Oregon
Tina Kotek, Governor

Department of Land Conservation and Development
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May 14, 2025

TO: Goal 5 Cultural Areas Rulemaking Advisory Committee Members

FROM: Kirstin Greene, Deputy Director and Tribal Laision
Gordon Howard, Community Services Division Manager
Amanda Punton, Natural Resources Specialist
Jess Miller, Executive Support Specialist for Programs

CC: Brenda Ortigoza Bateman, Ph.D., Director
Land Conservation and Development Commissioner Lianne Thompson
Shana Radford, Governor Kotek Tribal Affairs Director
Casaria Taylor, Senior Rules Coordinator
Alexis Hammer, Legislative and Policy Manager
Alyssa Bonini, Legislative and Policy Analyst

RE: Materials for May 22, 2025, Rulemaking Advisory Committee Meeting

Thank you for your ongoing commitment to this important effort. Attached, please find the meeting agenda and some background materials for our process and meeting. Please review these before we spend time together.

As RAC members, you should have a Zoom meeting link in your calendar invite to join the meeting. Unless community members wish to make public comment, we invite everyone else to watch via the live stream on DLCD's YouTube channel here.

We are pleased that Land Conservation and Development Commissioner Lianne Thompson will continue as our liaison to the commission. To finish our work before the 2026 Legislative Session, we are planning three RAC meetings before the public hearing on the draft rules at the September 25-26 commission meeting. The close of consultation and public comment is set for October 5, 2025. Staff will ask commissioners to consider adoption at their October 23-24 meeting.

Please contact Jess Miller at 971.301.1849, jess.k.miller@dlcd.oregon.gov for meeting support. These materials also will be posted on the project webpage (Click on the accordion menu for OAR 660-023: Goal 5 Cultural Areas). We look forward to meeting with you next week!

Packet Contents:
1. Meeting Agenda
2. RAC Membership
3. Operating Principles
4. Meeting Outline
5. Backgrounder: Processing Applications for Cultural Areas (Legislative v Quasi-Judicial Processing Pathways
6. Draft Rules as Adopted December 5, 2024

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Goal 5 Cultural Areas Rulemaking Advisory Committee
First Meeting Agenda

May 22, 2025
1:00 – 3:00 PM

This meeting will be livestreamed at the Department of Land Conservation and Development (DLCD) YouTube page. This meeting will be hosted online. The link after the meeting, and other materials will be posted to DLCD's Rulemaking page here on https://www.oregon.gov/lcd.

The public comment period for this rulemaking will close on October 5, 2025, 11:55 p.m. To make public comment in writing, please email dlcd.goal5ca@dlcd.oregon.gov at any time. To be considered part of the rulemaking record, please note that comments must be submitted in writing. To make brief public comment verbally at the meeting, please join the Zoom Meeting linked here. While three minutes per speaker is the norm, the facilitator may need to shorten the time for each speaker due to the number of persons wishing to speak and other items on the agenda.

To request accommodations for persons with disabilities or language interpretation, please contact Jess Miller at (971) 301-1849, jess.miller@dlcd.oregon.gov or by TTY: Oregon Relay Services (800) 735-2900 48 hours before the meeting.

Time	Item/ *Desired Outcome*	Lead
1:00 - 1:25 pm	Welcome and Introductions *Please briefly share your name, affiliation, and what's important for you in this rulemaking process*	Land Conservation and Development Commission Liaison Clatsop County Commissioner Lianne Thompson Committee Facilitator Deputy Director Kirstin Greene All RAC Members
1:25 - 1:35 pm	Commission Charge and Operating Principles	Kirstin Greene
1:35 - 1:45 pm	Public Comment *Community members, please "raise hand" to be in the queue.*	Kirstin Greene

Time	Item/ *Desired Outcome*	Lead
1:45 - 2:00 pm	Overview Topic #1: Processing Applications	Gordon Howard, Community Services Division Manager
2:00 - 2:40 pm	Discussion	RAC Members
2:40 - 2:50 pm	Next Steps, Looking ahead	Kirstin Greene
2:50 - 3:00 pm	Closing Thoughts Adjourn	RAC Members Commissioner Lianne Thompson

