Oregon
Tina Kotek, Governor

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July 11, 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 July 18, 2025, Rulemaking Advisory Committee Meeting

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

1. Meeting Agenda
2. June 12 Draft Meeting Summary
3. Metro Urban Growth Boundary (UGB) Backgrounder
4. Draft Rules
5. Review Draft Fiscal Impact Statement
6. Comments of the Confederated Tribes of the Warm Springs Reservation of Oregon

Please note that in order to consolidate the notice requirements associated with urban growth boundary amendments, and to clarify rules between Metro and local governments at the time of urban growth boundary amendments, staff have proposed a new section for these purposes. Staff also have made a non-substantive correction to the numbering and use of terms for consistency throughout the document.

As Rulemaking Advisory Committee (RAC) members, you should have a Zoom meeting link in your calendar invite to join the meeting. Unless community members wish to provide verbal public comment, DLCD asks interested community members to watch via the live stream on DLCD's YouTube channel here. Due to the disruption at our last meeting, DLCD's Information Technology (IT) staff have made changes to the agency's global Zoom settings so that this will not happen again. As part of those changes, screen sharing will not be allowed.

While this is our final RAC meeting before the public hearing on the draft rules at the September 25-26 Land Conservation and Development Commission meeting, consultation and public comment is welcome before October 5, 2025. We will be scheduling a final RAC meeting ideally after the hearing and before October 5. 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!

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Goal 5 Cultural Areas Rulemaking Advisory Committee
Meeting Agenda

July 18, 2025
2:00 – 4:00 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.

Consultation and public comment is welcome until October 5, 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. To make brief public comment verbally at the meeting, please join the Zoom Meeting linked here. Screen sharing is not enabled or allowed. 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
2:00 - 2:10 pm	Welcome Agenda Review *RAC Comments, Questions*	Land Conservation and Development Commission Liaison Clatsop County Commissioner Lianne Thompson Committee Facilitator Deputy Director Kirstin Greene RAC Members
2:10 - 2:20 pm	Public Comment *Community members, please "raise hand" to be in the queue.*	Kirstin Greene
2:20 - 2:40 pm	Legislative Amendments, Timeline *Do RAC members recommend a timeline for decisions on legislative amendments?*	Kirstin Greene RAC members
2:40 - 3:00 pm	Overview of Full Draft Rule and Draft Fiscal Impact Statement	Amanda Punton, Natural Resources Specialist

Time	Item/ ***Desired Outcome***	Lead
	Discussion	RAC Members
3:00 – 3:45	RAC Guidance - Full Draft Rule - Fiscal Impact Statement	RAC Members
3:45 - 4:00 pm	Next Steps and Closing Thoughts Adjourn	Kirstin Greene, RAC Members Commissioner Lianne Thompson

Department of Land Conservation and Development
Goal 5 Cultural Areas Rulemaking Advisory Committee

Draft Meeting Summary

June 12, 2025

Rulemaking Advisory Committee (RAC) Members Attending
Shawna Adams, Senior Planner, Lane County
Elissa Bullion, Oregon Legislative Commission on Indian Services
Briece Edwards, Confederated Tribes of Grand Ronde
Jennifer Eisele, DLCD Citizen Involvement Advisory Committee
Kelly Glover, Wasco County
Peter Hatch, Confederated Tribes of Siletz Indians
Dave Hunnicutt, Representative of property rights organization
Courtney Krossman, Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians
Brandi Malone, Cow Creek Band of Umpqua Tribe of Indians
Katie McDonald, Metro Regional Government
Carey Miller, Confederated Tribes of the Umatilla Indian Reservation
Keenan Ordon-Bakalian, Private developer
Sara Palmer, Coquille Indian Tribe
John Pouley, State Historic Preservation Office, State Archaeologist
Alexandria Ring, League of Oregon Cities
Jill Rolfe, County planner, Coos County
Nick Starin, City planner, Portland
Dave Whitt subbed in for Lawrence Squiemphen, Confederated Tribes of Warm Springs Reservation
Ed Sullivan, Retired land use attorney
Michelle Wright, Oregon Department of Transportation

