



Oregon

Tina Kotek, Governor

Department of Land Conservation and Development

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October 9, 2025

TO: Goal 5 Cultural Areas Rulemaking Advisory Committee Members

FROM: Kirstin Greene, Deputy Director and Tribal Liaison
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
Mathew Hampton, Rules Coordinator
Alexis Hammer, Legislative and Policy Manager
Alyssa Bonini, Legislative and Policy Analyst

RE: Materials for October 14, 2025, Rulemaking Advisory Committee Meeting

Please find the meeting agenda and some important background materials enclosed.

1. [Meeting Agenda](#)
2. [July 18 Draft Meeting Summary](#)
3. [Draft Rules and Impact Statements published September 1, 2025](#)
4. [Compare versions of 2024 adopted and 2025 draft rules](#)

As Rulemaking Advisory Committee (RAC) members, you should find a Zoom meeting link in your calendar invite to join the meeting. DLCD asks interested community members to watch via the live stream on DLCD's [YouTube channel here](#).

Consultation and public comment associated with the formal public comment process may be found online associated with the commission's September meeting [online here](#) for Agenda Item 3.

Please contact Jess Miller at 971.301.1849, jess.k.miller@dlcd.oregon.gov for meeting support and email Jess with any corrections to the meeting summary before our meeting.

These materials are 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!



Goal 5 Cultural Areas Rulemaking Advisory Committee Draft Meeting Agenda

October 14, 2025

3:00 – 4:30 PM



This meeting will be hosted online and streamed at the Department of Land Conservation and Development (DLCD) [YouTube page](#). The link after the meeting, and other materials will be posted to DLCD's Rulemaking page [here](#).

Consultation and written public comments on the [September 1 Draft Impact Statements and Rule](#) remain welcome until October 31, 2025, 11:55 p.m. To be considered part of the rulemaking record, please note that comments must be submitted in writing. To provide comment in writing, please email dlcd.goal5ca@dlcd.oregon.gov at any time.

DLCD staff are posting all formal rulemaking comments received since September 1 on the commission's September meeting page under Agenda Item #3 [here](#).

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
2:00 - 2:10 pm	Welcome Agenda Review <i>RAC Comments, Questions</i>	Land Conservation and Development Commission Liaison Clatsop County Commissioner Lianne Thompson Committee Facilitator Deputy Director Kirstin Greene RAC Members
2:10 - 2:40 pm	Draft Rules Vis a Vis 2025 Charge <i>RAC questions for clarification</i>	Amanda Punton, Natural Resources Specialist RAC members
2:40 - 3:10 pm	Review of Implementation Tools Under Development <i>What else is needed for implementation support?</i>	Amanda Punton, Natural Resources Specialist RAC Members
3:10 – 3:30 pm	Roundtable of RAC Members: Closing Thoughts, Advice	RAC Members Commissioner Lianne Thompson



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Goal 5 Cultural Areas Rulemaking Advisory Committee Draft Meeting Summary July 18, 2025



RAC Members

Shawna Adams, Senior Planner, Lane County
Gabrielle Bratt, Coquille Indian Tribe
Kelly Howsley-Glover, Wasco County
Peter Hatch, Confederated Tribes of Siletz Indians
Dave Hunnicutt, Oregon Property Owners Association
Courtney Krossman, Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians
Katie McDonald, Metro
Carey Miller, Confederated Tribes of the Umatilla Indian Reservation
Tahnaya Miller, Klamath Tribes
John Pouley, State Historic Preservation Office
Jill Rolfe, Community Development Director, Coos County
Nicholas Starin, City Planner, Portland
Lawrence Squiemphen, Confederated Tribes of Warm Springs Reservation

Affiliated/Interested Parties

Ellen Grover, Attorney for Confederated Tribes of Warm Springs Reservation
Austin Smith Jr, Natural Resources Branch Manager, Confederated Tribes of Warm Springs Reservation
Tribal Affairs Director Shana Radford, Office of Governor Tina Kotek
Lara Rodgers