OREGON
Department of Land Conservation & Development

Goal 5 Cultural Areas Rulemaking Advisory Committee Membership

Updated May 22, 2025

Government/Agency/Interest	Name of Representative
1. Senior Planner, Lane County	Shawna Adams
2. The Klamath Tribes	Councilmember Les Anderson
3. Oregon Legislative Commission on Indian Services	Elissa Bullion
4. Confederated Tribes of Grand Ronde	Briece Edwards
5. DLCD Citizen Involvement Advisory Committee	Jennifer Eisele
6. City planner, Salem	Kimberli Fitzgerald
7. Wasco County	Kelly Glover
8. Confederated Tribes of Siletz Indians	Peter Hatch
9. Representatives of property rights organization	Dave Hunnicutt
10. Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians	Courtney Krossman
11. Cow Creek Band of Umpqua Tribe of Indians	Brandi Malone
12. Oregon METRO	Katie McDonald
13. Confederated Tribes of the Umatilla Indian Reservation	Carey Miller
14. Private developer	Keenan Ordon-Bakalian
15. Coquille Indian Tribe	Sara Palmer
16. State Historic Preservation Office, State Archaeologist	John Pouley
17. League of Oregon Cities	Alexandria Ring
18. County planner, Coos County	Jill Rolfe
19. City planner, Portland	Nick Starin
20. Confederated Tribes of Warm Springs Reservation of Oregon	Lawrence Squiemphen
21. Representative of land use advocacy organization	Ed Sullivan
22. Oregon Department of Transportation	Michelle Wright

Jess Miller, Department of Land Conservation and Development, is providing committee support. Committee facilitator is Deputy Director Kirstin Greene. Project management and rule coordination is provided by Amanda Punton with support by Community Services Division Manager Gordon Howard.

Community members are welcome to submit comment to dlcd.goal5CA@dlcd.oregon.gov. Requests for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Jess Miller at Jess.K.Miller@dlcd.oregon.gov, or by TTY: Oregon Relay Services (800) 735-2900.

OREGON
Department of Land Conservation & Development

Cultural Areas Rulemaking Advisory Committee Operating Principles

May 13, 2025

I. Charge to the Rulemaking Advisory Committee

The Land Conservation and Development Commission (LCDC or commissioners) initiated rulemaking on March 20, 2025, to re-open the Goal 5 Cultural Areas rules to consider three items. The commissioners' charge to the Rulemaking Advisory Committee (RAC) is to reconsider:

- The parties that could bring an amendment for a comprehensive plan to place a culturally significant landscape site on a local inventory.
- The manner in which a local government would process such an amendment.
- The manner in which Metro regional government would recognize a request for consideration of a landscape feature of cultural significance in the context of a regional urban growth boundary amendment.

II. Organizational Structure

State and commission policy requires that potentially affected parties, community members be involved in the drafting of rules. The Department of Land Conservation and Development's (DLCD) goal in convening this RAC is to receive individual and group guidance on developing Oregon Administrative Rules. As a state agency, DLCD also is responsible for Government-to-Government relations with Oregon federally recognized Tribal Governments.

Membership. RAC members are serving in an advisory role to DLCD staff, who will draft and present recommendations to the LCDC for their consideration and final decision-making. RAC members are encouraged to communicate their guidance at RAC meetings or in writing, preferably within one week following a RAC meeting.

DLCD staff. Staff will provide committee support and rules coordination. Staff commit to communicate diverging opinions on the rule language proposal in their staff report presented to LCDC for consideration.

LCDC Liaison. Clatsop County Commissioners Lianne Thompson is the commission liaison for the rulemaking process.

LCDC. At the end of the public process, LCDC will be the final decision-maker on these rules.

III. Meetings

Attendance. Members are expected to make a good faith effort to attend all meetings. Because of the collaborative nature of the meetings, it is important to have the members attend consistently for continued discussions and shared learning.

Summaries. DLCD staff will prepare draft and final meeting summaries. Staff ask RAC members to communicate any corrections within one week of receiving the draft summary. All final summaries will be posted on the project webpage linked here.

Public Comment. DLCD will livestream the meetings on YouTube, take public comment, and provide meeting summaries posted to the department's rulemaking webpage. Written public comment is accepted at any time to DLCD.Goal5CA@DLCD.oregon.gov. As time allows, the facilitator will make time on the meeting agendas for verbal public comment during the RAC meetings.

