

# Hugo Neighborhood Association & Historical Society

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October 13, 2014 Letter/Email

Hugo Graves Team (HGT)  
Hugo Neighborhood Association & Historical Society (HuNAHS)

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REF: Planning For Neely & Trimble Historic Cemeteries “Under Oregon State Law (ORS 97.740, ORS 358.905-358.961, ORS 390.235, OAR 736-051-0090) significant archaeological sites are protected on all non-federal public (state, county, city) and private lands.” “Archaeological sites are considered significant until their eligibility can be evaluated.” (Oregon SHPO Archaeology Bulletin 1 - Archaeological Sites on Private Lands).

Dear Hugo Graves Team Members:

As you are well aware, we are currently in the investigative stage of identifying the standards and criteria (S&C) applicable to the planning process to develop a cemetery plan for the Neely and Trimble Historic Cemeteries. This communication addresses the status of the HGT’s research concerning the Oregon State Historic Preservation Office’s (SHPO) recommended S&C that “Archaeological sites are considered significant until their eligibility can be evaluated.” (“significance statement” in Arch. Bulletin 1, Appendix D). Recommendations identified in Arch. Bulletin 1 are powerful as independent statements of the SHPO. The team will utilize them and their associated ORSs and OARs in its outreach and local testimony.

Archaeology Bulletin 1 identifies four sources of law (i.e., ORS & OAR) as authorities for the SHPO’s “significance statement.” (<http://www.oregon.gov/oprd/HCD/ARCH/Pages/index.aspx>)

- . ORS 97.740? (Research finds “significance statement” not apparent; Appendix B).
- . ORS 358.905-358.961 (Research finds “*Site of archaeological significance*” Appendix B).
- . ORS 390.235? (Research finds “significance statement” not apparent; Appendix B).
- . OAR 736-051-0090? (Research finds “significance statement” not apparent; Appendices A & C).

The HGT’s preliminary research found that ORS 358.905(1)(b) identified “*Site of archaeological significance*” (Appendix B), and OAR 736-051-0070(5) identified “*archaeological significance.*” (Appendix C). Its research did not find a reference to the SHPO’s “significance statement” in ORS 97.740, ORS 390.235, or OAR 736-051-0090. Most importantly, the HGT could not find any obvious connection in ORS 97, ORS 358, ORS 390, or OAR 736-050 to OAR 736-054 supporting the “significance statement” recommendation that *Archaeological sites are considered significant until their eligibility can be evaluated* (Appendix B - C; estimated 90% - 95%

reliability for search of the words “significant” and “significance”). The HGT will continue to search the ORS and OAR.

It is noted that Arch. Bulletin 1 is a May 2012 set of *recommendations* from the archaeology SHPO staff (Appendix D). Until now the HGT had identified the heritage and archaeology bulletins as policy, arguments for sufficient merit to interpret not law. The HGT observes that “recommendations” have a lesser authority than “policy” and should be used with their associated ORSs and OARs to identify the standards and criteria.

The HGT notes that it could have inadvertently overlooked some “significance statements” and it will continue to research the ORS and OAR for statements that support SHPO’s recommendation. It invites comments and suggestions from any source.

ORS 358.910 identified that the policy of the Oregon Legislative Assembly was that “*The State of Oregon shall preserve and protect the cultural heritage of this state embodied in objects and sites that are of archaeological significance.*” The HGT finds that “policy” by itself is like a “goal” and does not significantly contribute in identifying standards and criteria which are intended to be the thresholds of measurement. For example, many times policy can act like visions for legislators, but without knowing what “preserve and protect” means, it would have minimal to no impact in supporting a non-compliance with law statement in court (e.g., district court, Oregon Land Use Board of Appeals, etc.). What is obvious to the HGT is that Oregon is vitally concerned, as identified in the ORS and OAR, with archaeological significance as defined by a site on, or eligible for inclusion on, the National Register of Historic Places (ORS 358.905(1)).