DLCD Staff

Brett Estes, North Coast Regional Representative
Kirstin Greene, Deputy Director and Tribal Liaison
Matthew Hampton, Rules, Records, and Policy Coordinator
Dawn Hert, Eastern Oregon Regional Representative
Gordon Howard, Community Services Division Manager
Jess Miller, Executive Support for Programs
Amanda Punton, Natural Resource Specialist
Casaria Taylor, Senior Rules Coordinator/ Records Officer

Note: this is a meeting summary. The recording of the meeting is available on DLCD's YouTube channel online here: [Oregon DLCD - YouTube](#)

Welcome

Clatsop County Commissioner Lianne Thompson, Land Conservation and Development Commission (LCDC) Liaison, welcomed everyone to the work and thanked everyone for bringing their grace and intelligence to this rulemaking process.

Agenda Review

Kirstin Greene briefly reviewed the agenda for the meeting and gave a general timeline for filing the rules and close of public comment. Commission will hold their hearing in September 25 in Klamath Falls. Online verbal testimony is welcome as well.

Consultation and Public Comment

No individuals signed up to provide verbal comment.

Kirstin noted that DLCD had received a letter from the Confederated Tribes of Warm Springs, which is included in the packet for today's meeting and available on the rulemaking website.

Public comment period for comments directly to LCDC will be from September 1 to October 5. Kirstin mentioned that this could be extended. Note: DLCD did subsequently extend the comment period through October 31, 2025 at 11: 55 pm.

Kirstin reminded RAC members to please provide any additional comment on the rules by the end of the month. Those comments would then inform the filing the draft rules with the Secretary of State by September 1, 2025.

Legislative Amendments/Timeline

RAC members took up the question of who can apply to a city or county to add a landscape feature of cultural significance to the local inventory of Goal 5 significant resource sites

Consistent with input from RAC members at the last meeting, DLCD staff noted that section (4)(c) now specifies that a local government must only accept applications from an Oregon based government to add a landscape feature of cultural significance to a local inventory of Goal 5 significant resource sites. The rule defines Oregon based government as local, state, or tribal government in Oregon. Federally recognized tribes based outside of Oregon and non-federally recognized (terminated) tribes in Oregon are not included in this definition. While this approach is not consistent with requests received from the Nez Pierce Tribe and the Cowletiz Tribes, these nations would still be able to request a local government to self-initiate such an amendment.

As part of the rules, the Legislative Commission on Indian Services and DLCD will seek consultation with the nine Tribes on which notices they would like to receive associated with this rulemaking.

RAC members then discussed the pathway to review applications for adding items of cultural significance to local government inventories.

Consistent with input from a majority of RAC members at the last meeting and advice from DLCD's attorney, the draft rule does not specify whether an amendment will be reviewed through a quasi-judicial or legislative process. Members did not disagree with this approach.

Members discussed setting a schedule for legislative or quasi-judicial amendments to add a significant cultural area to a local government inventory

Staff summarized that while a process to amend a comprehensive plan does not have a statutorily set window in which to reach a decision, RAC members agreed to not recommend setting a timeline in this rule.

Overview of Full Draft Rule

Urban Growth Boundary Amendment Notices & Technical Fixes

DLCD Natural Resources Specialist Amanda Punton described changes to the rule that grew out of addressing Metro's unique role in amending a UGB. For the Portland metro area, Metro carries the process through to adoption of the amended boundary and then passes the task of planning for urban uses in new urban areas to the relevant city. When working on this clarification for Metro, DLCD staff made some organizational improvements to clarify what the rule requires for UGB amendments generally. Organizational changes include:

- a new section (7) specific to UGB amendments
- moving the description of what it means to send notice to tribes with an ancestral connection to land within their jurisdiction section from section (5) to section (10)

Staff also added a requirement to the draft rule that non-Metro cities and Metro send notice to Tribes 35 days prior to first hearing on a proposed UGB amendment.