Department of Land Conservation and Development (DLCD) Staff
Kirstin Greene, Deputy Director and Tribal Liaison
Brett Estes, North Coast Regional Representative
Gordon Howard, Community Services Division Manager
Laura Kelly, Mero Area regional Representative
Jessica Miller, Executive Support
Casaria Taylor, Senior Rules Coordinator
Lianne Thompson, Land Conservation and Development Commission Liaison
Amanda Punton, Natural Resource Specialist

Interested Parties/ Alternates
Elaine Albrecht
Tobin Bottman, Oregon Department of Transportation
Glen Hamburg, Metro Regional Government

Welcome and Introductions
Land Conservation and Development Commission Chair Liann Thompson opened the meeting. She and Kirstin Greene, Department of Land Conservation and Development Deputy Director

and Tribal Liaison welcomed all members, including those who could not participate in the May Rulemaking Advisory Committee (RAC) meeting. Those members introduced themselves.

Agenda Review and Public Comment
Kirstin noted that there were no public comments to the RAC from interested community members. She noted that for comments to be considered part of the rulemaking record, they must be submitted in writing. All comments to LCDC will are due October 5th at 11:55 pm.

Topic 1 - Local Government applications for Consideration of Potentially Significant Cultural Area

Kirstin checked what staff understood to be general consensus of RAC members from the last meeting pertaining to whether the rule should not be amended to specify applications to add a culturally significant landscape areas to local inventories shall be reviewed through a legislatively or quasi-judicial process. Kirstin noted that, after discussion, staff and RAC members agreed to leave this to be a local decision depending on the application.

This discussion pertains to draft Oregon Administrative Rule (OAR) 660-023-0210 section (4) Local Inventory of Significant Cultural Landscape Features, subsection (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 . . .

RAC member Ed Sullivan gave a brief overview of the memo he sent to the RAC via staff. The memo describes the benefits of establishing the distinction between legislative and quasi-judicial review pathways, and setting timelines for legislative amendments. Ed raised the question of whether property owners should also be able to bring the change. Members will continue that discussion at the next meeting.

Questions and comments from RAC members are shown in *italics*. Responses from staff are shown in regular font.

- *Do all local governments accept applications for a legislative amendment?*
- Not all do; this rule would require that all local governments would consider such amendments.
- *Our community only allows the local government to initiate a legislative amendment*. *In our community, a quasi-judicial amendment must have property owner approval*.
- Staff and RAC members gave examples of other communities that do allow legislative amendments to be brought by any community member for a fee.
- *What is the role of other culturally affiliated groups?*
  The rule speaks to landscape features of cultural significance to one of the nine federally recognized Tribes in Oregon. Other culturally identified groups would retain the ability to request that a local government consider an amendment but would not be able to force consideration of an amendment through an application process.
- Members discussed whether a local government could be required to come to a conclusion after a significant amount of time, e.g., two years. Members noted it would be a lot of time and effort to bring an application that may not get considered or resolved. Others noted that this would be new.
- *The 120/150 day time limit in statute for quasi-judicial applications does not apply to comprehensive plan amendments. The rule would have to set time limits for both review pathways if that's what is desired.*

- At our last meeting, members had raised the issue of having sufficient time for meaningful coordination with tribes.
- *Complicated plan amendments can take longer than two years and favor the rule not having a timeline. These applications will require a rigorous public process.*
- *Is it possible to include an intent statement that would work to avoid a specified timeframe but guarantee demonstrable movement towards a decision?*

Topic 2: Who Can Bring Applications

Amanda introduced the topic based on materials in the packet. Questions and comments from RAC members are shown in *italics*. Responses from staff are shown in regular font.

