to, or the right to the use of the East half of said Wall for purpose of attaching thereto the proposed building now under contemplation by said lodge, together with the right also to continue said East Wall of said Brick building two story's high by building thereon an additional story, said Grantors to have an undivided interest in said additional wall without charge or expense to them, which interest is hereby reserved.

Also following premises, to-wit: A strip of land ten feet wide off of the North end of Lot Numbered Eight in said Block No. Two above named in said city of McMinnville, in Yamhill County, Oregon, being strip of land now used by said Grantors for Alley way purposes, said strip of land however is hereby conveyed subject to the right of the said Grantors their heirs and assigns to forever hereafter use the same as an open and unobstructed Alley Way, and said grantors hereby reserve to themselves their heirs and assigns, the right to so use said strip of land as an open and unobstructed Alley Way in connection with said Brick building above referred to. Said Lodge its successors and assigns to forever hereafter repair and keep said Alley way in good repair at its own expense.

Together with, all and singular, the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and also all our estate, right, title and interest, in and to the same, including dower and claim of dower.

TO HAVE AND TO HOLD, the above described and granted premises unto the said Occidental Lodge No. 30, I. O. O. F. above named, its successors and assigns together with the rights and privileges as above fully stated, upon the conditions therein named forever. It being agreed and understood that said lodge its successors and assigns is to forever hereafter keep said Alley way above referred to free from any and all obstructions, and is to forever hereafter repair and keep the same in good repair without charge to said grantors.

IN WITNESS WHEREOF, we the grantors above named, hereunto set our hands and seals this 2nd. day of March A. D. 1909.

Signed, Sealed and Delivered  
in the presence of,  
Frank W. Fenton,  
R. L. Bewley,

G. S. Wright, (Seal)  
Cara H. Wright, (Seal)

STATE OF OREGON)  
County of Yamhill)ss:

This Certifies, That on this the 2nd. day of March, A. D. 1909, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named G. S. Wright and Cara H. Wright, his wife, who are known to me to be the identical persons described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily for the uses and purposes therein mentioned.

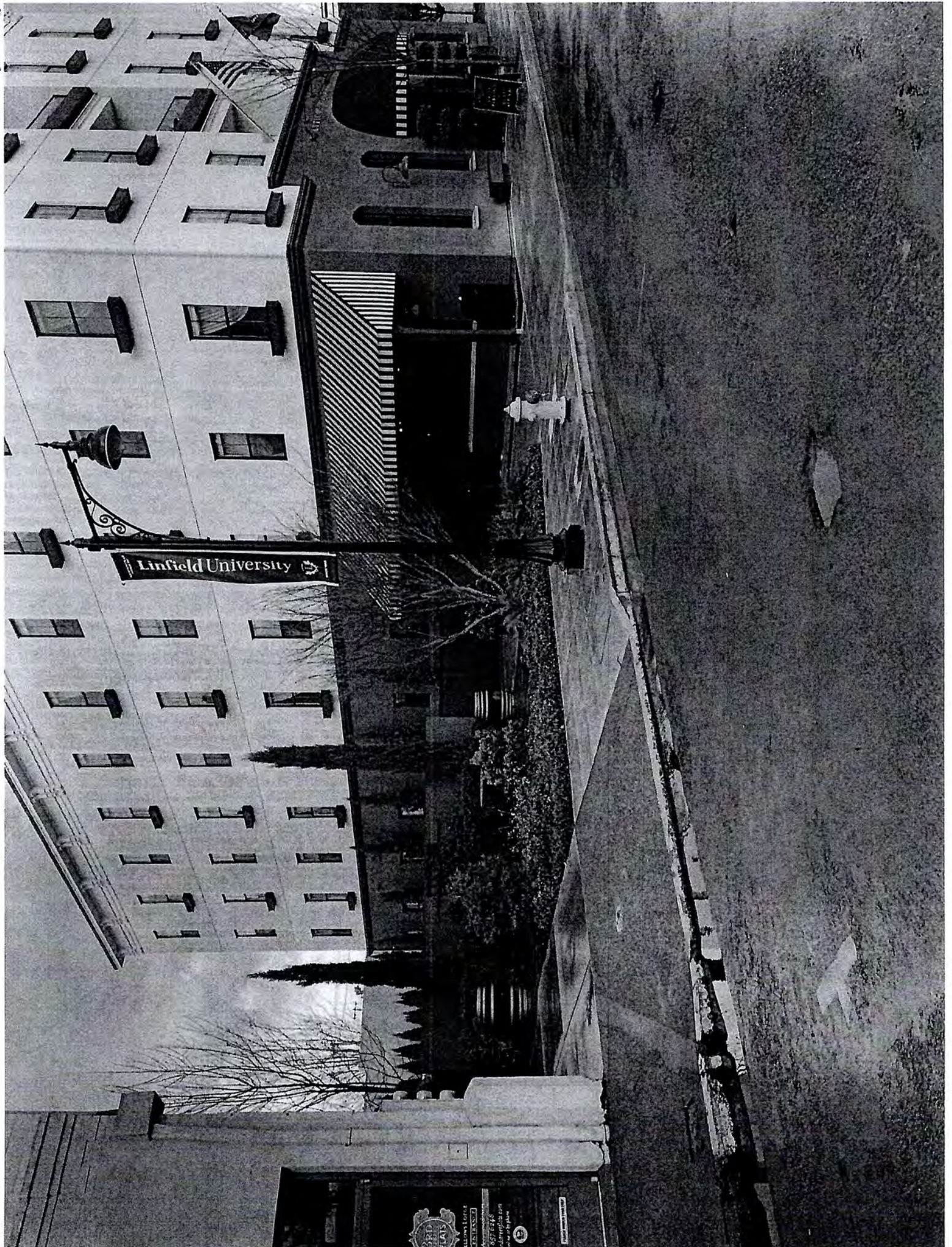
IN TESTIMONY WHEREOF, I have hereunto set my hand and Notarial seal, the day and year last above written.