Sincerely,

Mike :)

/s/ Mike Walker

Mike Walker, Standards & Criteria Lead & Web Publisher  
Hugo Graves Team

Appendices:

- Appendix A. OAR 736-051-0090. Process for Applying for an Archaeological Permit on Private Lands
- Appendix B. Preliminary Analysis: ORS 97, ORS 358, ORS 390 & Significant Archaeological Sites
- Appendix C. Preliminary Analysis: OAR 736-050, OAR 736-051, OAR 736-052, OAR 736-053, and OAR 736-054 & Significant Archaeological Sites
- Appendix D. Preliminary Analysis: Archaeology Bulletin 1 & Significant Archaeological Sites

Email copies:

- . Oregon SHPO
- . Oregon CHC

## APPENDIX A. OAR 736-051-0090 PROCESS FOR APPLYING FOR AN ARCHAEOLOGICAL PERMIT ON PRIVATE LANDS

### OAR 736-051-0090

#### OAR 736-051-0090 Process for Applying for an Archaeological Permit on Private Lands

(1) A person may not knowingly and intentionally excavate, injure, destroy or alter an archeological site or object or remove an archeological object from private lands in Oregon unless that activity is authorized by a permit issued pursuant to this rule:

(a) Permits on private lands will not be required for exploratory excavation to determine the presence of an archaeological site;

(b) The provisions of this rule do not apply to a person who unintentionally discovers an archaeological object that has been exposed by the forces of nature and retains the object for personal use, except for sacred objects, human remains, funerary objects or objects of cultural patrimony;

(c) Collection of an arrowhead from the surface of private land is permitted if collection can be accomplished without the use of any tool.

(2)(a) It is strongly recommended that anyone considering a development project on private lands on previously undisturbed ground contact the SHPO and the appropriate Tribe(s) to determine whether archaeological sites and objects are likely to be present in the project area. This contact will reduce the chance that the project will be delayed due to discovery of an archaeological site;

(b) SHPO shall coordinate, along with the governing bodies of the Oregon Tribes and the CIS, joint efforts to create and disseminate informational materials that will be distributed to local governments, federal and state agencies, and permitting authorities on the requirements of ORS Chapters 97, 358 and 390, and these rules.

(3) A person who desires an archaeological permit to excavate or remove objects on private lands pursuant to ORS 358.920(1)(a) and 390.235 must submit a request to the Oregon State Parks and Recreation Director or his or her designee:

(a) The application must be complete and meet the requirements of the public lands rule section OAR 736-051-0080(4). In addition, an application for an archaeological permit on private lands must be accompanied by a copy of the landowner's written permission pursuant to ORS 358.920(5), and a written statement concerning the disposition of any recovered artifacts not covered by ORS 359.920(4)(b);

(b) **The archaeological permit process for private lands is the same as that found in OAR 736-051-0080(6), (7), (8), (9), (10), (12) and (14) relating to permits on public lands.** [emphasis added] The SHPO must be satisfied that reasonable concerns of the appropriate Tribe(s) have been addressed by the applicant.

(4) Upon receipt of an application, the Director or his or her designee may contact the landowner to verify the written permission, location and activities of the proposed activity.

(5) Unless authorized by ORS 97.750, an archaeological permit on private lands shall not be issued if the activity includes burials, funerary objects, or human remains.

(6) If an applicant disputes the permit conditions, or the Director's denial of a permit, the dispute shall be resolved pursuant to OAR 736-051-0000 through 736-051-0050.

**The archaeological permit process for private lands is the same as that found in OAR 736-051-0080(6), (7), (8), (9), (10), (12) and (14) relating to permits on public lands.**

(6) In consultation with the Commission on Indian Services, the SHPO shall identify the appropriate tribe to be mailed copies of the complete archaeological permit application.

(7) As soon as practicable, but generally not to exceed two working days, the SHPO shall mail copies of the complete application to the appropriate Indian tribe, if any, the land managing agency, Commission on Indian Services, Oregon State Museum of Anthropology, and the applicable local government planning department.

(8)(a) Before issuing a permit, the Director or his or her designee shall contact the appropriate Indian tribe, if any, the landowner or head of the land managing agency, the Director of the Oregon State Museum of Anthropology at the University of Oregon State Museum of Anthropology at the University of Oregon, the appropriate local planning commission, and the Commission on Indian Services;

(b) Notification shall consist of mailing the complete application and its attachments to appropriate state and local entities and the appropriate Indian tribe. The notification shall solicit comments, recommendations for conditions, or objections to the application. Notification letters shall include a highlighted confidentiality statement. Responses to the solicitation must be received within 30 calendar days of the date of the letter. SHPO shall send copies of all responses to the applicant;

(c) If the archaeological site in question is associated with a prehistoric or historic native Indian culture, the applicant shall consult with the appropriate Indian tribe during the 30 day period. At a minimum, consultation shall consist of meeting(s) satisfactory to the tribal governing body and/or its designee, and shall include discussion of the proposed work, archaeological permit terms or conditions, tribal monitoring of the archaeological and project work, contingency plans for discovery of remains and artifacts during both archaeological work and project development, and curation of artifacts;

(d) If an entity listed in subsection (a) of this section makes any objection or requests a condition to the application, the applicant shall contact the entity and attempt to resolve the issue. If the objection or request for condition is resolved by the applicant and the entity, they shall notify the SHPO in writing of the resolution. If the applicant and the entity cannot resolve the objection or request for condition within the 30 calendar days

allowed for comment on the permit application, the Director or his or her designee shall determine what effect, if any, the objection or proposed condition shall have on the permit application.