- *Are we presuming the rule provision that recognizes a Tribe as an authority on what is culturally significant to that Tribe (OAR 660-023-0210(4)(a) will stand.*
- Yes.
- *Metro regional government staff would like the rule to be clear that "government" in option 2 includes include Metro.*
- Staff affirmed that is the intent.
- *RAC members expressed preference for limiting the opportunity to bring amendments directly to federally recognized Tribes in Oregon. They said this would reduce opportunity for mischief by non-Tribal culturally identified groups and reduce the possibility of local protections allowing for access to private property.*
- *One member emphasized that If the commission doesn't limit the option, the rule would open a pathway for disgruntled neighbors to stop development projects. One member suggested that only property owners should be able to bring the application. Otherwise, this rule provision could lead to constitutional violations.*
- Staff emphasized that a decision to protect and how to protect rests with the local government. This rule cannot contradict state statute. Providing access can be considered and rejected, if supported by the Goal 5 analysis. DLCD also is leaning toward limiting the ability to bring an application directly to federally recognized tribes in Oregon.
- *Is the rule's current definition of Tribes and wonders if it is consistent with our discussion around federally recognized tribes in Oregon. Staff will check this.*
- *It is worth considering including tribal governments in other states as state lines and historic relocation of tribes by the federal government do not sever the connection those tribes have with places in Oregon.*
- *The option to limit is a good balance, particularly when paired with the earlier discussion on the rule requiring an application to be processed and giving sufficient time for a diversity of viewpoints to be heard before a decision on how to protect a significant resource site is reached.*
- *A RAC member recommends striking (6)(c)(A)(ii) as too definitive – or at least change from shall to may.*
- Staff explained the purpose of the provision -- to provide structure for the Goal 5 Economic, Social, Energy, and Environmental (ESEE) analysis.
- *In the event the rule is changed to reflect that federally recognized Tribes only could bring an application, a RAC member requested providing clarity to other culturally identified groups on their ability to request a local government self-initiate a process to recognize a culturally significant landscape feature.*
- Staff agreed to provide this in guidance.

Preview of Next Meeting Topics

Kirstin noted the topics for the RAC's July 18 meeting:

- Consideration of adding property owners to the list of entities who can bring an application to recognize a culturally significant landscape feature.
- City/Metro coordination at the time of UGB expansions
- Full draft rule review including minor amendments to include treatment of comments when a public review process does not include a hearing.
- Fiscal Impact Statement Review

Closing Thoughts

Commissioner Thompson asked RAC members to continue to bring our creative thinking and imagination to the next meeting.

Department of Land Conservation and Development
Goal 5 Cultural Areas Rulemaking
Applications for Amendments for Potentially Significant Cultural Areas
Backgrounder
July 11, 2025

Overview

At the request of the Land Conservation and Development Commission (LCDC or commission), the Department of Land Conservation and Development (DLCD or department) convened a rules advisory committee (RAC) in May 2025. The purpose, or charge, to this RAC was specific and threefold: a) to consider how local governments should process applications for potentially significant cultural landscape areas, b) to consider who can bring these amendments directly, and 3) to resolve how Metro regional government (Metro) would process potentially significant cultural areas at the time of a urban growth boundary expansion. The draft rules are in the Oregon Administrative Rules (OARs) that implement Statewide Land Use Planning Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces. When filed with the Secretary of State, these rules will be found in OAR Division 23 (OAR 660-023-0210).

After several years of process, this new rule for cultural areas was adopted by LCDC in December 2025. As those rules have not yet been filed, this backgrounder provides information for the RAC and other interested parties on why DLCD is revising the rule sections that speak to the intersection of Goal 5 with an urban growth boundary (UGB) amendment process. Revised language will better describe the role of cities, counties, and Metro as well as the timing of actions required of them when information about a cultural landscape area is entered into the record of a UGB amendment.