(Notary Seal)

Frank W. Fenton,  
Notary Public for Oregon,

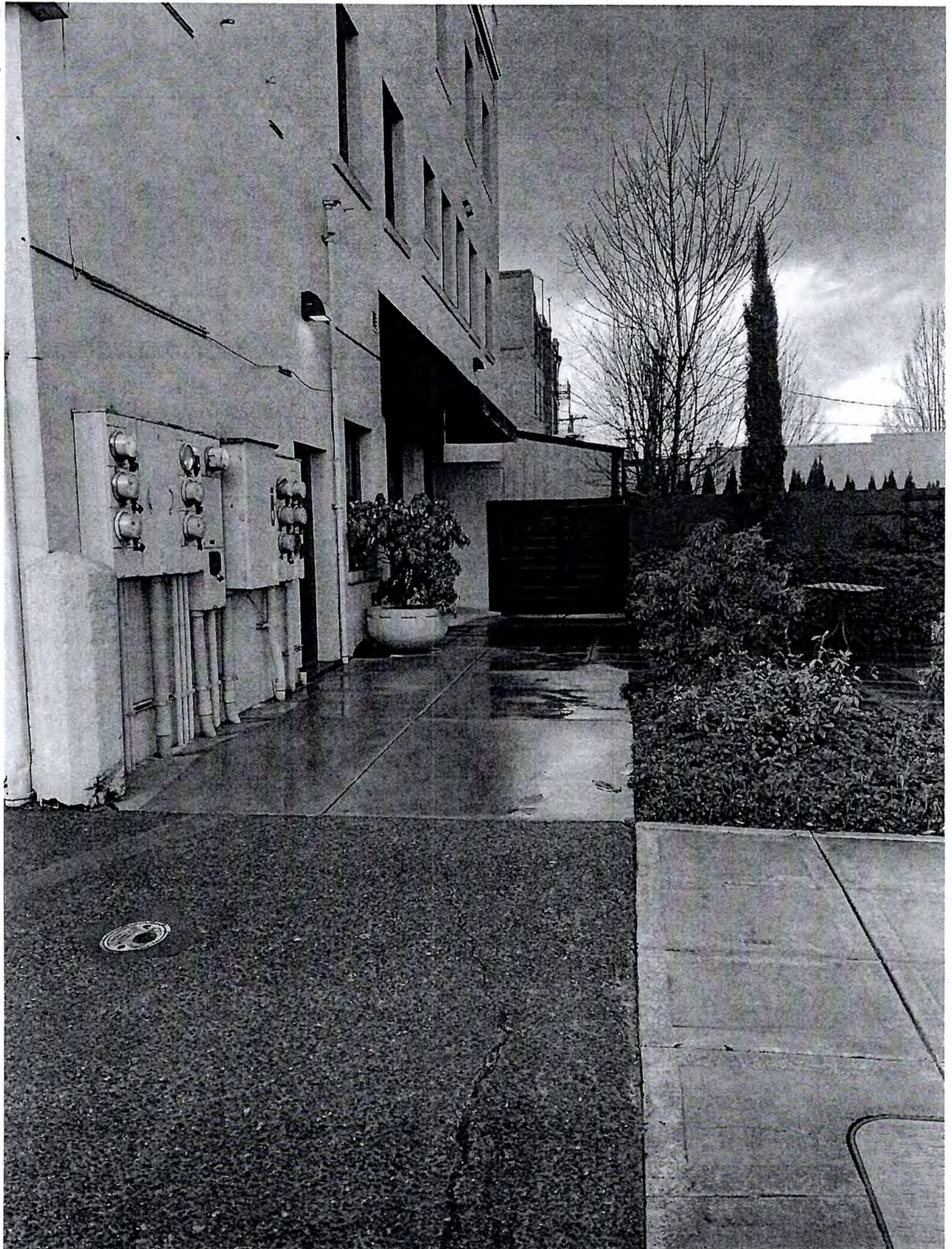
Recorded Dec. 5th. 1911 at 10.45 A. M.