(9)(a) Notwithstanding the provisions of section (8) of this rule, any person or entity who discovered an archaeological or historic site or burial during construction may request an expedited consultation process. The request may be granted whenever the Director or his or her designee, in consultation with the parties listed in subsection (8)(a) of this rule, determines that the 30 day consultation period provided in subsection (8)(b) of this rule will result in extreme economic hardship to the person or entity making the request, or an undue risk to public health, life or safety, or an undue threat to the site or burial. Examples of situations creating undue risk to public health, life or safety include hazardous material spills, breach of regional flood control facilities, and pipeline failures.

(b) If the Director or his or her designee determines that an expedited consultation process is warranted, the following procedures apply:

(A) The applicant shall contact the Director or his or her designee by telephone and/or facsimile to provide the information described in sections (4) and (7) of this rule;

(B) During the following 48 hours (excluding Saturday, Sunday, and any legal or tribal holidays), the Director or his or her designee shall consult by telephone and/or facsimile with the persons or entities described in section (8) of this rule. If the head of the land managing agency or the tribal governing body of the appropriate Indian tribe objects in writing to an expedited review, the Director or his or her designee will not proceed with the expedited review;

(C) The applicant may proceed with approval from the Director or his or her designee, to be followed by written notice as provided in section (12) of this rule.

(c) For purposes of this section, "extreme economic hardship" means a quantifiable and verifiable expenditure or fiscal loss that is unreasonable for the requestor to bear under the circumstances, including but not limited to the following:

(A) The importance of the project or non-archaeological use that would be delayed during the consultation period;

(B) The additional costs that would be incurred during the consultation period;

(C) The total cost of the project;

(D) The degree to which expedited consultation could achieve the same protection of the site as consultation over the standard 30 day permit application review period;

(E) Whether the requestor reasonably could have avoided the additional costs by anticipating the need for a permit and consultation at an earlier time.

(10) After considering the application, maps, research design, vita and all comments, recommendations for conditions, or objections received by entities with approval authority during consultation, the Director or his or her designee may issue the permit without conditions, issue the permit with conditions or deny the permit. The permit does not relieve the applicant of compliance with other federal or state requirements, including, but

not limited to, ORS 97.740 to 97.760, ORS 358.905 to 358.955, and ORS 390.235 to 390.240.

(12) The applicant and all parties defined in ORS 390.235(1)(f) shall be notified of the Director's decision by first class mail.

(14) The permit issued by the Department shall be reviewed and may be suspended or revoked if human remains, funerary objects or sacred objects are encountered during an excavation.

## APPENDIX B. PRELIMINARY ANALYSIS: ORS 97, ORS 358, and ORS 390 & SIGNIFICANT ARCHAEOLOGICAL SITES

### ORS 97.450(2)

“(2) Notwithstanding subsection (1)(a) of this section, a cemetery or burial ground containing human remains that were interred before February 14, 1909, may not be discontinued or declared abandoned or have remains removed from the burial ground or cemetery without prior notice to and comment by the Oregon Commission on Historic Cemeteries. When commenting on a request to discontinue or declare abandoned a cemetery or burial ground, **the commission shall consider:** [emphasis added]

- (a) The listing of the cemetery or burial ground under ORS 97.782;
- (b) The **historic significance** [emphasis added] of the cemetery or graves included in the request; and
- (c) The findings of any archaeological survey of the cemetery or burial ground.”

### ORS 97.772

“97.772 Definition of “historic cemetery.” For purposes of ORS 97.772 to 97.784, **“historic cemetery” means any burial place that contains the remains of one or more persons who died before February 14, 1909.**” [emphasis added]

### ORS 97.780(1)&(6) Duties

“97.780 Duties. The Oregon Commission on Historic Cemeteries shall:  
**(1) Maintain a listing of all historic cemeteries in this state.** [emphasis added]  
**(6) Assist the director in locating and listing historic cemeteries.**” [emphasis added]

### ORS 97.782

“97.782 Listing of historic cemeteries; form. **A historic cemetery** [emphasis added] that is not an operating cemetery, as defined in ORS 692.010, **shall be listed with the Oregon Commission on Historic Cemeteries** [emphasis added]. An owner or any other person or association of individuals that maintains such a historic cemetery shall list the historic cemetery with the Oregon Commission on Historic Cemeteries on a form provided by the commission. No fee shall be required from a historic cemetery for listing.”