This background paper addresses the element of the commission's charge to revise the rule to clarify Metro's unique role, distinct from cities, when the Metro UGB is amended. These revisions support Governor Kotek and DLCD's priority to reduce barriers to the production of housing by clarifying that the intersection of Goal 5 with UGB amendments will minimally affect the UGB amendment process.

With the revisions, Metro will retain the task of notifying federally recognized tribes of a proposed Metro UGB amendment; entering responses into the record for the amendment and notifying the State Historic Preservation Office if responses concern a known or suspected archaeological site. Metro also will be required to pass along responses on to the city or county responsible for comprehensive planning of the UGB expansion area. The rule will clarify that the "receiving" local governments will consider options for mitigating impacts to archaeological sites and applying Goal 5 to cultural landscape features for which information is included in the record.

While reviewing the rule, DLCD staff noticed an opportunity to clarify the timing of applying avoidance measures to archaeological sites, inventorying cultural landscape features, and applying protection measures to significant cultural landscape features. As this is true for all cities, not just those within Metro, staff have proposed those in the full

draft rule associated with the July 18 RAC meeting. The rule draft l specifies, consistent with current practice and adherence to OAR 660-023-0250(3)(c), that a local government may delay assessing the significance of a landscape feature, adding significant sites to the local inventory, and adopting protection measures for significant sites, provided they formally commit to completing these steps prior to adoption of urban zoning that would allow new uses on the site.

Next Steps
Department staff will seek the guidance of Rulemaking Advisory Committee members on this matter at their July 18, 2025 meeting. Staff expect to invite formal consultation and public comment on the rule in its entirety from September 1 – October 5, 2025. The department plans to ask the commission for their deliberation on all consultation and comments received by October 5 at their October 23-24, 2025 meeting. Currently, DLCD is considering an effective date of June 30, 2026. This period is intended to provide local governments time to update their local ordinances according to the new rules.

Contact: Kirstin Greene, AICP, Deputy Director and Tribal Liaison, 971-701-1584, Kirstin.greene@dlcd.oregon.gov or Amanda Punton, Natural Resources Specialist, 971-718-3245, Amanda.punton@dlcd.oregon.gov. All written consultation and public comment may be submitted before October 5, 2025 at 11:55 pm to dlcd.goal5ca@dlcd.oregon.gov.

Additional Background
In 1996, LCDC revised Statewide Planning Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces. The commission also adopted a new set of rules for implementing Goal 5.

When adopted in 1996 OAR chapter 660, division 23, included a rule specific to each Goal 5 resource category, except cultural areas. This outcome resulted from the recommendation of a DLCD-convened workgroup. The workgroup advised postponing development of a rule for cultural areas until the State and Tribal Nations established better government-to-government relationships. A priority of Governor Kitzhaber, strengthening of state/tribe relationships was imperative. In the mid 90's, Oregon tribes were still rebuilding their capacities in the wake of the Western Oregon Indian Termination Act of 1954. Six of the nine federally recognized tribes in Oregon did not regain federal recognition status until the late 1970s into the mid-1980s. Accordingly, tribal representatives were not able to formally participate in the early comprehensive plan development processes and inventories at the city and county level.

After some years of work surveying local governments, working with representatives of tribal governments, and a rulemaking advisory committee, the commission adopted OAR 660-023-0210 on December 5, 2024, to direct implementation of Statewide Planning Goal 5 for cultural areas.

Draft Rules
Updated July 11, 2025

CHAPTER 660
LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

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

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
https://www.oregon.gov/oprd/OH/Pages/lawsrules.aspx
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 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. Also referred to as “landscape feature of cultural interest’.

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

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

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

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

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

(b) Except as provided in (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 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 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. *Note: DLCD would receive a copy of this application as part of the regular post-acknowledgement plan amendment.*

(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)(c), 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) or limited land use decisions as defined in ORS 197.015(12) that involve ground disturbance, a local government shall send notice to the tribes as described in (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 2025 Oregon Laws, ch. 330, §3.

