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CHAPTER 660

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

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FILING CAPTION: Describing how local governments comply with Goal 5 for cultural areas.

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RULE SUMMARY: This rule defines how local governments comply with Statewide Land Use Planning Goal for cultural areas including archaeological sites and significant landscape features.

CHANGES TO RULE:

660-023-0210

Cultural Areas

(1) For purposes of this rule, the following definitions apply:¶

(a) "Archaeological Site" means a geographic locality in Oregon, including but not limited to submerged and submersible lands but not the bed of the sea within the state's jurisdiction, that contains archaeological objects as defined in ORS 358.905(1)(a) and the contextual associations of the objects with:¶

(A) Each other; or¶

(B) Biotic or geological remains or deposits. Examples of archaeological sites include but are not limited to shipwrecks, lithic quarries, house pit villages, camps, burials, lithic scatters, homesteads and townsites.¶

(b) "Cultural areas" means archaeological sites or landscape features of cultural interest. Also referred to as "cultural resource site."¶

(c) "Cultural Areas Protection Plan" means an element of a local government's comprehensive plan addressing Goal 5 for cultural areas and associated development code provisions.¶

(d) "Potentially Significant Cultural Landscape Feature" means a landscape feature that is: integral to a tribe's history, legends, traditions, and stories; traditionally used for wayfinding; traditionally used for gathering first foods and materials; integral to ongoing tribal cultural practices; traditional trails; and sites that support traditions of a culturally identified group. Also referred to as "landscape feature of cultural interest."¶

(e) "Oregon qualified archaeologist" means an archaeologist that satisfies the qualifications listed in ORS 390.235(6)(b) and as provided in OAR 736-051-0070.¶

(f) "Oregon-based government" means a local, state, or tribal government in Oregon.¶

(g) "Professional archaeologist" as defined in ORS 97.740, means a person who has extensive formal training and experience in systematic, scientific archaeology and to whom the State Historic Preservation Office (SHPO) has granted access to the Oregon Archaeological Records Remote Access (OARRA) database.¶

(h) "Tribe" as defined in ORS 182.162(2), means a federally recognized Indian tribe in Oregon.¶

(2) Relationship of Cultural Areas Protection to the Standard Goal 5 Process and Other Rules in this Division.¶

(a) The requirements of the standard Goal 5 process in OAR 660-023-0030 through 660-023-0050, in conjunction with the requirements of this rule, apply when a local government adopts or amends a cultural areas protection plan.¶

(b) Except as provided in subsection (9)(d), a local government is not required to assess archaeological sites for significance under OAR 660-023-0030 or complete an analysis of the economic, social, environmental, and energy (ESEE) consequences of a decision to allow, limit, or prohibit uses that conflict with a significant resource site pursuant to OAR 660-023-0040 in order to inform a local program to protect cultural resource sites that are also protected under ORS 358.905 to 358.961 and subject to permit requirements in OAR chapter 736, division 51.¶

(c) Local protections for a cultural area significant for reasons other than archaeology that intersect with a significant riparian area, wetland, or wildlife habitat will be in addition to local Goal 5 protection measures adopted for these resource sites.¶

(d) A cultural area significant for its culturally significant vista, which is identified as a significant scenic resource in a local comprehensive plan shall be subject to protection measures in the local code for that site and is not subject to this rule.¶

(e) Protections for a landscape feature of cultural significance shall not have the effect of limiting mining within the boundaries of a significant aggregate site in which mining is authorized by a local government.¶

(3) Archaeological Sites.¶

(a) Distinguishing between significant and non-significant resource sites, as described in OAR 660-023-0030, is not required for the application of this rule to archaeological sites.¶

(b) The OARRA database is maintained by SHPO. OARRA includes information on documented archaeological resources and archaeological survey reports. The OARRA database is one source of information on the presence or likely presence of an archaeological site. Other sources of information include inventories maintained by tribes.¶

(c) A local government is not required to follow the process provided in OAR 660-023-0030 through 660-023-0050 for an archaeological site. Instead, a local government must support protection of an archaeological site, as directed in section (5), regardless of whether the resource is listed as a significant Goal 5 resource in the local plan.¶