### ORS 692.010(7)

“(7) “Operating cemetery” means a cemetery that  
(a) Performs interments;  
(b) Has fiduciary responsibility for endowment care, general care or special care funds; or  
(c) Has outstanding preneed service contracts for unperformed services.”

## OREGON HISTORIC TRAILS

### ORS 358.057

“358.057 Value and **significance** [emphasis added] of state historic trails. Oregon recognizes the value and **significance** [emphasis added] of its historic trails, including:”

## HISTORIC PROPERTY

### ORS 358.475 Policy

“358.475 Policy. The Legislative Assembly hereby declares that it is in the best interest of the state to maintain, preserve and rehabilitate properties of Oregon **historical significance** [emphasis added]. Historic preservation incentive programs provide a public benefit by encouraging preservation and appropriate rehabilitation of **significant historic** [emphasis added] properties. These historically significant portions of the built environment contain the visual and intellectual record of our irreplaceable cultural heritage. They link us with our past traditions and values, establish standards and perspectives for measuring our present achievements and set goals for future accomplishments. To the extent that Oregon’s historic preservation incentive programs encourage the preservation and appropriate rehabilitation of **significant historical** [emphasis added] property, the programs create a positive partnership between the public good and private property that promotes economic development; tourism; energy and resource conservation; sustainability; neighborhood, downtown and rural revitalization; efficient use of public infrastructure; and civic pride in our shared historical and cultural foundations.”

### ORS 358.480(8)&(17)

“358.480 Definitions for ORS 358.480 to 358.545. As used in ORS 358.480 to 358.545, unless the context requires otherwise:”

“(8) “Contributing resource” means a building, site or structure that adds to the **historic significance** [emphasis added] of a historic property or historic district.”

“(17) “Rehabilitation” means the process of repairing or altering a historic property in order to return the property to a state of utility in which an efficient contemporary use is possible, while preserving those portions and features of the property that are **significant** [emphasis added] to the historic, architectural and cultural values of the property.”

### ORS 358.487(2)

“(2) The application must include or be accompanied by: (a) A preservation plan as defined in ORS 358.480. The preservation plan must commit the applicant to expend, within the first five years for which historic property special assessment is granted, an



amount not less than 10 percent of the historic property’s real market value determined as of the assessment date for the first tax year to which the historic property special assessment applies. The focus of the preservation plan must be on exterior features, especially those visible from a public way, and structural members of the property. The treatment of **significant** [emphasis added] interior features, as determined by the State Historic Preservation Officer, may also be included in the plan, but unless specifically required by the officer, work in bathrooms, kitchens, basements and attics is not included in the preservation plan. Work proposed in the plan must meet the historic rehabilitation standards.”

#### **ORS 358.540(5)(a)**

“(5)(a) An application filed under subsection (3) of this section may be approved only upon a finding by the State Historic Preservation Officer that the preservation plan submitted with the application pursuant to subsection (4) of this section will, if implemented, result in a **significant** [emphasis added] investment in the historic property that promotes compliance with Americans with Disabilities Act or that results in seismic improvements or improvements in energy conservation or sustainability to the property.”

### **OREGON HERITAGE COMMISSION**

#### **ORS 358.583**

“358.583 Purpose and duties of commission relating to museums. (1) As used in this section, “museum” means a public institution or private nonprofit Oregon corporation primarily devoted to the acquisition and public exhibition of specimens, artifacts, articles, documents and other items that relate to history, anthropology, archaeology, science or art and that have **historical significance.**” [emphasis added]

### **HISTORIC PRESERVATION PLAN**

#### **ORS 358.605(3)**

“358.605 Legislative findings . . . (3) It is, therefore, the purpose of this state to identify, foster, encourage and develop the preservation, management and enhancement of structures, sites and objects of **cultural significance** [emphasis added] within the state in a manner conforming with, but not limited by, the provisions of the National Historic Preservation Act of 1966.”