*H. S. Malouet*  
Recorder of Conveyances.



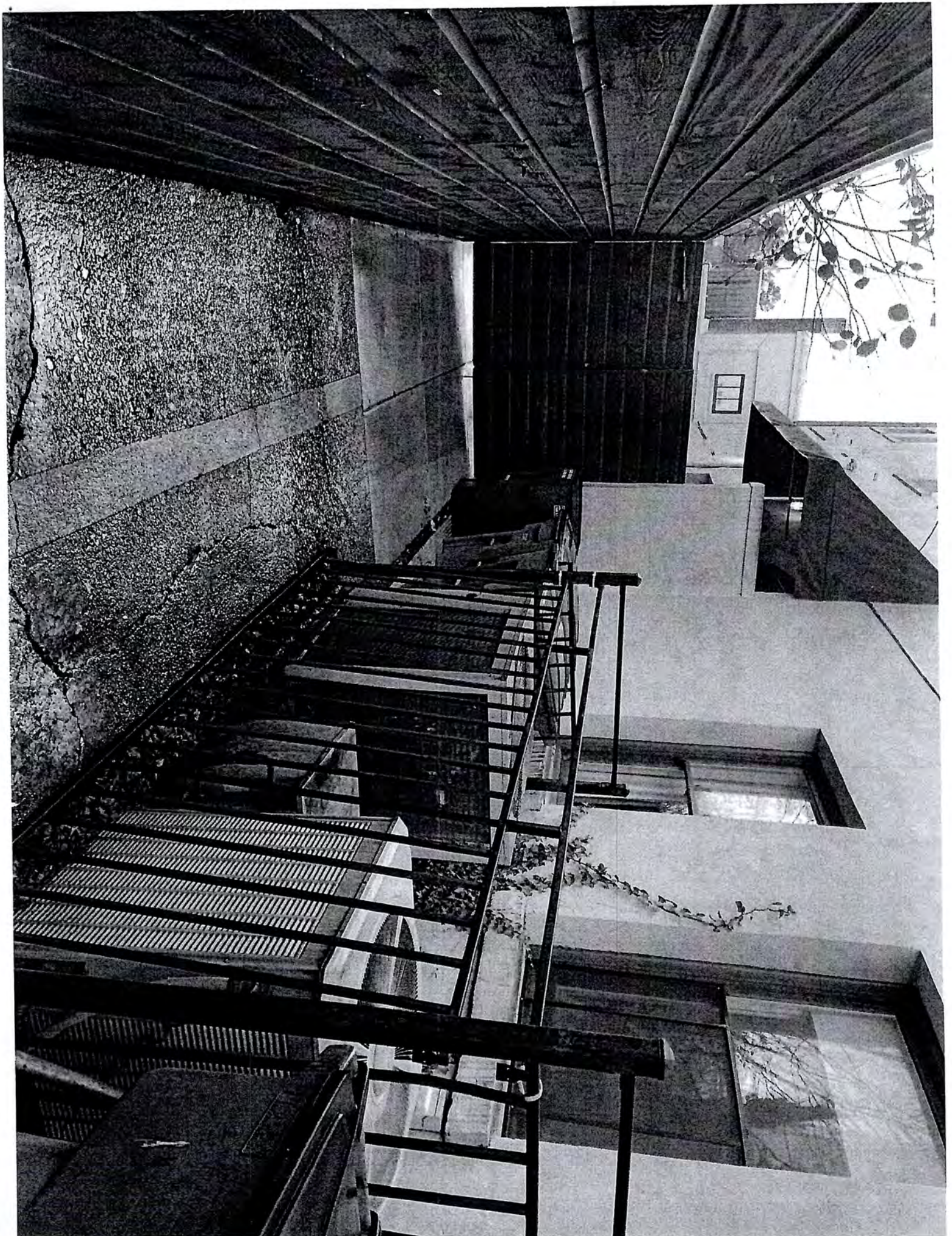
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