RAC members then discussed the realities of applying Goal 5 to a UGB expansion area after a UGB is amended. Such application of Goal 5 is required by OAR 660-023-0250 if there is evidence of a Goal 5 resource in the UGB amendment record. One RAC member pointed out that culturally important landscape features was a very broad category, compared to other Goal 5 resource categories, and that the potential for unknowns to come up in the comprehensive planning phase for new urban areas is high. A tighter definition would lessen the chance of Goal 5 protections impeding the capacity of these lands for meeting housing and other urban needs. Deputy Director Greene said that conversations at the Oregon Housing Needs Analysis rulemaking and earlier consultation may help diminish uncertainty.

Metro's representative asked for the notice period required for a Metro UGB amendment be extended to 45 days and that the rule be clear that Metro is responsible for sending notices to tribes.

Other Technical Fixes

Amanda explained that staff had made an adjustment to list of application types requiring notice to tribes to account for the 2025 legislature removing a requirement that public notice be provided for expedited land divisions.

The Confederated Tribes of Warm Springs to raise issues of concern discussed in their July 8, 2025, letter

Kirstin invited the representatives from the Confederated Tribes of the Warm Springs Reservation to speak to their letter in the RAC packet.

They mentioned that the tribe does not have sufficient capacity to respond to the number of notices they already receive and they need time for consultation. The Tribe supports alternative ways, possibly developed through an intergovernmental agreement, to have more efficient and productive communication. As currently drafted, the rules are optional for tribes to decide which notices they would like to or not like to receive.

Deputy Director Greene talked about an idea raised by the Warm Springs Tribe legal counsel that tribes receive advance notice when one tribe brings an application to add a culturally significant landscape feature to a local inventory. Discussion followed about the need for a notice time window to provide time for inter-tribal conversation. Amanda posed an option of making notification to the nine tribes an application requirement, so inter-tribal communication could occur outside the local government review process. The Council for Warm Springs was open to considering options for supporting communication.

Draft Fiscal and Racial Equity Impact Statement

Director Greene asked for input on a request received from a RAC member that the impact draft statement did not adequately address impacts to tribes. No input was offered. Deputy Director Greene said DLCD staff would add mention of impacts to tribes.

Next Steps and closing Thoughts

- Continue to clean up the draft rule.
- Draft Rule to be published with Secretary of State Notice on September 1.
- LCDC hearing on the draft rule at their September meeting in Klamath County; likely on September 25 of the commission's two day meeting.
- A RAC meeting after the public hearing.
- Deliberation and adoption at LCDC's December 4-5 meeting.
- Additional comments from RAC members should be sent to staff by the end of July so they can be considered when preparing the rule draft that will be posted on September 1.

Commissioner Thompson closed by asking that we anticipate the unanticipated consequences as we continue to improve the rule and be prepared to accept the consequences in the real world.



NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 660 LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

FILED

08/27/2025 9:48 AM
ARCHIVES DIVISION
SECRETARY OF STATE

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

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/31/2025 11:55 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Matthew Hampton
503-983-4092
matthew.l.hampton@dlcd.oregon.gov

635 Capitol Street NE Suite 150
Salem, OR 97301

Filed By:
Matthew Hampton
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 09/25/2025

TIME: 8:00 AM

OFFICER: LCDC

IN-PERSON HEARING DETAILS

ADDRESS: Juniper Hall meeting space, Running Y Resort, 5500 Running Y Road, Klamath Falls, OR 97601

SPECIAL INSTRUCTIONS:

To submit public comment, please visit: <https://www.oregon.gov/LCD/Commission/Pages/Public-Comment.aspx>

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-253-205-0468

CONFERENCE ID: 92935053384

SPECIAL INSTRUCTIONS:

To submit public comment, please visit: <https://www.oregon.gov/LCD/Commission/Pages/Public-Comment.aspx>

NEED FOR THE RULE(S)

OAR chapter 660, division 23, is the primary set of rules that describe process steps and standards to comply with Goal 5. The division has a rule specific to each Goal 5 resource category except cultural areas. This new rule will improve implementation of Statewide Planning Goal 5 for cultural areas. The rule promotes greater understanding of cultural resource areas, supports protection of significant sites, and will serve to preserve the state's cultural heritage.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Statewide Land Use Planning Goal 5 <https://www.oregon.gov/lcd/OP/Pages/Goal-5.aspx>