#### **ORS 358.612(1),(4)&(5)**

“358.612 Duties of State Historic Preservation Officer. The State Historic Preservation Officer: (1) Shall conduct or cause to have conducted a comprehensive, statewide survey

to identify districts, sites, buildings, structures and objects that are potentially **significant** [emphasis added] in Oregon history, prehistory, architecture, archaeology and culture;” . . . “(4) Shall create a mechanism for an Oregon State Register of Historic Properties in which to record **significant historic** [emphasis added] properties with the State Advisory Committee on Historic Preservation developing the criteria for such properties; (5) Shall nominate properties of **historical, prehistoric architectural, archaeological and cultural significance** [emphasis added] to the Oregon State Register of Historic Properties and to the National Register of Historic Places;”

## **PRESERVATION OF PROPERTY OF HISTORIC SIGNIFICANCE**

### **ORS 358.635(1)**

“358.635 Definitions for ORS 358.635 to 358.653. As used in ORS 358.635 to 358.653: (1) “Historic artifacts” means three-dimensional objects including furnishings, art objects and items of personal property which have **historic significance** [emphasis added]. “Historic artifacts” does not include paper, electronic media or other media that are classified as public records.”

### **ORS 358.645**

“358.645 Review of private property of **historic significance**. A private owner of any historic artifact believed to have state or **national historic significance** [emphasis added] that the owner wishes to give to the state or to a political subdivision may request review of the **significance** [emphasis added] of the property by the State Parks and Recreation Department.”

### **ORS 358.650(1)**

“358.650 Acceptance of historic artifact as gift to state; custody; finders fees. (1) Whenever a prospective donor of any historic artifact identified as **historically significant** [emphasis added] pursuant to ORS 358.645 requires immediate acceptance of the property as a condition of a gift, the State Parks and Recreation Department may accept the gift on behalf of the state or political subdivision and may place the gift in the custody of a state agency or political subdivision under agreement between the department and the agency or political subdivision.’

### **ORS 358.653(1)-(3)**

“358.653 Conservation program; leases. (1) Any state agency or political subdivision responsible for real property of **historic significance** [emphasis added] in consultation with the State Historic Preservation Officer shall institute a program to conserve the

property and assure that such property shall not be inadvertently transferred, sold, demolished, substantially altered or allowed to deteriorate.

(2) State agencies and political subdivisions may and are encouraged to lease real property of **historic significance** [emphasis added] to private businesses and nonprofit organizations for purposes which are consistent with the nature of the property.

(3) Where possible, the Oregon Department of Administrative Services shall acquire or lease buildings of **historic significance** [emphasis added] for state use.”

## **OREGON PROPERTY MANAGEMENT PROGRAM FOR HISTORIC SITES AND PROPERTIES**

### **ORS 358.685(1)-(5)&(7)-(8)**

“358.685 Duties of director. In addition to any other duties or powers provided by law, the State Parks and Recreation Director may, with the advice of the State Advisory Committee on Historic Preservation: (1) Except as otherwise provided in ORS 358.650 (1), accept, from whatever source, appropriations, gifts or grants of money or other property for the preservation of significant historic sites and properties, and use the money or property to preserve **significant historic sites** and properties.

(2) Sell or exchange property owned by the state and used for state heritage or historic preservation purposes if the director determines that the sale or exchange would be advantageous to the state for the preservation of **significant historic sites** and properties.

(3) Acquire by purchase, lease, agreement or gift real property and all appropriate interests therein for **significant sites** and properties of recreational value and purpose.

(4) Acquire by purchase, lease, agreement, gift or otherwise real property and all interests therein and establish, operate and maintain thereon **significant historic sites** and properties.

(5) Establish and develop **significant historic sites** and properties and prescribe rules governing the use of **significant historic sites** and properties established and developed under any other provision of state law. . . .”

“(7) Enter into contracts with any person or governmental agency for the development and encouragement of programs and projects designed to preserve **significant historic sites** and properties.

(8) Perform the acts necessary for the establishment and implementation of programs designed to preserve **significant historic sites** and properties with agencies of the federal government.”

## **ARCHAEOLOGICAL OBJECTS AND SITES**

### **ORS 358.905(1)(a)&(1)(b)**

“358.905 Definitions for ORS 358.905 to 358.961; interpretation.

(1) As used in ORS 192.005, 192.501 to 192.505, 358.905 to 358.961 and 390.235:

- (a) “**Archaeological object**” [emphasis added] means an object that:
- (A) Is at least 75 years old;
  - (B) Is part of the physical record of an indigenous or other culture found in the state or waters of the state; and
  - (C) Is material remains of past human life or activity that are of **archaeological significance** [emphasis added] including, but not limited to, monuments, symbols, tools, facilities, technological by-products and dietary by-products.
- (b) “**Site of archaeological significance**” [emphasis added] means:
- (A) Any archaeological site on, or eligible for inclusion on, the National Register of Historic Places as determined in writing by the State Historic Preservation Officer; or
  - (B) Any archaeological site that has been determined **significant** [emphasis added] in writing by an Indian tribe.”