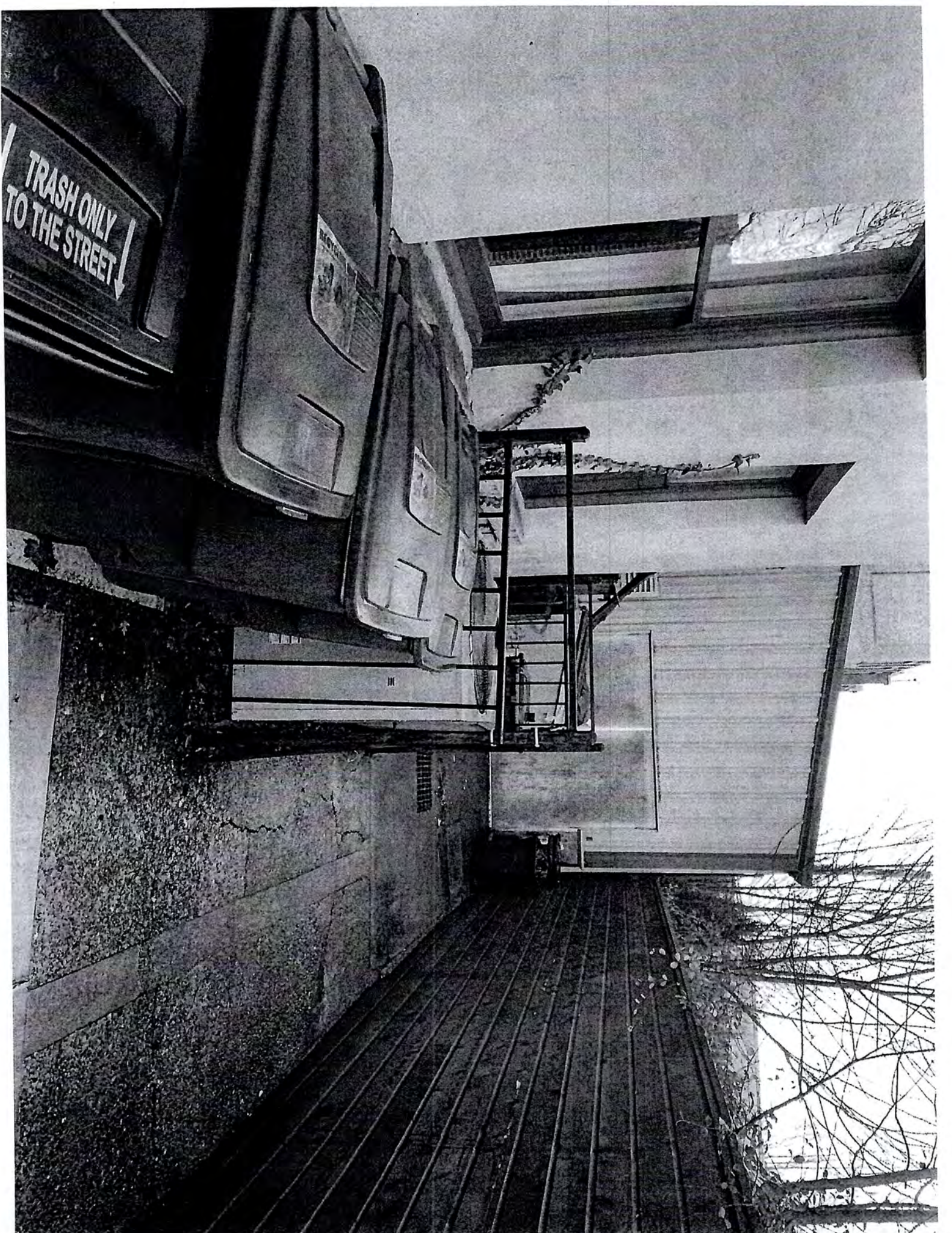
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