State Historic Preservation Office (SHPO) statutes for archaeological resource protection

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The State of Oregon requires that a rulemaking notice include “a statement identifying how adoption of the rule will affect racial equity in this state.” ORS 183.335(2)(b)(F). For the purposes of this statement, racial equity has been defined as treating people of all races fairly, justly, and without bias. The agency is required to attempt to determine the racial groups that will be affected by the rule, and how the rule will increase or decrease disparities currently experienced by those groups. In this context, a disparate treatment of racial groups may be supportable if it addresses current disparities.

The proposed new rule is not expected to negatively impact racial equity and equitable outcomes. While treated by the US Census as a racial/ethnic group, Native American tribes in Oregon are a political rather than a racial entity. The recognition and protection of culturally significant landscape features and input from Native American communities may increase their participation and contributions in city and county land use processes. Tribes’ engagement with local governments to reduce impacts from development on important cultural areas is voluntary. Voluntary engagement will require tribal staff and financial resources.

FISCAL AND ECONOMIC IMPACT:

As part of the rulemaking process, a Fiscal Impact Statement is required to assess the expected degree to which “state agencies, units of local government and the public may be economically affected by the adoption, amendment or repeal of the rule” and must estimate the economic impact on those entities. ORS 183.335(2)(b)(E) also requires that, in determining economic impact, the agency shall “project any significant economic effect of that action on businesses which shall include a cost of compliance effect on small businesses affected.”

While the new rule being evaluated is in addition to the existing rules in division 23, identification and protection of archaeological sites is already present elsewhere in Oregon’s Revised Statutes (ORS) and Administrative Rules (OAR). As such, the net anticipated fiscal impact of the archaeological resources sections of the rule is negligible. The new rule does identify and define Goal 5 protections for “Significant Cultural Landscape Feature”. While Goal 5 and OAR chapter 660, division 16 currently provide for identification and protection of culturally significant areas, the new rule requires communication with Federally Recognized Tribes at times when planning decisions could increase the risk of impact to these areas. It also highlights the opportunity for tribes and other culturally identified groups to be engaged in the public process for identifying culturally significant landscape areas and crafting protection measures for such sites. The rule does not require local governments to conduct jurisdiction-wide inventories of culturally significant landscape features. It does require that cities and counties must respond to applications from Oregon government entities to add a site to a local inventory. Evaluation of the application for possible recognition of a landscape feature as a significant Goal 5 resource site will require a public process. This rulemaking does not change an existing provision in division 23 that requires a Goal 5 resource site to be evaluated for significance when the record of a UGB amendment includes information that a site exists in a UGB expansion area. The identification and local inventory of culturally significant landscape areas under this rule will place some burden on local governments, and resultant Goal 5 protection of these resources could impact the outcome of future land use decisions. Local jurisdictions will continue to have the option of conducting an inventory of tribal and other culturally significant areas in part or the entirety of their jurisdiction.

The primary impacts expected from the proposed rule include:

- Compliance costs, both monetary and time-related, for local governments to add information on state law on

archaeological sites to development permits and provide notice to tribes. While notice to tribes is expected to occur at two points: when the application for development is received within a period of seven days, and also at the time of full application, the costs are expected to be nominal and within the realm of typical notice requirements. DLCD expects that these notices can be done via email and will provide model language, forms, and training to both help minimize impact to local government staff time and increase consistency. Local governments will also likely incur costs when assessment of landscape areas is required as part of a UGB amendment and when the remaining steps of the Goal 5 process (OAR 660-023-0040 and 660-023-0050) are applied to significant sites.

- Additional staff time for review of quasi-judicial land use approval will be needed when a local government learns that the proposed action could impact a known or suspected archaeological site. Archaeological resources are currently protected under Oregon law (ORS 358.910) on public lands and permitting is required for excavation that disturbs an archaeological site and/or removal of artifacts on private lands. Potential cost will result from applying the Goal 5 process to culturally significant landscape features and supporting measures to avoid archaeological sites following a UGB amendment.