(d) When provided information on a recorded or suspected archaeological site, a local government will use the information to inform land use decisions, recommendations to applicants, and permit conditions in a manner that preserves confidentiality and is consistent with state law. ORS 192.345(11) exempts most information concerning the location of archaeological sites and objects from public records disclosure, except when information on an Indian tribe's cultural or religious activities is requested by the governing body of a tribe. Requirements in this rule are intended to be consistent with ORS 192.345(11).¶

(A) A professional archaeologist representing either a local government or an applicant may access data relevant to a proposed land use action or permit application, consistent with privileges assigned by state statute and administrative rule.¶

(B) In the acquisition and publishing of data exempt from disclosure, local governments may:¶

(i) Acquire and publish aggregated data in a spatial format to indicate relative likelihood of inadvertent discovery within all or a portion of a local jurisdiction.¶

(ii) Acquire and publish data on a known archaeological site if the location of the site is approximated so that the precise location of the site is obscured.¶

(iii) Acquire and keep confidential information on a specific site that is used to inform permit conditions or other strategies for avoiding impacts to a site or support compliance with state statutes and rules governing excavation of an archaeological site.¶

(4) Local Inventory of Significant Cultural Landscape Features.¶

(a) A landscape feature of cultural interest is significant if a local government has determined it to be significant through application of the OAR 660-023-0030 assessment process. When assessing significance of a site, a local government shall recognize the use of a site for ceremonial gatherings or harvest of traditional foods and materials

as an indication of the quality, when assessing the importance of the site compared to other known examples of the same resource. A local government shall consider a Tribal Government an authoritative source of knowledge on landscape features that are significant to that tribe's culture.

(b) A local government may inventory significant cultural landscape features across a portion or the entirety of its jurisdiction following the procedures and standards in subsection (a).

(c) A city or county shall accept an application from an Oregon-based government to determine if a cultural landscape feature is significant and complete the Goal 5 process for a significant cultural landscape feature. The city or county shall process the application as an amendment to a comprehensive plan to place a significant cultural landscape feature on a local inventory following the procedures and standards in subsection (a). After receiving the application, the city or county shall notify owners of property that contains all or a portion of the subject landscape feature or its impact area, as described by the applicant. A city or county shall not require property owner consent to process such an application.

(d) Within seven days of receiving an application under subsection (c) a city or county shall send notice to the tribes with an ancestral connection to land within its jurisdiction, as described in subsection (10)(c).

(e) A local government shall adopt protection measures for a landscape feature found to be culturally significant concurrently with the creation or amendment of a local inventory, consistent with subsection (6)(a) and OAR 660-023-0050.

(5) Protection of archaeological sites.

(a) Protection for archaeological sites is achieved through application of state statutes and permit requirements governing treatment of all archaeological sites and any associated human remains, and objects. Local governments shall support awareness and compliance with these state statutes and rules. Measures that arise from application of this section for characterizing and avoiding alteration of a suspected archaeological site or a known site for which boundaries have not been established in OARRA will be advisory to an applicant.

(b) All local application forms for authorizations that involve ground disturbance must include a statement informing the applicant that it is unlawful to disturb an archaeological site without first obtaining a permit required by OAR chapter 736, division 51 and of steps to take in the event of unintentional discovery of an archaeological site.

(c) A local government shall provide notice to tribes with an ancestral connection to land within its jurisdiction, as described in subsection (10)(c), for any application that involves ground disturbance and that is:

(A) A permit as defined in ORS 215.402(4) or ORS 227.160(2);

(B) A limited land use decision for which public notice is required under ORS 197.195 or ORS 197.797; or

(C) A land use action subject to the procedures established in ORS 197A.146.

(D) This requirement does not apply to ministerial permits or to limited land use decisions processed ministerially under ORS 197.195(6), or to any other applications for which public notice is not required by statute.

(d) When providing notice under subsection (c), a local government shall:

(A) Notify tribes no later than 5 days after the local government determines that the application is complete, to request information about the potential for negative impacts to a known or suspected archaeological site; and

(B) Include tribes in the notification of public comment period or public hearing on the application provided under ORS 197.195, ORS 197.797 or ORS 197A.146.

(e) Notice to tribes required under subsection (c) shall include the following information, as provided by the applicant:

(A) A description of the proposed development;

(B) A map showing the vicinity of the proposed development; and

(C) Tax lots and the street address or other easily understood geographical reference to the subject property.