### ORS 358.955(1)

“358.955 Civil enforcement. (1) Any person or the Attorney General, on behalf of the state, may institute a civil proceeding against a person who violates the provisions of ORS 358.920, 358.945, 358.950 or 390.235. In the proceeding, relief shall be granted in conformity with the principles that govern the granting of injunctive relief in other civil cases, except that a showing of special or irreparable damage to the person is not required. Upon the execution of the proper bond against damages for an injunction improvidently granted and a showing of immediate danger of **significant** [emphasis added] loss or damage, a temporary restraining order or a preliminary injunction may be issued in any such action before a final determination on the merits.”

### ORS 358.910(2)

“358.910 Policy. The Legislative Assembly hereby declares that:” . . . “(2) The State of Oregon shall preserve and protect the cultural heritage of this state embodied in objects and sites that are of **archaeological significance** [emphasis added].”

## LOTTERY BONDS FOR STATE PARK PURPOSES

### ORS 390.067.Sec11.(3)

“Sec. 11. Willamette Falls Legacy Project. “. . . (3) A local or regional public sponsor of the project has requested that the State Parks and Recreation Department participate in the planning, development and potential future operation of any public access project on the site to ensure that the **statewide significance** [emphasis added] of Willamette Falls is recognized and interpreted and that the falls are accessible to the public.”

**STATE PARKS AND RECREATION DEPARTMENT (Generally)**

**ORS 390.112(2)**

“390.112 Additional criteria for acquiring and developing new historic sites, parks and recreation areas. The State Parks and Recreation Department shall propose to the State Parks and Recreation Commission additional criteria for the acquisition and development of new historic sites, parks and recreation areas. The criteria shall include but need not be limited to: . . .

(2) Criteria to protect **significant cultural and historic properties** [emphasis added], such as Thompson’s Mills in Linn County, Fort Rock Cave in Lake County, Fort Yamhill in Polk County and Keil House in Marion County; and . . .”

**ORS 390.122(2)**

“390.122 Requirements for establishing priorities for acquisition. In establishing its priorities for acquisition, the State Parks and Recreation Commission shall: . . .

(2) Encourage public nominations of **significant resources** [emphasis added] that meet the criteria established pursuant to ORS 390.112 and other criteria pertaining to the acquisition of historic sites, parks and recreation areas.”

**ORS 390.135(2)(b)**

“390.135 . . . (2) Moneys deposited from the Oregon State Lottery to the Parks Subaccount may be used only for: . . .

(b) Acquiring real property, or interests in real property, that has **significant natural, scenic, cultural, historic or recreational value** for the creation or operation of state parks, ocean shores, public beach access areas, outdoor recreation areas and historic sites; and . . .”

**ORS 390.135(3)(b)**

“390.135 . . . (3) All moneys in the Parks Subaccount shall be transferred to the State Parks and Recreation Department Fund and used to carry out the purposes described in subsection (2) of this section by achieving each of the following: . . .

(b) Protecting natural, cultural, historic and outdoor recreational resources of **statewide or regional significance.**” [emphasis added]

**ORS 390.835(6)(a), (8)(b), (12)(b), (13)(a)**

“390.835 . . . (6) Upon a finding of necessity under subsection (1) of this section, the Water Resources Commission may issue a water right for human consumption not to exceed 0.005 cubic feet per second per household, or livestock consumption uses not to

exceed one-tenth of one cubic foot per second per 1,000 head of livestock, as designated in ORS 536.310 (12) within or above a scenic waterway if the Water Resources Commission makes the following findings

(a) That issuing the water right does not **significantly impair** [emphasis added] the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

“(8) The Water Resources Commission may not allow human consumption and livestock uses authorized under subsection (6) of this section in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless: . . .

(b) Exceeding that amount will not **significantly impair** [emphasis added] the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.”

“(12) As used in this section, “measurably reduce” means that the use authorized under subsection (9) of this section will individually or cumulatively reduce surface water flows within the scenic waterway in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless: . . .

(b) Exceeding that amount will not **significantly impair** [emphasis added] the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.”

“(13) Before authorizing an appropriation that will reduce streamflows within a scenic waterway in amounts up to but not exceeding the amounts described in subsection (12) of this section, the Water Resources Director shall find:

(a) That the appropriation will not **significantly impair** [emphasis added] the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.”