The following is a summary of areas in which the draft administrative rule may have fiscal and economic impacts, including:

- The new rule will apply when local governments review and process permit applications for development.
- The rule augments the standard Goal 5 process (OAR 660-023-0030, 660-023-0040, and 660-023-0050) rules. Goal 5 protection for archaeological sites will defer to existing state laws and permit requirements. Notice requirements to tribes will increase opportunities for voluntary avoidance of archaeological sites. The rule directives for culturally significant landscape features primarily represent a clarification of the standard process. With the addition of this rule, division 23 will replace the application of division 16 to cultural areas.
- The incremental cost of identifying and inventorying landscape areas of cultural significance would be borne following a UGB amendment process if information on areas of cultural importance is entered into the record. Local governments can continue to work voluntarily with tribes to identify areas of significance at any time.
- The new rule could potentially increase areas designated as culturally significant.
- This would likely be landscape areas of cultural significance that were not previously addressed. Archaeological sites are already recognized and protected under state law.
- Designating a site as culturally significant will not necessarily result in local prohibitions of conflicting uses.
- Protection measures are informed by an “ESEE” analysis, which will balance the consequences of impacts with economic, social, environmental, and energy considerations.
- There is potential for increased costs to public and private landowners and developers to comply with measures adopted by a local government to limit or prohibit impacts to landscape areas of cultural significance on a local inventory.
- Identification of significant cultural areas may impact the location of future UGB expansions.
- A landscape area identified in a county comprehensive plan as a significant Goal 5 resource site could result in assignment of limited or no development capacity to the site (OAR 660-024-0067(5)(c)). This could affect the location of a UGB expansion and result in a city turning to higher-quality agricultural land in order to meet land needs. We would consider this a low-likelihood result as it would only potentially alter one variable among many to be considered.
- Identification and protection of a landscape area of cultural significance in a new UGB expansion area, or elsewhere in a UGB could result in reduced development capacity. The reduction of capacity will be factored into subsequent buildable land inventory used to informing a city’s next UGB amendment.
- To the extent that locations of known or suspected archaeological sites are not publicly disclosed, and that the nature and location of culturally significant landscape areas are only roughly understood, application of the rule may bring an increased level of uncertainty to land use planning actions.

The fiscal impact of the proposed rule is expected to range from negligible to modest, depending upon the jurisdiction and presence of Goal 5 culturally significant areas. For the subset of cultural areas that are archaeological sites, the proposed rule is not expected to have any substantive fiscal impact. Reducing the incidences of inadvertent discovery may result in time and cost savings for property owners and developers.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

SMALL AND LARGE BUSINESSES

The proposed rule is not expected to have any impact on businesses related to compliance. It will not apply to the functional operation of most businesses. To protect landscape features of cultural significance, DLCD recognizes that limits local governments may apply to development in order to reduce impacts to a resource site could affect private property owners and developers. Developers or property owners seeking to develop their properties may be impacted by increased uncertainty, constraints on development, and/or a more complicated and time-intensive approval process. These impacts could affect the underlying value of some properties. OAR 660-023-0210 will clarify the inventory and protection opportunity associated with a UGB expansion that already exists in OAR 660-023-0250 for landscape features of cultural significance. The rule will replace OAR chapter 660, division 16's application to cultural areas. It will also provide a pathway for Oregon state agencies, Metro Regional Government, and tribal governments based in Oregon to initiate a city or county process to add a culturally significant landscape feature to a local inventory. When a city or county considers establishing Goal 5 protections for a culturally significant landscape feature, by limiting uses currently allowed, the local government would need to mail a ballot measure 56 notice to owners of affected property. Property owners will be able to participate in public discussions about the legislative amendment.

This rule may increase the likelihood of cities and counties incorporating a Goal 5 cultural areas element into their comprehensive plans and adopting protection measures for significant resource sites. Such local protections may result in land use approvals that are marginally less favorable for some Oregon businesses. The rule is not expected to have a significant impact on either small or large businesses.