Public Hearing. When the rules are published in draft for public comment, LCDC will accept written and verbal public comments at their September 25-26, 2025, meeting.

Close of Public Comment. Staff anticipate that public comment for this rulemaking will close on October 5, 2025, at 11:55 pm.

IV. Member Expectations

Collaboration. In this context, collaboration means that all members engage in a process of listening to and sharing information that is important to them and the group they represent so the group has an increased likelihood of meeting as many of the stated and shared needs as possible. To support this, RAC members agree to:

1. Approach the discussions with curiosity and a willingness to hear others' views to support joint problem solving.
2. Bring up issues and concerns for discussion at the earliest point in the process.
3. Share all relevant information that will assist RAC members in understanding the variety of needs so the RAC can achieve its goals.
4. Keep their government or organization's leadership informed of recommendations formulated by the RAC.
5. Review and comment on draft and revised rules, impact statements, and other associated strategies and documents.

Preparation. Members will make a good faith effort to review meeting materials provided by DLCD in advance of each meeting.

No Surprises. Members will make a good faith effort to notify staff in advance of actions outside the RAC which could affect the proposals, recommendations, or agreements being discussed.

Press and Public Forums. Members are asked to refer media inquiries about this process to DLCD staff. If a member does speak to the media, DLCD asks that RAC members identify that their views are their own, and not those of the RAC or DLCD.

V. Agreements

Staff and RAC members agree to apply the following:

- Listen with respect, seeking to understand each other's perspectives without interrupting.
- Allow the facilitator to balance speaking time while respecting time and agenda meeting goals. Speak again only after others who want to speak have done so.

- Address issues and questions, rather than people and organizations.
- As appropriate, discuss topics at the RAC rather than offline.
- RAC members are “blind copied” on meeting communications to avoid “meeting” on email where there is not public notice. If members have information they would like distributed to the full group, please send that to dlcd.goal5ca@dlcd.oregon.gov.
- Silence cell phones and other devices during meetings; stay on mute unless speaking to minimize background noise.
- Please stay engaged during the full meeting. While breaks are understandable, DLCD encourages members to keep their cameras on for optimum communication.
- As needed, agree to disagree without being disagreeable.
- Once the RAC has discussed and decided an issue, it will not return to the issue without a majority of RAC members agreeing to do so.

VI. Schedule

Staff expect that the RAC will meet for two-hour meetings in May, June, July and September of 2025.

Staff anticipate that the proposed rules will be provided to LCDC for hearing at their September 25-26, 2025, meeting, and for adoption at their October 23-24, 2025, meeting.

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Goal 5 Cultural Areas Rulemaking Advisory Committee
Meetings Overview
Updated May 13, 2025

Meeting Number/ Month	Topics to be addressed	Other comments
1: May 22	How amendments are processed	
2: June TBD	Wrap up processing: discuss who can bring amendments	Begin Metro and Technical Corrections
3:July TBD	Metro's Urban Growth Boundary amendments Fiscal Impact Statement (FIS) Review Discuss Other Technical Corrections	
August- no meeting unless needed		Publish draft rule for public comment
September 25-25 public hearing at Land Conservation and Development Commission (LCDC)		
4: September TBD	Refine draft rules	
October 23-24 deliberation/ adoption at LCDC		

DIFFERENCES BETWEEN TYPES OF LOCAL GOVERNMENT LAND USE DECISIONS

Prepared by Gordon Howard, Community Services Division Manger
Department of Land Conservation and Development

Updated May 13, 2025

	Administrative	Quasi-Judicial	Legislative
Breadth of Application	Decision is not discretionary (example: building permit, grading permit)	Applies to a limited number of property owners (example: land division, zoning variance)	Applies community-wide or to a large area (example, comprehensive plan amendment, large-scale zoning map change)
Nature of decision	Uniform standards without any discretion	Applies plan and code provisions to a specific application and interprets those provisions as necessary	Sets policy, in some cases my apply existing policies to create new policies
Public Notice	No public notice required	Public notice required to neighboring property owners	No public notice required, with some exceptions set out in state law
Public Hearing	No public hearing	Public hearing, or public hearing if requested	Public hearing
Public Hearing Procedures	n/a	Specific procedural requirements	No statutory procedural requirements
Limitation on Decision-Makers' Information	n/a	"Ex Parte contact" disclosure	No limits on "ex parte contact"
Timelines for Decision	Local government timelines for issuance of permit	Subject to 120 day decision timeline (cities), 150 days (county)	Not subject to a decision timeline – no decision required
Ethics and Bias Laws	Ethics laws and bias guidelines apply	Ethics laws and bias guidelines apply	Ethics laws and bias guidelines apply

A narrative overview follows.