#### **ORS 390.835(6)(a), (8)(b), (12)(b), & (13)(a)**

“(6) Upon a finding of necessity under subsection (1) of this section, the Water Resources Commission may issue a water right for human consumption not to exceed 0.005 cubic feet per second per household, or livestock consumption uses not to exceed one-tenth of one cubic foot per second per 1,000 head of livestock, as designated in ORS 536.310(12) within or above a scenic waterway if the Water Resources Commission makes the following findings:

(a) That issuing the water right does not **significantly impair** [emphasis added] the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.” [emphasis added]

“(8) The Water Resources Commission may not allow human consumption and livestock uses authorized under subsection (6) of this section in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless:

(b) Exceeding that amount will not **significantly impair** [emphasis added] the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.”

“(12) As used in this section, “measurably reduce” means that the use authorized under subsection (9) of this section will individually or cumulatively reduce surface water flows

within the scenic waterway in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less, unless: . . .

(b) Exceeding that amount will **not significantly impair** [emphasis added] the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

(13) Before authorizing an appropriation that will reduce streamflows within a scenic waterway in amounts up to but not exceeding the amounts described in subsection (12) of this section, the Water Resources Director shall find:

(a) That the appropriation will not **significantly impair** [emphasis added] the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife.

## **APPENDIX C. PRELIMINARY ANALYSIS: OAR 736-050, OAR 736-051, OAR 736-052, OAR 736-053, and OAR 736-054 & SIGNIFICANT ARCHAEOLOGICAL SITES**

The preliminary analysis found several references in the search for the words “significant” and “significance.”

### **DIVISION 50 HISTORIC PRESERVATION OFFICER**

#### **OAR 736-050-0001 Policy**

##### **“Authority, Purpose and Policy**

**(1) Authority:** The authority for this rule is granted to the State Historic Preservation Officer in accordance with ORS 358.545.

**(2) Purpose:** These rules clarify the statutory requirement for participation in the Special Assessment of Historic Property program as provided in ORS 358.480 to 358.545.

**(3) Policy:** One of the goals of the State Historic Preservation Officer is to maintain, preserve and rehabilitate properties of Oregon **historical significance** [emphasis added] through historic preservation incentive programs, thereby creating a positive partnership between the public good and private property that promotes economic development, tourism, energy and resource conservation, neighborhood, downtown, and rural revitalization, efficient use of public infrastructure, and civic pride in our shared historical and cultural foundations.”

#### **OAR 736-050-0230(8)&(11) Definitions**

“(8) "Historic District" – A geographically definable area, urban or rural, possessing a **significant** [emphasis added] concentration, linkage, or continuity of historic sites, buildings, structures, or objects united by past events or visually by plan or physical development.”

“(11) "National Register of Historic Places" – The national list of districts, sites, buildings, structures, and objects **significant in American history, architecture, archaeology, engineering, and culture** [emphasis added], maintained by the Secretary of the Interior. The Keeper of the National Register of Historic Places is an official of the National Park Service.”

#### **OAR 736-050-0240(4) Organization and Duties**

“(4) Pursuant to 36 CFR 61.4(f)(6) and ORS 358.622 the Committee shall:

(a) Review all proposed nominations to the National Register of Historic Places to determine whether or not the property meets the **criteria for evaluation** [emphasis added];



(b) Participate in the review of appeals to the Keeper of the National Register of nominations rejected by the SHPO, and provide written opinions on the **significance of the properties** [emphasis added];”

## **DIVISION 51. ARCHAEOLOGICAL PERMITS**

### **OAR 736-051-0070(5) Definitions**

“(5) "Archaeological Object" means an object that:

- (a) Is at least 75 years old;
- (b) Is part of the physical record of an indigenous or other culture found in the state or waters of the state; and
- (c) Is material remains of past human life or activity that are of **archaeological significance** [emphasis added] including, but not limited to, monuments, symbols, tools, facilities, technological by-products and dietary by-products.”

## **DIVISION 52 STATE AGENCY TRANSFER OF HISTORIC ARTIFACTS**

### **OAR 736-052-0001 Definitions**

“For the purposes of this division the following definitions shall apply:

- (1) "Department" means the Oregon Parks and Recreation Department.
- (2) "Historic artifacts" means three-dimensional objects including furnishings, art objects and items of personal property which have **historic significance** [emphasis added]. "Historic artifacts" does not include paper, electronic media or other media that are classified as public records. "Historic Artifacts" does not include "archaeological objects" as defined in ORS 358.905(1)(a).
- (3) "**Historic Significance**" [emphasis added] as used in the definition of "historic artifacts" connotes a historic artifact that was important, meaningful, or influenced past events, or is famous. **Historic significance** [emphasis added] may be determined by the Oregon Heritage Commission or by the department based on an inventory of historic artifacts, including: . . .”

