



# Oregon

Tina Kotek, Governor

## Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: 503-373-0050

Fax: 503-378-5518

[www.oregon.gov/LCD](http://www.oregon.gov/LCD)

### Goal 5 Cultural Areas Rulemaking Advisory Committee

Meeting Summary

May 22, 2025



#### **RAC Members and Alternates:**

Les Anderson - Klamath Tribes, Tribal Council

Elissa Bullion - Oregon Legislative Commission on Indian Services, Physical Anthropologist

Briece Edwards - Confederated Tribes of Grand Ronde, Deputy THPO

Jennifer Eisele - Vice Chair DLCD Citizen Involvement Advisory Committee

Kimberli Fitzgerald - City of Salem, Planner, Archaeologist, and Historical Preservation Officer

Peter Hatch - Confederated Tribes of Siletz Indians

Dave Hunnicutt - Oregon Property Owner's Association

Kelly Howsley Glover - Wasco County, Planning Director

Elen Grover, Confederated Tribes of the Warm Springs Indian Reservation, Legal council

Courtney Krossman - Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians, THPO

Brandi Malone - Cow Creek Band of Umpqua Tribe of Indians

Katie McDonald - Metro, Tribal Liaison

Carey Miller - Confederated Tribes of the Umatilla Indian Reservation, THPO

Keenan Ordon-Bakalian - Private attorney, Land Use Advocate

John Pouley - Oregon Parks and Recreation, SHPO State Archaeologist

Shana Radford - Governor's office, Tribal Affairs Coordinator

Alexandria Ring - League of Oregon Cities

Jill Rolfe - Coos County, Community Development Director

Stacy Scott - Oregon Parks and Recreation, Archaeologist

Nick Starin - City of Portland, Planner

Lawrence Squiemphen - Confederated Tribes of the Warm Springs Indian Reservation, THPO

Diane Teeman - Burns Paiute Natural and Heritage Program

Ed Sullivan - Retired attorney, Housing and Land Advocate

Michelle Wright - Oregon Department of Transportation

#### **DLCD Staff:**

Brenda Bateman, Director

Kirstin Greene, Deputy Director

Jessica Miller, Executive Support

Amanda Punton, Natural Resource Specialist

Gordon Howard, Community Services Division Manager

Commissioner Lianne Thompson, LCDC Liaison

Casaria Taylor, Rules Coordinator

Laura Kelly, Mero Area regional Representative

Alyssa Bonini, Legislative and Policy Analyst

Alexis Hammer, Legislative and Policy Manager

#### **Welcome and Introductions**

Kirstin Greene and Commissioner Thompson welcomed RAC members. RAC members and DLCD staff introduced themselves.

### **History, Commission Charge, and Operating Principles**

Kirstin provided some history of this rulemaking, first identified by Tribal government representatives. She also provided an overview of the LCDC charge for the RAC, the RAC Operating Principals (Pg. 5 of Packet), and receipt and treatment of public comment. She concluded with a summary of the anticipated schedule for the rulemaking (Pg. 8 of Packet).

### **Public Comment to the RAC:**

Miranda Miller, representing the Nez Perce Tribe, described the history of the Nez Perce Tribe and ancestral lands which resulted in the federal government removal of the tribe's authority over the majority of their ancestral lands. The Nez Perce Tribe is a federally recognized tribal government in Idaho, and would like to have the same recognition in the rule as federally recognized tribes in Oregon. Specifically, the tribe would like to be recognized as an entity that can submit applications for adding a landscape feature of cultural significance to a local inventory of Goal 5 resources.

### **Topic 1: Processing Applications**

Amanda Punton gave a brief overview of Oregon Administrative Rule (OAR) 660-023-0210, as adopted by LCDC in December 2024. She explained the language being discussed today is in section 4 of the rule. Subsection (4)(c) requires cities and counties to receive and process applications to add a landscape feature of cultural significance to a local inventory of Goal 5 resource sites. The question for discussion is whether the rule let a local government decide how to process an application or specify that which process should be used. The current language does not specify which review pathway to use. Gordon Howard gave an overview of similarities and differences of the two types of review, legislative and quasi-judicial, and provided information on the three factors for making the decision, identified by the Oregon Supreme Court in 1979 (page 9 of Packet).

