



# Oregon

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To: Land Conservation and Development Commission

From: Brenda Ortigoza Bateman, Ph.D., Director  
Kirstin Greene, AICP, Deputy Director and Tribal Liaison  
Amanda Punton, Natural Resource Specialist

Subject: **Agenda Item 5, November 2-3, 2023, LCDC Meeting**

## Goal 5 Rule for Cultural Areas

### I. Summary

Department of Land Conservation and Development (DLCD or department) staff will ask the Land Conservation and Development Commission (LCDC or commission) to initiate rulemaking to add rules specific to cultural areas as identified in Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces. Staff anticipate these new rules would be included in Oregon Administrative Rules (OAR) chapter 660, division 23.

**Purpose.** To improve implementation of the Statewide Planning Goal 5, staff ask the commission to initiate rulemaking to update practices to understand and conserve significant cultural resources to better preserve the state's cultural heritage.

**Objectives.** Obtain LCDC approval to initiate rulemaking within OAR 660-023 specific to cultural resources. As part of this process, staff ask the commission to approve a rulemaking charge and direct the department to appoint a Rules Advisory Committee (RAC). Staff welcome the commission's input on the draft list of interests to be included on a RAC. Finally, staff request a commissioner be appointed as a liaison to the process.

For further information about this report, please contact Amanda Punton, Natural Resource Specialist at 971-718-3245 or [Amanda.punton@dlcd.oregon.gov](mailto:Amanda.punton@dlcd.oregon.gov), or Kirstin Greene, Deputy Director and Tribal Liaison at 971-701-1584 or [Kirstin.greene@dlcd.oregon.gov](mailto:Kirstin.greene@dlcd.oregon.gov).

## II. Background

In 1996, LCDC amended Statewide Planning Goal 5 and adopted OAR 660-023 (division 23) to replace the previous rules implementing Goal 5 (OAR 660-016) for thirteen of the fourteen Goal 5 resource categories. Division 23 now describes process steps and standards for complying with the goal specific to each resource category with the exception of cultural areas. With the 1996 amendments, the commission also removed the definition of cultural resources from the goal language. Associated with the division 23 rulemaking, a rules advisory group and department staff recommended postponing the development of additional rules for the inventory of cultural areas as an executive order 96-30 on Tribal-state agency coordination had been recently issued. This left cultural areas as the only Goal 5 resource utilizing the general inventory methodology in division 16 for conserving these resources. Nearly thirty years later, the state comprehensive planning program still does not include a rule specific to guide identification, inventory, and protection of these resources for current and future Oregonians.

Following discussion at the Legislative Commission on Indian Services (LCIS) Cultural Resources Cluster, representatives of federally recognized Oregon Tribes and the Interim Executive Director of LCIS testified to the inadequacy of Goal 5 implementation for cultural resources at the January 2021 commission meeting. In response, the commission asked DLCD staff to meet in a work group with tribal representatives to discuss the general scope of the rulemaking. Accordingly, DLCD included development of new rules for Goal 5 cultural areas in the department's 2021-2023 Policy Agenda. In preparation for rulemaking, DLCD staff convened a Goal 5 Cultural Areas Tribal Workgroup to develop the rulemaking charge. The workgroup met six times to consider various aspects of a rule and the rulemaking process. Resulting from this guidance, internal meetings with DLCD's urban, rural and policy team as well as with the Local Official Advisory Committee, staff have included the draft charge in the commission packet as *Attachment A: Goal 5 Cultural Areas Draft Rulemaking Charge, November 2023, Considerations of Scope for Goal 5 Cultural Areas Rulemaking* as Attachment A. When considering various approaches associated with the scope of the rulemaking, staff and members agreed to present a range of potential approaches for discussion at a rules advisory committee table. For a representation of these options in table form, staff have included *Attachment B: Considerations for Scope of Goal 5 Cultural Areas Rulemaking*.

For additional context to the background of this proposed rulemaking, please see *Attachment C, Oregon Land Use Planning Goal 5: Cultural Areas Project Update*.