(f) Examples of ground disturbance for which notice is required include:

(A) Grading;

(B) Foundation installation;

(C) Installation of underground utilities, and

(D) Mining of aggregate or minerals.

(g) The local government shall inform the applicant when a tribe responds to a notice provided under subsection (c) and transmit to the applicant a tribe's recommendation for avoiding or mitigating impacts. Information from a tribe received by a local government prior to the first evidentiary hearing, or by the close of the comment period if the local government does not schedule a public hearing, shall be included as part of the record for the application in a manner that preserves confidentiality, as provided in subsection (3)(d).

(h) When information is entered into the record for review of an application documenting that the proposed development is within the established boundaries of an archaeological site recorded in OARRA, a local government shall condition an approval on the applicant applying for an Oregon Archaeological Permit.

(6) Protection for landscape features of cultural significance.

(a) For a cultural landscape feature found to be significant under section (4), a local government shall complete the

Goal 5 process and adopt a program to achieve the goal as provided in OAR 660-023-0040, as modified by subsection (b), and OAR 660-023-0050.

(b) An ESEE analysis shall include consideration of applying the following limits, consistent with the rights of private property owners, to conflicting uses as part of a program to protect a landscape feature of cultural significance.

(A) For sites that are significant due to use of the immediate area (e.g. gathering first foods, traditional location of ceremonies, trails):

(i) Avoidance through clustering and other means to preserve the area as open space and the preservation of existing public access; and

(ii) Establishment of time windows when access is restricted to members of the tribe or cultural group engaging in the activity from which the basis of the site's significance is derived.

(B) For sites that are significant due to a culturally significant vista (e.g. landform features used for wayfinding, landform features integral to a tribe's legends/traditions/stories):

(i) Limits on structure heights to preserve the vista; and

(ii) Specifications on the use of non-reflective surfaces.

(c) For projects with a federal nexus and for which a review has been completed under the requirements of 54 USC section 306108 of the National Historic Preservation Act, a local government shall defer to measures for mitigating impacts to a landscape feature of cultural significance applied by the federal decision.

(d) When designation of a significant cultural landscape feature includes the adoption of local protections for that feature, and the finding of significance is based in part on the feature's significant historic quality, a local government shall comply with the owner consent provisions of ORS 197.772.

(7) Urban Growth Boundary (UGB) amendments.

(a) A local government shall send notice to tribes with an ancestral connection to land within their jurisdiction, as provided in subsection (10)(c), of a proposed UGB amendment and request information on potential conflicts between future urbanization of a UGB expansion area and a cultural area. The local government shall provide this notice:

(A) At least 35 days prior to the first evidentiary hearing by cities, for amendments to a city's UGB.

(B) At least 45 days prior to the first evidentiary hearing by Metro, for amendments to Metro's UGB.

(b) When a city or Metro receives information describing a potential conflict with an archaeological site, it shall manage the information on recorded or suspected sites consistent with paragraph (3)(d)(B). Metro shall convey the responses they receive from a tribe to the city or county responsible for comprehensive planning of the UGB expansion area.

(c) If factual information is entered in the record of a UGB amendment demonstrating that a landscape feature or its impact area is present in the UGB expansion area, the city or county responsible for comprehensive planning of the UGB expansion area shall apply Goal 5, consistent with OAR 660-023-0250(3)(c).

(8) Consideration of potentially significant cultural landscape features.

(a) For applications requiring permits as defined in ORS 215.402(4) on lands outside an urban growth boundary, in addition to the notice requirements in subsection (5)(c), a local government shall notify tribes with an ancestral connection to land within their jurisdiction, as provided in subsection (10)(c), and request information on the potential of the proposal to negatively impact a landscape feature of cultural value to one or more tribes. A local government shall:

(A) Notify tribes, no later than 5 days after the local government determines that the application is complete, to request information about the potential for negative impacts to a cultural landscape feature; and

(B) Include tribes in the notification of public comment period or public hearing on the application provided under ORS 197.195, ORS 197.797 or ORS 197A.146.

(C) Notification shall include the following information, as provided by the applicant:

(i) A description of the proposed development;

(ii) A map showing the vicinity of the proposed development; and

(iii) Tax lots and the street address or other easily understood geographical reference to the subject property.

