

MEMORANDUM

To: Cultural Resources RAC
From: Edward J. Sullivan
Re: Quasi-Judicial Actions Involving Cultural Resources

I reviewed the tape of the July 18th RAC meeting and agree with those members who stated that the designation of a cultural resource as part of a plan amendment proceeding is not subject to the 120/150 day rule. ORS 215.427(7)(a) and 227.178(7)(a).

Depending on the nature of the designation, the local government might also be able to claim an exemption from the 120/150 day rule under ORS 215.427(6)(a) and 227.178(6)(a), as subsequent requirements for any state permit are not “wholly within” the authority of the local government.¹

The exemptions from the 120/150 day rule would not cover other local discretionary permits that may relate to cultural resources, such as a local ground disturbance permit. For landscapes of significant cultural importance, the standard provisions for the application of Goal 5 apply under proposed OAR 660-023-0210(2)(a), (4)(e) and 10(a) unless specifically exempted; thus, under OAR 660-023-0050, there can be no local discretionary permits, so clear and objective conditions for developments are required.²

I hope these comments are helpful.

¹ The wetland analogy discussed in the meeting might be useful, at least with respect to archeological sites, in that an applicant must secure a state permit.

² These limitations also apply to archeological sites identified in a preconstruction survey under proposed OAR 660-023-0210(8)(c) or significant cultural landscapes identified under proposed OAR 660-023-0210(9)(a).