LEGISLATIVE LAND USE DECISIONS

A legislative land use decision typically involves the adoption of a new policy that applies to a large area or group of people. Examples include adoption of a comprehensive plan or amendment to a comprehensive plan, or an application initiated by a local government to amend the zoning code or apply a change to a zoning code to a large number of properties. These decisions are referred to as "legislative" because the local government is acting in its capacity as a law-making body.

State law imposes few requirements on local governments in making legislative land use decisions. Local government codes or charters often have additional requirements which state law does not mandate. State ethics laws regarding conflict of interest apply, and "common law" provisions related to bias also apply, which in a land use context is a prejudice for or against a land use application that would result in the decision-maker making a decision that is not based upon the merits of the application, but is not defined as a conflict of interest under state law (which has a financial or monetary requirement).

However, state law (with one major exception involving a legislative application that would eliminate or limit particular land uses on an affected property) does not require property owner notice of the proposed change. Decision-makers are not limited in their information-gathering related to the application, are not bound by any timelines or deadlines in making the decision, and are not bound, in fact, to make a decision at all on the application. While a decision on a legislative application must include some sort of findings to justify the decision, this requirement is minimal and not subject to much judicial scrutiny.

QUASI-JUDICIAL LAND USE DECISIONS

A quasi-judicial land use decision applies existing general standards to a single tract of land or a small number of tracts of land. The term "quasi-judicial" means that the local government decision-makers are acting in a capacity as a judge rather than as a legislator. This means that, as a "quasi-judge," the decision-maker is bound to make a decision that applies, and in some cases interprets, existing law (a local government's comprehensive plan and zoning code). In addition, as with a "real" court, a quasi-judicial decision-maker must provide procedural due process to all the participants in the process of making a decision.

State law requirements for quasi-judicial land use decisions include the following:

- When an application is received by the local government, the local government has 30 days to find if the application is complete and notify the applicant of any missing information.
- If the application is complete, the local government cannot change the standards set forth in its plan or codes that the application must be consistent with.
- The local government must give notice of the land use application to property owners within prescribed distance of the application, at least a certain time period before the scheduled decision.
- The notice must include specific information regarding the public process and rights of participants the local government must include in the notice.

- If there is no initial public hearing required, an affected party, the applicant or a nearby property owner, has the right to request a public hearing.
- If the local government conducts a public hearing:
  - The local government must provide a staff report at least seven days before the hearing.
  - At the hearing, the local government must give clear instructions for participants regarding how the public hearing will be conducted.
  - Any participant at the hearing has the right to request a continuance to present additional information to the hearing body.
  - The decision-maker must disclose any communications or information received outside of the hearing procedures or the hearing materials by a decision-maker, and must give participants the right to question the decision-maker about that information received.
- The local government must prepare written findings comparing the specifics of the application to all the relevant criteria in the local government plan and codes and provide facts as to why the application complies or does not comply with each criterion.
- The local government must issue a final decision on the application within a specified time period, approving, denying, or approving with conditions. If the local government does not comply with this requirement, the applicant has the right to get a "Writ of Mandamus" from Circuit Court compelling approval of the application in all but extraordinary circumstances.
- Decision-makers must comply with state ethics laws regarding conflict of interest and also "common law" provisions related to bias, as discussed above under legislative decisions.

DISTINGUISHING LEGISLATIVE VS. QUASI-JUDICIAL LAND USE DECISIONS

The case of *Strawberry Hill 4 Wheelers vs. Board of Commissioners*, a controversy arising out of Benton County, was decided by the Oregon Supreme Court in 1979. The Supreme Court did not develop a "bright line" test for distinguishing between legislative and quasi-judicial decisions, instead providing a list of three factors to use in making the distinction:

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?

In subsequent decisions courts have determined that the second factor is the least important of the three – and if the first and third questions are answered with "no," then the decision is almost certainly legislative, not quasi-judicial.