(c) Notice to tribes required under (a) 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.

(d) 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 provided under subsection (b). Information from a tribe received by a local government prior to the first evidentiary hearing, or by the close of the comment period if no public 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 an action described in subsection (b) that the proposed development has potential to impact 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.

(f) 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.

(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-.

(b) 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.

(c) 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) Urban Growth Boundary (UGB) amendments

(a) A local government shall notify tribes as provided in (10)(c) at least 35 days prior to the 1st evidentiary hearing of a proposed UGB amendment and request information on potential conflicts

between future urbanization of a UGB expansion area and a cultural area.

(b) When a city or Metro receives information describing a potential conflict with an archaeological site, it shall inform SHPO of the information prior to adoption of the amendment and follow SHPO's direction for managing information on known or suspected sites, including information that is exempt from public records disclosure under ORS 192.345(11). 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, as modified by this rule, 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 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 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 protecting sites of cultural significance to one or more tribes and potentially significant cultural landscapes, as provided 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 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 (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 (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) A local program described in (b) 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 (10)(c) when initiating a program under (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)(b) 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) Requirements for sending notice to tribes in this rule are satisfied by sending notice to tribes with an ancestral connection to land within the jurisdiction of the local or regional government. Each city and county and Metro shall obtain a list from the LCIS 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 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

Goal 5 Cultural Areas Rule
Updated Draft Impact Statements
July 11, 2025

I. FISCAL IMPACT STATEMENT

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 that 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 in this report 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 ~~long-range~~ 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 inventory and protect landscape areas of cultural significance, except when information is entered into the record of a UGB amendment that a cultural landscape area is present in land being added to a UGB. Cities and counties will also need to respond to applications from Oregon government entities to add a site to a local inventory. 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 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 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 during the UGB amendment process.

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, 0040, and 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 and size 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.

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 660-210 will clarify the inventory and protection opportunity associated with a UGB expansions that already exists in OAR 660-023-250 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 is 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 can be absorbed within its current operating budget; however, 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.

Additionally, there is the potential for DLCD to incur Department of Justice legal fees in situations where DLCD files, or is a party to, an appeal of a local government's actions that are deemed not consistent with this administrative rule to the Land Use Board of Appeals (LUBA) or is brought to intervene in a LUBA case between two other parties regarding an appeal. DLCD also maintains authority to enact an enforcement order, which would incur legal fees and demand a modest increase in staff effort in time to review and compile legal records.

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.

II. HOUSING IMPACT STATEMENT

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.

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.

III. RACIAL EQUITY STATEMENT

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 land use processes. Required notice to Tribes and clarifications around cultural resource recognition and local protections for resource sites may have a disproportionate beneficial impact on Tribes.

The new rule may extend planning periods, but we would not anticipate a disproportionate impact on underserved populations.[1]

[1] State of Oregon DEI_Action_Plan_2021.pdf, page 7.

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July 8, 2025

Goal 5 Rules Advisory Committee (RAC)
Oregon Department of Land Conservation and Development

Re: Comments of the Confederated Tribes of the Warm Springs Reservation of Oregon

Dear Goal 5 RAC Members:

As the General Manager of the Branch of Natural Resources for the Confederated Tribes of the Warm Springs Reservation of Oregon ("Tribe" or "CTWS"), I am writing to offer feedback regarding two of the items that are included in the Goal 5 RAC's charge:

1. The parties that could bring an amendment for a comprehensive plan to place a culturally significant landscape site on a local inventory.

2. The manner in which a local government would process such an amendment.

The Tribe shares the Land Conservation and Development Commission's concern that Oregon's local land use system does not effectively address cultural areas. CTWS staff, however, remains concerned about whether Statewide Planning Goal 5 is an appropriate regulatory vehicle to address this gap. The Oregon land use system, including its Goal 5, was developed without meaningful input from Oregon's tribes. Because of this structural oversight, simply because Goal 5 contains a reference to cultural areas is not, in CTWS staff's view, a sufficient reason to develop a Goal 5 program around tribal cultural resources.