LOCAL GOVERNMENT COSTS

For local governments, fiscal costs are related to the cost of compliance. These are both monetary and time-related costs associated with:

- notification to Federally Recognized Tribes
- outreach
- applying the rule to cultural areas at the time of a UGB amendment
- adopting protection measures for a culturally significant landscape feature when one is identified
- amending local development regulations
- coordinating with DLCD during review

Local governments will need to notify Federally Recognized Tribes as part of quasi-judicial permit reviews and UGB amendments.

Identification of a Goal 5 significant cultural area in an area added to a UGB may result in higher infrastructure costs to serve, lower marketability, or impact site designs. Current state law regulates impacts to archaeological sites. Higher development costs related to a culturally significant landscape feature are likely to be a rare outcome as a wide range of factors are considered and weighed when a local government determines appropriate protections for these resources. Cultural resource sites significant for their culturally significant vistas, which are already identified as a significant scenic resource in a local comprehensive plan are not subject to this rule.

STATE AGENCY COSTS

The proposed rule is expected to have a significant fiscal impact on only DLCD among state agencies. The Oregon State Historic Preservation Office (SHPO) currently maintains the Oregon Archaeological Records Remote Access (OARRA) database of archaeological sites. The proposed rule is not expected to alter the requirements or costs to maintain this database.

Legislative Commission on Indian Services

The Legislative Commission on Indian Services staff will be responsible for identifying appropriate Tribes for local governments to consult and coordinate with in the course of fulfilling the rule. It is anticipated that there will be a minimal fiscal impact associated with staff supporting implementation of this rule. While LCIS staff expect that their staff can absorb this impact within its current operating budget; to the degree the rule results in more frequent flagging of potential impacts to cultural resource sites of Tribal origin, it may have a greater fiscal impact on LCIS than anticipated, depending on the volume of inquiries. In addition, a small fiscal impact is anticipated for LCIS associated with staff time dedicated to training and workgroup participation related to the development and deployment of Tribal notification protocols. LCIS expects that this impact can be absorbed within their current operating budget.

DLCD staff will be responsible for the review of plan amendments that result from required elements of the rule and that result from a local government choosing to develop a communication and coordination agreement with one or more tribes. The department does not anticipate any significant increase in costs associated with staff review of Goal 5 cultural area PAPA submittals; however, the review of new, voluntary communication and coordination agreements with tribes that are intended to take the place of some of the requirements in the rule would represent new work for agency staff.

The fiscal impact to DLCD is difficult to estimate due to the complexity of the issues involved. DLCD staff will be required to review documents related to this rule in a wide range of geographic contexts. The agency will also need to provide technical assistance to the local governments applying the proposed rule.

PUBLIC

The public is not anticipated to experience a significant fiscal impact from the new rule. Any related costs incurred by local jurisdictions and state agencies may reduce resources available for other uses, but this impact is expected to be negligible. Members of the public will likely realize some level of qualitative benefits from the preservation of culturally significant areas in communities in which they are present.

ORS 183.335(2)(b)(E) and ORS 183.530(3) require that rules adopted by the LCDC include an “estimate of the effect of a proposed rule or ordinance on the cost of development of a 6,000 square foot parcel and the construction of a 1,200 square foot detached single-family dwelling on that parcel.” (ORS 183.530). This Housing Impact Statement (HIS) is

described in ORS 183.534.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Rulemaking Advisory Committee membership included attorneys who represent developers and property owners who may be organized as small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

HOUSING IMPACT STATEMENT:

The new rule will not directly impact either the production or consumption of housing. The rule is designed to clarify how certain cultural areas are identified and protected under the Goal 5 process. The rule will have no impact on the construction cost of housing (materials, labor) or broader impact areas such as interest rates and underwriting requirements.