Almost all disputes that arise over these provisions involve a situation where a local government determined that an application was "legislative," and the objections asserted that the application should have been determined to be "quasi-judicial." This occurs because the quasi-judicial process has many more requirements and standards that local governments must comply with.

The department is not aware of any state statute or administrative rule that declares a certain type of application to be "legislative" or "quasi-judicial."

660-023-0210, as adopted by LCDC December 2024
RULE TITLE: Cultural Areas
RULE SUMMARY: This rule defines how local governments comply with Statewide Land Use Planning Goal 5 for cultural areas including archaeological sites and significant landscape features.

RULE TEXT:

(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, landscape features of cultural interest, and sites where both are present. 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.

(e) "Oregon qualified archaeologist" means an archaeologist with documentation from the State Historic Preservation Office (SHPO) that satisfies the qualifications listed in ORS 390.235(6)(b) and as provided in OAR 736-051-0070.

(f) "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 SHPO has granted access to the Oregon Archaeological Records Remote Access (OARRA) database.

(g) "Tribe" as defined in ORS 182.162(2), means a federally recognized Indian tribe in Oregon, except where the definition in ORS 97.740 applies by statute.

(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 (8)(c), a local governments 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) A local government shall identify and protect a cultural area significant for reasons other than archaeology that is also a significant historic site using procedures provided in OAR 660-023-0200 and section (8).

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

(e) 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.

(f) 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) State Inventory of Archaeological Sites

(a) All archaeological sites are significant Goal 5 resources.

(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 designated in the local plan.

(d) When provided information on known or suspected archaeological site, 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 significant site or support compliance with state statutes and rules governing excavation of a significant 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 their tribe's culture.

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

(c) A local government shall process an application for an amendment to a comprehensive plan to place a culturally significant landscape feature on a local inventory following the procedures and standards in subsection (a). A local government shall notify property owners of the application and shall not require property owner consent to process such an application.

(d) Consistent with ORS 197.772, local governments must allow a property owner to refuse consent to the designation of a landscape feature as a significant cultural area if SHPO has determined that the landscape feature is eligible for listing on the National Register of Historic Places.

(e) Except as provided in paragraph (7)(a)(B), 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 significant archaeological sites.

Protection for archaeological sites is achieved through application of state statutes and permit requirements governing treatment of all archaeological sites and 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.

(a) 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.

(b) For applications requiring permits as defined in ORS 215.402(4) or ORS 227.160(2), limited land use decisions as defined in ORS 197.015(12), or expedited land divisions as defined in ORS 197.360(1), that involve ground disturbance, a local government shall:

(A) Notify tribes within seven days of receiving the application to request information about the potential for negative impacts to a known or suspected archaeological site. Notice to tribes shall include the following information:

(i) A description of the proposed development as provided by the applicant;

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

(iii) Tax lots and address of the subject property, as provided by the applicant.

(B) Include tribes in the list of interested parties receiving notice of complete applications and information on how to view or request a copy of the application.

(c) Cities shall notify tribes of a proposed urban growth boundary (UGB) amendment and request information on the potential of the proposed development to impact a known or suspected archaeological site.

(d) Each city and county shall obtain a list of tribes with an ancestral connection to land within their jurisdiction from the Oregon Legislative Commission on Indian Services. A local government satisfies the notice requirements under subsections (a) and (b) when notice is sent to all tribes with an ancestral connection to the land within the jurisdiction of the city or county. Examples of ground disturbance for which notice is required include:

(A) Grading

(B) Foundation installation

(C) Installation of underground utilities

(D) Mining of aggregate or minerals

(e) The local government shall inform the applicant when a tribe responds to a notice. Information from a tribe received by a local government prior to the first evidentiary hearing shall be included as part of the record for the hearing as provided in subsection (3)(d).

(f) When information is entered into the record for either an action described in subsection (b) that the proposed development has potential to impact an archaeological site, or subsection (c) that an area proposed to be included in a UGB contains an archaeological site, the local government shall provide SHPO a copy of the information and consider and recommend appropriate measures for characterizing, avoiding, and minimizing impacts to the site. Appropriate measures may include, but shall not be limited to the following:

(A) A pedestrian archaeological survey of the site;

(B) Subsurface probing to locate artifacts or identify site boundaries, with permit from SHPO;

(C) Preparation of an inadvertent discovery plan;

(D) Use of site design measures, such as clustering development, to avoid alteration of the archaeological site;

(E) Preservation of the archaeological site as open space to be used for non-impactful activities; and

(F) Use of means to ensure adequate protection of the site, such as acquisition of easements, public dedications, or transfer of title.