Gordon covered the factors listed by the Oregon Supreme Court in 1979 in *Strawberry Hill 4 Wheelers vs. Board of Commissioners* decision:

1. Is the process bound to result in a decision?
2. Is the decision bound to apply preexisting criteria to concrete facts?
3. Is the action directed at a closely circumscribed factual situation or a relatively small number of persons?

### **Discussion:**

- A RAC Member asked about application of Factor #1. What authority bounds the local government to reach a decision? Gordon gave a couple examples and said it would be case by case.
- A RAC member rhetorically asked if the answer to factor 2 could ever be yes in a process to assess significance or devise a protection strategy based on an Environmental, Social, Energy, and Economic standard Goal 5 (ESEE) analysis; both are compactly discretionary decisions for the local government.

- A RAC member asked about “relatively small number of persons”. Does this include the span of time, e.g., over many years? From a tribal perspective, impact on persons includes people over many generations. Gordon stated that this factor applies to people in the present. The RAC member posed that the constraints of this criteria might not allow for tribal values to be considered. Amanda stated that she had heard this factor to apply to the number of parcels, not people. Gordon will seek clarification with DLCD legal counsel.
- A RAC member pointed out the time constraints of a quasi-judicial process does not allow sufficient time for tribal consultation.
- Another member raised concern with all types of applications that a local government needs to process in mind. Amanda clarified that the discussion today is only about applications to add a landscape feature to a local inventory of Goal 5 significant sites. A different section of the rule speaks to notifying tribes of applications for land use authorization that would result in ground disturbing activity.
- A RAC member stated their understanding that a comp plan or code amendment would always need to be processed through a legislative review.
- RAC members continued to discuss the applications for which notice to tribes is required in the rule. A RAC member who administers local cultural resource protection measures stated that their jurisdiction does not make decisions, but accommodates a tribe’s request for precautions to ensure either avoids archaeological sites or obtains SHPO permits.
- A RAC member raised the issue that many cities and counties do not have a process in place to receive an application for a change to a comprehensive plan (except for Goal 5 aggregate sites.) Gordon said that to comply with this rule, a city/county could amend its procedures to allow applications regarding a significant landscape feature without opening up the application option for all types of plan amendments.
- A RAC member raised the concern that a person bringing an application to add a site to the local inventory and get local protection for that site will expect the city or county commission to reach a decision. The ability of a city/county to forgo making a decision, would likely frustrate the applicant.
- A RAC member expressed concern over the rule providing an adequate time for local jurisdictions to amend their procedures and allow applications seeking amendments to the comprehensive plan. They noted this could take up to a year for a legislative amendment.
- Amanda explained that the Goal 5 rules required these two decisions to be adopted concurrently. The purpose of a Goal 5 inventory is to get to the point of protecting resources on the inventory. Kirstin emphasized the importance of knowing about these important resources, even if local protection is not achieved. Note: in this case, this objective may be better reached in a comprehensive plan policy/policies rather than in the inventory if the latter were not possible.

### **Next Steps/Looking ahead**

Kirstin noted that the question for the next RAC meeting is, who can bring these types of applications directly? The current language allows applications to be brought by Federally Recognized Tribes in Oregon and other culturally identified groups. The RAC heard from a representative of the Nez Perce Tribe and LCDC received comments from the Cowlitz Tribe who would like to be recognized in this rule. Kirstin reviewed the anticipated outline of future RAC meetings (Page 8 of the Packet). She also raised the possibility of revisiting the definition

the rule uses for “cultural areas” as noted by a representative of the Burns Paiute Tribe in the recent Solar on Farmland in Eastern Oregon rulemaking process.

**Closing thoughts**

Commissioner Thompson offered a succinct close, that It’s a good meeting when everyone gets smarter. She thanked members for their participation and adjourned the meeting.