## **DIVISION 53. HERITAGE COMMISSION GRANT AND COORDINATION PROGRAMS OREGON MUSEUM GRANT PROGRAM**

### **OAR 736-053-0105(2) Definitions**

“As used in OAR 736-053-0100 to 736-053-0140, unless the context requires otherwise:

- (1) "Commission" means the Oregon Heritage Commission.
- (2) “Department” means the Oregon Parks and Recreation Department.
- (3) "Museum" means a public institution or private nonprofit Oregon corporation primarily devoted to the acquisition and public exhibition of specimens, artifacts, articles, documents and other

items that relate to history, anthropology, archaeology, science, heritage, or art and that have **historical significance** [emphasis added].”

## **Oregon Heritage Grants**

### **OAR 736-053-0220(2)(b) Evaluation of Applications**

“(1) Eligible applications received by announced deadlines shall be evaluated by an Oregon Heritage Grants Review Committee appointed by department staff and approved by the Commission Chair.

(2) The Oregon Heritage Grants Review Committee shall rank applications in order of priority based on an evaluation of:

(a) The applicant's capability of carrying out the proposed project; and

(b) How the proposed project will result in the conservation or development of heritage resources. Priority will be given to projects that preserve or develop heritage resources that are threatened, are of **statewide significance** [emphasis added], or both.”

### **OAR 736-053-0305(2) Definitions**

“(2) "Statewide anniversary celebrations" means celebrations and other commemorations of anniversaries of events of **statewide significance** [emphasis added] to Oregon's heritage.”

### **736-053-0315 Qualification as a Statewide Anniversary Celebration**

“An event or episode may qualify for designation as a statewide anniversary celebration if its impacts are proven to have **significance in Oregon** [emphasis added] beyond the actual event or episode being celebrated or commemorated. Upon demonstration of **significance** [emphasis added], the Commission may designate the event or episode a statewide anniversary celebration.”

## **DIVISION 54 HISTORIC CEMETERY GRANTS**

The preliminary analysis found zero references in the search for the words “significant” and “significance.”

## **APPENDIX D. PRELIMINARY ANALYSIS: ARCHAEOLOGY BULLETIN 1 & SIGNIFICANT ARCHAEOLOGICAL SITES**

**Archaeology Bulletin 1 - Archaeological Sites on Private Lands** May 2012 Recommendations from the Oregon State Historic Preservation Office (SHPO) Archaeology Staff.

<http://www.oregon.gov/oprd/HCD/ARCH/Pages/index.aspx>.

**“Laws:** Under Oregon State Law (ORS 97.740, ORS 358.905-358.961, ORS 390.235, OAR 736-051-0090) significant archaeological sites are protected on all non-federal public (state, county, city) and private lands. Significance is based on the potential of an archaeological site to be eligible for inclusion on the National Register of Historic Places, which means the site possesses important archaeological information on a local, regional or national level. **Archaeological sites are considered significant until their eligibility can be evaluated.** [emphasis added] Under state law, damage to archaeological sites is a Class B Misdemeanor. Disturbance of Native American human remains or associated funerary objects is considered a Class C Felony with penalties up to a \$10,000 fine.”

**Archaeology Bulletin 1 - Archaeological Sites on Private Lands FAG** May 2012 Frequently Asked Questions, page 2. Oregon State Historic Preservation Office (SHPO) Archaeology Staff.

<http://www.oregon.gov/oprd/HCD/ARCH/Pages/index.aspx>.

**“Laws: . . .” “What does archaeological significance mean?** Archaeological significance means that a site is eligible for inclusion on the National Register of Historic Places (NRHP). For an archaeological site to be significant, a professional archaeologist would need to evaluate the site in terms of its importance based on condition (integrity), type of artifacts and features associated with the site, research potential or similarity to known significant sites. Conversely, a professional archaeologist can assist with recommending an archaeological site as “non-significant”. If an archaeological site is determined non-significant with State Historic Preservation Office (SHPO) concurrence, it is not protected under state law. That would not prevent the landowner from protecting the site if they so choose, but it would not be necessary. Significant archaeological sites would require protection or mitigation if a landowner were planning a project with the potential to damage, injure or destroy the site. **Archaeological sites that have not been evaluated are considered significant until proven otherwise.**” [emphasis added]