(g) 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 obtaining an Oregon Archaeological Permit or a letter from SHPO stating that a permit is not required.

(h) When information on a known or suspected archaeological site is entered into the record of a UGB amendment described in subsection (c), the local government will consider the use of open space zoning, acquisition of easements, public dedications, or transfer of title to support protection of archaeological sites.

(i) A local government shall include findings on measures considered, measures recommended, and measures required to protect the site by avoiding or mitigating impacts in the approval decision or adoption ordinance. The local governments shall notify SHPO of the decision. Alteration of an archaeological site, as defined in ORS 358.905(1)(c)(A), is subject to permit requirements of OAR chapter 736, division 51.

(6) Protection for landscape features of cultural significance

(a) For a landscape feature found to be culturally 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 (c) of this section, and OAR 660-023-0050 except as provided in subsection (b).

(b) For sites determined to be significant as part of a UGB amendment, protection measures may be determined and applied prior to or at the time of annexation.

(c) An ESEE analysis shall include consideration of applying the following limits 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.

(d) For projects with a federal nexus and for which a review has been completed under the requirements of section 106 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.

(7) Consideration of potentially significant cultural landscape features

(a) When information on the presence of a potentially significant cultural landscape feature is entered into the record of a UGB amendment, a city or Metro shall follow the procedures and standards in subsection (4)(a), to determine if the site is significant.

(A) As provided in OAR 660-023-0250(3)(c), a local government shall add significant sites to the local inventory in conjunction with the UGB amendment.

(B) As provided in subsection (6)(b), a local government may delay adoption of protection measures for significant sites until the time of annexation of the site.

(b) For local authorization subject to quasi-judicial review on rural lands, a local government shall notify tribes to request information on the potential of the proposed development to negatively impact a landscape feature of cultural value to one or more tribes.

(c) Procedures for notifying tribes, providing information to applicants, and incorporating responses into the record of review shall follow those provided in subsection (5)(b) for archaeological sites.

(d) A local government satisfies the notice requirements under subsections (b) and (c) by providing notice to all tribes with an ancestral connection to the land within the jurisdiction of the county.

(e) Prior to the first evidentiary hearing for a permit application, described under subsection (b), 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 applicant. The purpose of the meeting is to discuss potential impacts to landscape features of cultural value to the tribe or tribes and voluntary measures for avoiding or minimizing impacts.

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

(g) A local government will make any voluntary measures on the part of the applicant to avoid or mitigate impacts and required measures stemming from a federal action a part of the record of approval.

(8) Optional and additional local protection strategies

(a) As an alternative to protecting sites of cultural significance to one or more tribes, as provided in sections (5) and (7), a local government may adopt a local protection program as a plan amendment after January 1, 2025, 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 (7) shall be consistent with the principles for establishing tribal relationships described in guidance from LCIS.

(B) A government-to-government consultation program adopted pursuant to this subsection shall be enabled by a memorandum of understanding with one of more tribes. A government-to-government consultation program supersedes the requirements of sections (5) and (7) 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 sections (5), and (7) 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 protections in sections (5) and (7).

(b) 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.

(c) Local governments may limit development to protect an archaeological site identified through a preconstruction survey, provided the ESEE decision process in OAR 660-023-0040 is followed and the program to achieve protection is consistent with the directives in OAR 660-023-0050.

(d) Local governments shall notify tribes as provided in 5(d)) when initiating a program under (b).

(9) 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 response to a UGB amendment process or an application for an amendment to a comprehensive plan as provided in subsection (4)(c). A local government may adopt procedures for consulting with tribes on the decisions described in subsection (5)(b) and subsection (7)(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 (7) directly except as provided by subsection (c).

(c) When a local government develops a program under section (8)(a), review and protection elements of that program shall replace some or all of the requirements of sections (5) and (7), as these sections pertain to the tribe with which a consultation agreement has been reached and are covered by a memorandum of understanding.