### A. Elements of Goal 5 Cultural Areas Rulemaking

As reflected in the draft charge, members of a rulemaking advisory committee (RAC) will be invited to consider several elements of additional approaches such as notice requirements and/or other ways to minimize impact to and enhance preservation of

cultural areas. Staff will work with RAC members and a commission liaison to develop an updated definition of Goal 5 cultural area. The original definition in division 16 was “refers to an area characterized by evidence of an ethnic, religious, or social group with distinctive traits, beliefs and social forms.”

Staff also will ask members to help develop a notification and/or assessment process to identify significant resource sites within the larger Goal 5 category. For archaeological sites and objects already protected under state law, a new Goal 5 rule could improve awareness of best practices to avoid impacts to significant sites and of the corrective measures required in the event of an inadvertent discovery. For landscape features with cultural significance, the rule will need to describe a process for learning of their significance and creating an approach to avoiding, minimizing, or mitigating impacts from development for significant sites.

Staff also will ask RAC members to consider circumstances under which to implement aspects of the new rule. Conditions could be based on the type of use, size of development, whether development is on public or private property, or the type of local decision being made. RAC members will be asked to consider the cultural and social value of the resource, local government capacity, tribal government or other organizational capacity, cost to developers, time required to apply protection measures, and availability of technical assistance. Staff and workgroup members agree that it will be important to engage with Oregonians with various, shared cultural identities in the rulemaking process.

For examples of landscape features of cultural significance to tribes, which may or may not include a significant archaeological site, please see *Attachment D, Examples of Landscape Features of Potential Cultural Significance to Oregon Tribes*.

## **B. Interest to be Included in a Rules Advisory Committee**

As advised by members of the workgroup including representatives from the LCIS, the State Historic Preservation Office (SHPO) and DLCD staff, the department includes a draft list of interests to serve on the RAC in the draft charge in *Attachment A*. Staff welcome commission feedback on this list. With the commission’s endorsement, staff would begin to recruit for this advisory committee in November in an open recruitment process. In addition to local government representatives and state agency officials, each of Oregon’s nine federally recognized tribes will be encouraged to appoint a representative to serve in this capacity.

## **C. Looking Forward to Implementation**

Inventories of archaeological sites are maintained by Oregon Tribes and by SHPO. Culturally significant landscape areas include sacred sites that are known to tribal communities. Information on both types of sites require thoughtful and respectful

treatment. Generally, information about these sites is kept confidential under the Public Records Law in order to prevent looting or other desecration. Processes to obtain information that will inform avoidance and protection measures will require technical assistance to local governments and staff resources from DLCD, SHPO, and Tribal governments. Staff will engage RAC members in discussing the range of approaches and associated funding needs. While a rules advisory committee may highlight the need for funding, any detailed steps to pursue funding will occur separately.

### **III. Recommended Action**

DLCD staff recommend that the commission initiate rulemaking and direct the department to prepare a rule for cultural areas to be added to OAR chapter 660, division 23. The department recommends the commission delegate to the director the appointment of a Rulemaking Advisory Committee to assist the department in developing the rules. The department will deliver final recommendations for commissioners to consider.

The consequence of not taking action would be the commission not providing specific guidance to local governments for conducting their land use planning in a manner consistent with Goal 5 directives for identifying, inventorying, and protecting cultural areas.

#### **Recommended motion:**

I move that the commission initiate rulemaking to prepare rules for Goal 5 cultural areas to be added to OAR chapter 660, division 23 and authorize the director to appoint a rulemaking advisory committee to develop proposed rules consistent with the charge included in *Attachment A*.

#### **Optional motion:**

I move that the commission initiate rulemaking to prepare rules for Goal 5 cultural areas to be added to OAR chapter 660, division 23 and authorize the director to appoint a rulemaking advisory committee to develop proposed rules consistent with the charge amended as follows...

### **IV. Attachments**

**A. Goal 5 Cultural Areas Draft Rulemaking Charge, November 2023**

**B. Considerations of Scope for Goal 5 Cultural Areas Rulemaking, November 2022**

**C. Oregon Land Use Planning Goal 5: Cultural Areas Project Update**

**D. Examples of Landscape Features of Potential Cultural Significance to Oregon Tribes**