The primary roles the land use system plays in the production of housing are:

- Providing for adequate and entitled development capacity consistent with projected needs
- Providing direction and certainty with respect to what development types and forms are entitled

This is primarily done during periodic review and using the Goal 10 Housing Needs Analysis approach, which determines projected demand and anticipated capacity of land within the current Urban Growth Boundary (UGB) to meet demand. If a deficit of residential capacity is determined within the UGB, the jurisdiction will move forward with a Goal 14 process to determine how this deficit can be addressed. The result of this process may be an amendment to the UGB.

As OAR 660-023-0250 already provides for the identification of potentially significant Goal 5 resource sites, including cultural areas covered under the current division 16 rule, the new rule will not impact the Goal 14 UGB amendment process. The obligation of home builders to comply with existing state laws and permit requirement for archaeological sites will not change. If a culturally significant landscape feature is identified within a UGB and local protections are applied, there could be some impact on how residential development proceeds in the area. The Economic, Social, Environmental, and Energy analysis that supports a decision to protect a site must consider any impacts on a city's ability to meet housing production targets.

In summary, the rule would be expected to have a negligible impact on home pricing for a 1,200 square foot home on a 6,000 square foot lot. Our expectation is that only a limited number of jurisdictions will be impacted by the clarified definition of cultural areas, and for those jurisdictions, the additional Goal 5 protections would not be expected to impact the costs and/or price of the reference residential development.

RULES PROPOSED:

660-023-0210, 660-023-0250

ADOPT: 660-023-0210

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:

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, 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) "Local Government" means a city or county, or a metropolitan service district described in ORS 197.015(13).¶¶

(e) "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."¶¶

(f) "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.¶¶

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

(h) "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.¶¶

(i) "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 (9)(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 (9).¶¶

(d) 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.¶¶

(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) 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.¶¶

(b) 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.¶¶

(c) 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 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 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 local government 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 local government 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 local government 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 local government shall not require property owner consent to process such an application.¶

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

(e) 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.¶

(f) 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.¶

(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) For applications requiring permits as defined in ORS 215.402(4) or ORS 227.160(2) or limited land use decisions as defined in ORS 197.015(12) that involve ground disturbance, a local government shall send notice to tribes with an ancestral connection to land within its jurisdiction, as described in subsection (10)(c). 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; 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 Oregon Laws 2025, chapter 330, section 3.¶

(d) Notice to tribes required under subsection (c) shall include the following information:¶

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

(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, as provided by the applicant.¶

(e) 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.

(f) The local government shall inform the applicant when a tribe responds to a notice provided under subsection (c). 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)(c).

(g) When information is entered into the record for an action described in subsection (b) that the proposed development has potential to impact an archaeological site, the local government shall 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.

(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) of this section, 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.

(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 ORS 97.740 to 97.760, ORS 192.345(11) ORS 358.905 to 358.961, ORS 390.235, and OAR 736-051-0000 to 736-051-0090, as applicable. Metro shall convey the responses they receive from a tribe to the city or county responsible for comprehensive planning of the UGB expansion area, consistent with SHPO's direction.

(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 local authorization subject to quasi-judicial review on rural lands, 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.¶

(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. 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, 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 (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, 2025, 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 (b) 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 (b).¶

(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 section (9)(a), review and protection elements of that program shall 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. Statutory/Other Authority: ORS 197.040

Statutes/Other Implemented: ORS 197.040, ORS 197.225-197.245

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

CHANGES TO RULE:

660-023-0250

Applicability ¶¶

(1) This division replaces OAR chapter 660, division 16, except with regard to ~~cultural resources~~, and 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 ~~ORS 197.633(3)(g)~~ AR 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 ~~183.197~~197.040

Statutes/Other Implemented: ORS 197.040, ORS 197.225 - 197.245

Note: This document is a “compare version” of the rules as adopted by the Land Conservation and Development Commission on December 4, 2024, and the current full set of proposed rules filed with the Secretary of State on August 27, 2025.

RULES PROPOSED:

660-023-0210, 660-023-0250

ADOPT: 660-023-0210

RULE TITLE: Cultural Areas

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.—

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)~~ “(d) “Local Government” means a city or county, or a metropolitan service district described in ORS 197.015(13).”