STATUTORY/OTHER AUTHORITY: ORS 197.040
STATUTES/OTHER IMPLEMENTED: ORS 197.040, ORS 197.225-197.245

AMEND: 660-023-0250
RULE TITLE: Applicability
RULE SUMMARY: This amendment removes the exception for cultural areas in OAR 660-023-0250(1).
RULE TEXT:

(1) This division replaces OAR 660, division 16, except with regard to certain PAPAs and periodic review work tasks described in sections (2) and (4) of this rule. Local governments shall follow the procedures and requirements of this division or OAR chapter 660, division 16, whichever is applicable, in the adoption or amendment of all plan or land use regulations pertaining to Goal 5 resources. The requirements of Goal 5 do not apply to land use decisions made pursuant to acknowledged comprehensive plans and land use regulations.

(2) The requirements of this division are applicable to PAPAs initiated on or after September 1, 1996. OAR chapter 660, division 16 applies to PAPAs initiated prior to September 1, 1996. For purposes of this section "initiated" means that the local government has deemed the PAPA application to be complete.

(3) Local governments are not required to apply Goal 5 in consideration of a PAPA unless the PAPA affects a Goal 5 resource. For purposes of this section, a PAPA would affect a Goal 5 resource only if:

(a) The PAPA creates or amends a resource list or a portion of an acknowledged plan or land use regulation adopted in order to protect a significant Goal 5 resource or to address specific requirements of Goal 5;

(b) The PAPA allows new uses that could be conflicting uses with a particular significant Goal 5 resource site on an acknowledged resource list; or

(c) The PAPA amends an acknowledged UGB and factual information is submitted demonstrating that a resource site, or the impact areas of such a site, is included in the amended UGB area.

(4) Consideration of a PAPA regarding a specific resource site, or regarding a specific provision of a Goal 5 implementing measure, does not require a local government to revise acknowledged inventories or other implementing measures, for the resource site or for other Goal 5 sites, that are not affected by the PAPA, regardless of whether such inventories or provisions were acknowledged under this rule or under OAR chapter 660, division 16.

(5) Local governments are required to amend acknowledged plan or land use regulations at periodic review to address Goal 5 and the requirements of this division only if one or more of the following conditions apply, unless exempted by the director under section (7) of this rule:

(a) The plan was acknowledged to comply with Goal 5 prior to the applicability of OAR chapter 660, division 16, and has not subsequently been amended in order to comply with that division;

(b) The jurisdiction includes riparian corridors, wetlands, or wildlife habitat as provided under OAR

660-023-0090 through 660-023-0110, or aggregate resources as provided under OAR 660-023-0180; or

(c) New information is submitted at the time of periodic review concerning resource sites not addressed by the plan at the time of acknowledgement or in previous periodic reviews, except for historic, open space, or scenic resources.

(6) If a local government undertakes a Goal 5 periodic review task that concerns specific resource sites or specific Goal 5 plan or implementing measures, this action shall not by itself require a local government to conduct a new inventory of the affected Goal 5 resource category, or revise acknowledged plans or implementing measures for resource categories or sites that are not affected by the work task.

(7) The director may exempt a local government from a work task for a resource category required under section (5) of this rule. The director shall consider the following factors in this decision:

(a) Whether the plan and implementing ordinances for the resource category substantially comply with the requirements of this division; and

(b) The resources of the local government or state agencies available for periodic review, as set forth in ORS 197.633(3)(g).

(8) Local governments shall apply the requirements of this division to work tasks in periodic review work programs approved or amended under OAR 660-025-0110 after September 1, 1996. Local governments shall apply OAR chapter 660, division 16, to work tasks in periodic review work programs approved before September 1, 1996, unless the local government chooses to apply this division to one or more resource categories, and provided:

(a) The same division is applied to all work tasks concerning any particular resource category;

(b) All the participating local governments agree to apply this division for work tasks under the jurisdiction of more than one local government; and

(c) The local government provides written notice to the department. If application of this division will extend the time necessary to complete a work task, the director or the commission may consider extending the time for completing the work task as provided in OAR 660-025-0170.

STATUTORY/OTHER AUTHORITY: ORS 197.040
STATUTES/OTHER IMPLEMENTED: ORS 197.040, ORS 197.225 - 197.245