Watts Remy

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Sent: Tuesday, March 26, 2019 10:31 AM
To: SENR Exhibits
Subject: SB 929

I have several significant concerns with SB 929. It will permit the demolition of historic interior fabric, diminishes opportunities for families to stay in their historic homes and/or apartments, propagates continued displacement of low income families, allows substantial private profit with little public benefit, allows demolition costs associated with the removal of interior historic fabric to be acceptable tax rebate costs, and other references/provisions may run afoul of the National Historic Preservation Act. I am supportive of that component of the measure that applies to unreinforced masonry buildings with the exception of allowing demolition costs as eligible expenses (if the costs are associated with the removal of features that contribute to a building's significance).

Demolition of Historic Fabric Should not be an Eligible Expense Unless Conditions are Met (Section 7(1)(a)(B)

Demolition Costs (Chapter 358, Section 7 – "Eligible Expenses")

> *(1)(a) Eligible expenses include expenses directly related to structural seismic retrofitting, including the necessary expenses of **demolition** and **restoration** of similar architectural finishes, electrical systems, plumbing, and mechanical systems necessary for access; and*

Use of the term restoration needs to be defined in the statute as it implies that during a seismic retrofit, historic fabric will be demolished and then "restored". This would be inconsistent with the "historic rehabilitation standards" as restoration is the least preferred of all of the "historic rehabilitation standards" and could result in the loss of characteristics that make the resource eligible for local listing or the NRHP. In addition, demolition expenses should be specifically excluded from an eligible cost unless the demolition was performed consistent with Preservation Brief 41 (NPS April 2016) and/or the "historic rehabilitation standards." Does the statute intend to use the term "restoration" as defined in the Secretary of the Interior's Standards for Rehabilitation? If so, it is not defined in the regulation and should be.

Definition of Historic Property in Oregon Revised Statutes Violates Federal Regulations and Statutes

The referenced definition of "historic property" used by the proposed rule, as cited in Section 7(2) of SB 929 statute and currently found in ORS 358.480(11)(c) is contrary to federal law as it provides powers not specifically delegated to the State Historic Preservation Office (SHPO) by the Secretary of the Interior or by the National Historic Preservation Act of 1966 (54 U.S.C. 300101). As noted in Oregon Revised Statutes (ORS) 358.480(11)(c), "historic property," a key term that determines entitlement to the tax rebate program, could include a property that "has been determined eligible for listing in the National Register of Historic Places (NRHP) ***by the SHPO***" {emphasis added}. This category of historic property enshrined in the Oregon Revised Statutes is at odds with federal statutes and regulations.

The NRHP program is a federal program administered by the state along a well prescribed, if imperfect, set of rules found in 36 CFR Part 64. Neither these regulations, nor the regulations found in 36 CFR Part 800 afford the SHPO the power to make a "determination of eligibility." Under the rules that guide the NRHP listing process, 36 CFR 60.3(c) notes that a "determination of eligibility" is a "decision by the Department of Interior that a district, site, building, structure, or

object meets the National Register criteria for evaluation…". Under a different section of the NHPA, the SHPO may also engage in an agreement on NRHP eligibility under 36 CFR 800.4(e)(2)) with a federal agency under the so-called "Section 106" process. Neither of these regulations nor the NHPA bestows the authority to make a determination of eligibility to the SHPO in a solitary capacity. To assert that authority would appear to violate the Tenth Amendment of the United States Constitution as the authority was specifically reserved to the NPS, federal agencies, or through a consensus agreement between the SHPO and a federal agency but not the SHPO as a singular entity engaging in independent decision making concerning a federal historic designation.

The reference in SB 929 and ORS 358.480(11)(c) should be revised and or deleted to conform with federal statutes and regulations.

Interior Demolitions

Section 8(2)(b) of SB929, currently allows the SHPO to issue a property owner a certificate of eligibility indicating that the property owner shall receive a rebate under this section on the condition that:

> *(b) The project adheres to the historic rehabilitation standards for the exterior facade of the historic property and for significant public interior spaces, allowing for changes of use and interior conversions to multifamily residential use.*

As written, this overly permissive text allows project proponents to substantially alter the characteristics that potentially make the property eligible for listing in the NRHP or local designation. If the interior of a National Register listed or locally designated resource is altered such that the physical characteristics are diminished or destroyed, eligibility for the NRHP or local designation could be lost. The Secretary of the Interior's Standards (referred to as the "historic rehabilitation standards") do not make these distinctions and to enshrine them in state regulations would create inconsistent programming. Furthermore, the regulation is entirely unclear in its definition of "public interior spaces" when discussing a private residence that is not otherwise open to the public. Even if "public interior spaces" are defined, the remaining interior parts of a building may still retain historic values and characteristics that substantially contribute to its historic significance. The following text is recommended:

> *(b) the project adheres to the historic rehabilitation standards and the characteristics that contribute to the historic property's significance are not diminished such that the historic property retains its historic integrity.*

The act should only be applied for owners of single family homes, pre-existing multi-family residences, and to unreinforced masonry buildings to take advantage of the rebate, with the benefit being allocated only to those who have lower incomes and who would like to stay in their existing neighborhoods as opposed to individuals who would be displaced as a result of internal conversions. The act should only include owner-occupied single family properties with homeowners who earn up to 120% Median Family Income to be participants in the program. This would allow single family residential homeowners to rehabilitate their own homes with some potential for internal conversions (if they do not harm the integrity of the resource and are consistent with the standards). The program, as it currently exists, would only exacerbate displacement of existing low income single family homeowners in favor of investors who seek to develop multi-family housing through single family housing conversions. Studies produced by the City of Portland

provide the stark realities of residential infill and internal conversions as their economic analysis reveals that the city's infill program will directly result in the targeted displacement of lower income and minority city residents. The rebate should only apply to owner-occupied single family homes (with the MFI requirements), pre-existing multi-family residences, or unreinforced masonry buildings.