Oregon's quasi-judicial land use decision procedures are not consistent with government-to-government consultation which is ***essential*** for ensuring the culturally appropriate management of tribal resources. Brief examples include (without limitation) the following:

- Tribes hold the indigenous knowledge and expertise to identify the existence and evaluate the significance of tribal cultural resources. Quasi-judicial proceedings place local governments as the sole judge of this significance, and Oregon's case law precedent does not adequately weight tribal indigenous knowledge and expertise. This does not respect tribal data sovereignty interests or government-to-government co-management of resources.

- CTWS staff have regularly voiced that Oregon's land use notice of a land use application *after* it is filed cannot satisfy tribal consultation. True consultation must begin early and be sensitive to tribal time and resource constraints.

    - Oregon's strict timelines for decision are not consistent with tribal consultation needs. Formal consultation involves meetings between elected officials. This requires significant lead time for scheduling agendas and staff briefings. On the

staff level, tribal historic preservation offices receive notices of projects from federal and state regulators throughout a tribe's aboriginal interest areas. These exceed reservation boundaries and treaty ceded land boundaries and can include areas in multiple states. In other words, we receive a lot of notices of small to large complex projects across multiple jurisdictions and landscapes. Tribes simply do not reliably have the capacity to respond to aggressive decision timelines set forth in Oregon's quasi-judicial land use procedures.

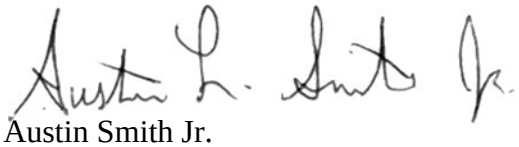
- Quasi-judicial procedures are incompatible with tribal consultation objectives because they stifle effective communication. Oregon's *ex parte* contact prohibitions that apply after application prohibit the decision maker from engaging in contacts about the application that are not in the record. It propels a proposal to a quasi-trial like proceeding that does not, in CTWS staff's view and experience, allow for appropriate inquiry and explanation. It simply prevents a government-to-government exchange of information that is necessary to honor the objectives of consultation that seek the free, prior and informed consent of the tribe to the resource inventory of its resources. This is particularly alarming when the subject is likely to involve sensitive information around complex histories.

Culturally significant landscapes are tied to historical and/or current tribal member practices. Historical and current family kinships extend across convenient governmental categorizations of tribal groups into "tribes." Accordingly, cultural landscapes can have ties to multiple tribes, including competing claims to areas. In addition to the potential for disputed historical claims, tribes may differ in their consent to whether tribal use or other cultural information should be shared publicly in an application and/or inventory listing. It would be wholly inappropriate for a local government to interfere with these inter-tribal disputes through a local land use decision that identifies, describes, evaluates and explains the significance of a cultural landscape.

Instead, I encourage the Goal 5 RAC to consider an approach that is more in line with a government-to-government co-management relationship. One approach would eliminate the application option and instead involve development of intergovernmental agreements (IGAs) between a local jurisdiction and tribes that can encourage consultation around cultural areas and landscapes before formal proceedings (if any), likely initiated by only the local jurisdiction. These IGA's could also surface any inter-tribal disputes to avoid placing a local jurisdiction in the inappropriate place of interfering in inter-tribal affairs. This could also ensure the consent of the relevant tribes to the public consideration of their cultural information and ensure that the local jurisdiction's inventory decision is centered around tribal indigenous knowledge.

Thank you for considering these comments, and I look forward to further discussion around this potential approach.

Sincerely,



Austin Smith Jr.
General Manager CTWS Branch of Natural Resources

cc: CTWS Secretary-Treasurer