(b) Prior to the first evidentiary hearing for a permit application, described under subsection (a), for which one or more tribes have indicated the potential for a negative impact, the local government shall offer to arrange a meeting with the tribe(s) and the applicant within the required review timeline. The purpose of the meeting is to discuss potential impacts to landscape features of cultural value to the tribe or tribes and voluntary measures on the part of the property owner for avoiding or minimizing impacts.

(c) Notification and consultation with tribes required and carried out as part of a federal action satisfy the requirements of this section.

(d) A local government will make any voluntary measures on the part of the property owner to avoid or mitigate impacts and required measures stemming from a federal action a part of the record of approval, unless the tribe has requested in writing that this information be kept confidential.

(9) Optional and additional local protection strategies.

(a) As an alternative to notice requirements in sections (5) and (8), a local government may adopt a local protection program as a plan amendment after January 1, 2026 enabled by a memorandum of understanding with one or more tribes as provided in paragraph (B).¶

(A) A local program that replaces protections described in sections (5) and (8) shall be consistent with the principles for establishing tribal relationships described in guidance from the Legislative Commission on Indian Services.¶

(B) A government-to-government consultation program adopted pursuant to this subsection shall be enabled by a memorandum of understanding with one or more tribes. A government-to-government consultation program supersedes the requirements of sections (5) and (8) only as it pertains to the cultural areas of the tribe or tribes party to the memorandum of understanding. The standards and review requirements of the local program that diverge from the baseline protections in section (5) and process steps in section (8) shall be described in the adoption materials.¶

(C) Notification to a local government by a tribe of withdrawal from a memorandum of understanding, upon which the government-to-government consultation program relies, will cause the local government to resume compliance with the baseline protection in sections (5) and process steps in section (8).¶

(b) A local program adopted prior to January 1, 2026, to protect archaeological and cultural resources is consistent with these rules if the local government provides notice consistent with sections (5) and (8).¶

(c) In addition to baseline protections in section (5) and as an alternative to OAR 660-023-0030, a local government may identify areas with a high likelihood of containing archaeological sites and require preconstruction surveys within such areas.¶

(d) A local program described in subsection (c) may limit development to protect an archaeological site identified through a preconstruction survey, provided the local government follows the ESEE decision process in OAR 660-023-0040 and the local government adopts a program to achieve protection that is consistent with the directives in OAR 660-023-0050.¶

(e) Local governments shall notify tribes as provided in subsection (10)(c) when initiating a program under subsection (c).¶

(10) Application of the rule.¶

(a) Local governments are not required to amend acknowledged plans or land use regulations to provide new or amended inventories, resource lists, or programs regarding cultural areas except as a result of applying OAR 660-023-0030 through 660-023-0050 to significant cultural landscape features identified in an application for an amendment to a comprehensive plan as provided in subsection (4)(c) or in response to a UGB amendment as provided under section (7). A local government may adopt procedures for consulting with tribes on the decisions described in subsection (5)(c) and subsection (8)(a) that could impact cultural areas that are of value to one or more tribes.¶

(b) A local government shall apply the standards and protection measures described in subsection (4)(c) and sections (5), (6), and (8) directly except as provided by subsection (d).¶

(c) A local government satisfies the requirements for sending notice to tribes in this rule by sending notice to tribes with an ancestral connection to land within the jurisdiction of the local government. Each city and county and Metro shall obtain a list from the Legislative Commission on Indian Services of tribes that have such a connection.¶

(d) When a local government develops a program under subsection (9)(a), review and protection elements of that program may replace some or all of the requirements of sections (5) and (8), as these sections pertain to the tribe with which a local government has entered into a consultation agreement or a memorandum of understanding.¶

(e) Notwithstanding OAR 660-023-0080, Metro's obligations under this rule are limited to section (7).¶

(f) Within the boundaries of the Columbia River Gorge National Scenic Area, local governments shall implement the provisions of the Columbia River Gorge National Scenic Area Act and the Columbia River Gorge National Scenic Area Management Plan instead of the provisions in this rule.

Statutory/Other Authority: ORS 197.040

Statutes/Other Implemented: ORS 197.225-197.245