“(e) “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.”

~~“(f) “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)(g)~~ “Oregon-based government” means a local, state, or tribal government in Oregon.

(h) “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~~the State Historic Preservation Office (SHPO) has granted access to the Oregon Archaeological Records Remote Access (OARRA) database.

(gi) “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 (89)(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 (89).

(d) Local protections for a cultural area significant for reasons other than archaeology that ~~intersects~~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. -

(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)~~(a) 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.-e

(b) 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)~~(c) When provided information on ~~known~~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 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~~that tribe's culture.

(b) A local government may inventory ~~culturally~~-significant cultural 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~~accept an application ~~for 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 local government shall process the application as an amendment to a comprehensive plan to place a ~~culturally~~-significant cultural landscape feature on a local inventory following the procedures and standards in subsection (a). After receiving the application, the local government 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 local government shall ~~notify property owners of the application and shall~~ not require property owner consent to process such an application.

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

(e) 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(f)~~ 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.

(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.

~~(ab)~~ 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.-

~~(bc)~~ For applications requiring permits as defined in ORS 215.402(4) or ORS 227.160(2), or 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: send notice to tribes with an ancestral connection to land within its jurisdiction, as described in subsection (10)(c). 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; 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 Oregon Laws 2025, chapter 330, section 3.~~

~~(d) Notice to tribes required under subsection (c) shall include the following information:~~

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

~~(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, 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 (e) 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, and

(D) Mining of aggregate or minerals.

~~(e)~~ The local government shall inform the applicant when a tribe responds to a notice: provided under subsection (c). 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 hearing application in a manner that preserves confidentiality, 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.

~~(gh)~~ 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 applying for 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 cultural 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 (eb) 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.~~

~~(e)(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.

~~(d)(c)~~ For projects with a federal nexus and for which a review has been completed under the requirements of 54 USC section 406306108 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)(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 ORS 97.740 to 97.760, ORS 192.345(11) ORS 358.905 to 358.961, ORS 390.235, and OAR 736-051-0000 to 736-051-0090, as applicable. Metro shall convey the responses they receive from a tribe to the city or county responsible for comprehensive planning of the UGB expansion area, consistent with SHPO's direction.

(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 local authorization subject to quasi-judicial review on rural lands, a local government shall notify tribes ~~to~~with an ancestral connection to land within their jurisdiction, as provided in subsection (10)(c), and request information on the potential of the ~~proposed development~~proposal 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(b=~~

~~(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 (ba), 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. 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.~~

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

~~(gd) A local government will make any voluntary measures on the part of the applicantproperty 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.~~

~~(89) Optional and additional local protection strategies.~~

~~(a) (a) As an alternative to protecting sites of cultural significance to one or more tribes, as providednotice requirements in sections (5) and (78), 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 (78) shall be consistent with the principles for establishing tribal relationships described in guidance from ~~LCIS~~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 (78) 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~~section (5), and ~~(7)~~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 ~~protections~~protection in sections (5) and ~~(7)~~process steps in section (8).

(b) A local program adopted prior to January 1, 2025, to protect archaeological and cultural resources is consistent with these rules if the local government provides notice consistent with sections (5) and (8).

~~(b)~~ (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.

~~(c)~~ Local governments~~(d)~~ A local program described in (b) 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 ~~is followed~~ and the local government adopts a program to achieve protection that is consistent with the directives in OAR 660-023-0050.

~~(d)~~ (e) Local governments shall notify tribes as provided in ~~5(d)~~subsection(10)(c) when initiating a program under subsection (b).

~~(9)~~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 ~~response to a UGB amendment process or~~ 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)~~(b)~~ (c) and subsection (78)(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 (~~78~~) directly except as provided by subsection (~~ed~~).

(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~~e) When a local government develops a program under section (~~89~~)(a), review and protection elements of that program shall replace some or all of the requirements of sections (5) and (~~78~~), as these sections pertain to the tribe with which a local government has entered into a consultation agreement ~~has been reached and are covered by~~ or 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 chapter 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