



## **Request to Prohibit Delisting of Local Historic Resources Pending Supreme Court Case That Affects 3,000 Portland Properties**

On April 24, 2015, the Oregon State Supreme Court agreed to review *Lake Oswego Preservation Society v. City of Lake Oswego*. The case concerns ORS 197.772, a statute that allows property owners the right to object to historic resource designation and, in limited instances, seek retroactive removal from historic resource listing. On May 20, the Portland City Council supported Resolution 37124, authorizing the City Attorney to participate in the case on the side of retaining existing historic resource designations. Because the outcome of the case has a direct bearing on Portland's historic preservation program, Restore Oregon requests the City take no further action to delist historic resources until the Supreme Court has issued their decision.

### **STATUTORY REQUIREMENTS**

In 1995, the Oregon Legislature passed ORS 197.772, a statute that to this day makes Oregon the only state in the nation to require owner consent for local historic resource designation. ORS 197.772 also provides a clause for retroactive removal of designations that were imposed on a property. The statute requires a 120-day delay before issuance of any "permit for the demolition or modification of property removed from consideration for historic property designation." Properties on the National Register of Historic Places are not subject to ORS 197.772.

### **HISTORIC RESOURCES AFFECTED**

*Lake Oswego Preservation Society v. City of Lake Oswego* specifically concerns requests to delist local historic resources in instances where the property has changed ownership since the time of listing. It is estimated that there are 3,000 historic resources in Portland that could be affected by the Supreme Court's decision. Defined in Zoning Code Chapter 33.910, these resources are:

- Local Landmarks;
- Conservation Landmarks;
- Properties identified as contributing to the historic significance of a Conservation District; and,
- Structures or objects that are included in the Historic Resources Inventory.

Zoning Code Chapter 33.445.520 specifies that a 120-day delay is required for applications to demolish any of the above historic resources. According to the Code, "Demolition delay allows time for consideration of alternatives to demolition, such as restoration, relocation, or architectural salvage."

A 2002 package of Historic Resource Code Amendments contained a provision that grants owners of Historic Resource Inventory properties the ability to request same-day removal from the Inventory (Portland Zoning Code Subsection 33.445.510.B). The rationale for this provision is not apparent in the Planning Commission Report and Recommendations that accompanied the amendments. Providing same-day removal of Historic Resource Inventory status contradicts the mandatory 120-day delays prescribed by both the Zoning Code and ORS 197.772.

**In the interest of upholding the intent of Zoning Code historic resource protections, adhering to the statutory 120-day delay requirement, and providing the community with adequate opportunity to seek alternatives to demolition of historic resources, Restore Oregon requests the City of Portland stay all requests to remove historic resource designation until the State Supreme Court issues a decision on *Lake Oswego Preservation Society v. City of Lake Oswego*.**

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## OPTIONS FOR STAYING REQUESTS TO DELIST HISTORIC RESOURCES

Two options exist for temporarily staying applications to delist local historic resources:

1. Directive from the City Attorney to the Bureau of Development Services. Such directives were recently issued in Pendleton and Deschutes County to provide relief to local historic resources until the Supreme Court issues a decision.
2. Adoption of a moratorium on demolition of locally designated historic resources. The procedure for enacting a moratorium is defined by ORS 197.520. The potential loss of historic resources due to owner objection requests qualifies as an irrevocable public harm that outweighs the adverse effects on owners who may be delayed in redeveloping their properties for the duration of Supreme Court consideration of the issue.

Additionally, and importantly, we urge the City Council to pass an ordinance extending the 120-day demolition delay to Historic Resource Inventory properties. This could be accomplished by the removal of unnecessary Zoning Code Subsection 33.445.510.B.

## EXAMPLES OF PROPERTIES RECENTLY REMOVED FROM THE HISTORIC RESOURCE INVENTORY



**John Bridges House, 1423 SW Columbia Street.** Built in 1884 by noted Portland architect Justus Krumbein, Goose Hollow's Bridges House was listed on Portland's Historic Resource Inventory in 1984. Described as a prime example of the Eastlake Style in *Classic Houses of Portland*, the property was eligible for listing in the National Register of Historic Places. It was removed from the Inventory the day the Bureau of Development Services received the owner's application and was demolished shortly after in the spring of 2014.



**St. Paul's Church, 801 NE Failing Street.** Built in 1904 by Volga German immigrants, St. Paul's Evangelical and Reformed Church was listed on Portland's Historic Resource Inventory in 1984. Following its sale to a Wilsonville developer, on March 31, 2015, the new owner submitted both a request for removal from the Inventory and a demolition application. The request for delisting was automatically approved and the church was demolished less than one month later. An online petition to save the building generated 2,136 signatures, but in the absence of a delay period there was no opportunity to negotiate a solution.



**5134 SE Division Street.** Built in 1902, this 2,085 square foot home was listed in the Historic Resource Inventory for its Queen Anne vernacular style and high level of architectural integrity. The house was removed from the Inventory on the same day the de-listing application was received, April 15. Although a demolition permit is active, a 120-day delay could have provided an opportunity to relocate the property while still accommodating the proposed apartment building. A comparable property at 2604 SE Division was saved by relocation in 2005 due to a delay that allowed that Inventoried building (the "Clay Rabbit") to be relocated prior to the construction of the condominium building that occupies the site today.