



# Oregon

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To: Land Conservation and Development Commission

From: Kirstin Greene, AICP, Deputy Director and Tribal Liaison  
Gordon Howard, Community Services Division Manager  
Amanda Punton, Natural Resource Specialist  
Sean Carpenter, Senior Editor

Subject: **Agenda Item 6, December 5-6, 2024, LCDC Meeting**



## Goal 5 Cultural Resources Rulemaking Decision

### I. Agenda Item Summary

Staff of the Department of Land Conservation and Development (DLCD or department) ask that the Land Conservation and Development Commission (LCDC or commission) consider adopting a new administrative rule for cultural areas in Oregon Administrative Rules (OAR) chapter 660, division 23. Division 23 is the set of rules for implementing Statewide Planning Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces (Goal 5). LCDC held a hearing on a draft of OAR 660-023-0210 and a minor amendment to OAR 660-023-0250 in September 2024. Public comment and consultation on the rulemaking closed October 16, 2024. Attachment A includes the draft rule with edits responding to received comments.

#### a. Purpose

This rule is intended to support greater understanding and protection of significant cultural resources and to better preserve the state's cultural heritage.

DLCD staff will provide a summary of public comments received and describe amendments to the draft rule.

#### b. Objective

Commissioners are informed about changes to the draft rule and are prepared to vote on adoption.

For further information about this report, please contact Amanda Punton, Natural Resource Specialist at 971-718-3245, [amanda.punton@dlcd.oregon.gov](mailto:amanda.punton@dlcd.oregon.gov), or Kirstin Greene, Deputy Director and Tribal Liaison at 971-701-1584, [Kirstin.greene@dlcd.oregon.gov](mailto:Kirstin.greene@dlcd.oregon.gov).

### II. Background

In 1996, LCDC amended Goal 5 and adopted OAR chapter 660, division 23 (division 23) to replace the previous rules implementing Goal 5 (OAR chapter 660, division 16) for 14 of the 15 Goal 5 resource categories. Division 23 now describes steps and standards for complying with the goal specific to each resource category except for one: cultural areas. Division 16 remained in place to cover cultural areas. Division 16 also supports local Goal 5 protection measures that were adopted prior to the LCDC adoption of division 23.

Leading up to the 1996 division 23 rulemaking, an advisory group and DLCD staff recommended postponing the rulemaking for cultural areas over a concern about Goal 5's emphasis on inventories and the need for confidentiality of such resources for cultural areas. In addition, then Governor John Kitzhaber signed Executive Order 96-30 that same year.

Executive Order 96-30 directs state agencies to improve formal relationships with Federally Recognized Tribes in Oregon. The hope at the time was that better state-tribe relationships would improve the outcomes of rulemaking for the protection of cultural areas. Nearly thirty years later, it is time for cities, counties, Tribes, and state agencies to better guide the identification, assessment, and protection of these resources for current and future Oregonians.

At the January 2021 commission meeting, representatives of Federally Recognized Tribes in Oregon and the Interim Executive Director of the Legislative Commission on Indian Services (LCIS) testified regarding the inadequacy of Goal 5 implementation for cultural resources.

In response, the commission asked DLCD staff to create a workgroup with tribal representatives to discuss the need for an administrative rule for Goal 5 cultural resources and the scope of any resulting rulemaking process. The commission's charge — explaining what outcomes are desired from the rulemaking — is included as Attachment B.

DLCD staff created a Goal 5 Cultural Areas Tribal Workgroup, which met six times between November 2022 and September 2023 to discuss the scope of a potential rule. The Tribal Workgroup helped staff develop a draft rulemaking charge, which LCDC discussed and affirmed at its November 2023 meeting. Staff convened a rules advisory committee (RAC) in January 2024, which has met four times to date. The RAC membership list is available on DLCD's rulemaking website and as Attachment C.

On September 27, 2024, LCDC held a hearing on a draft of the new OAR 660-023-0210 and amendments to OAR 660-023-0250. Commissioners considered concerns members of the RAC raised and provided direction to staff for how to address them.

During the public comment period — which ended on October 16, 2024 — DLCD received twenty letters. Some reiterated concerns discussed at the September 2024 hearing. Some expressed additional concerns. Several expressed support for the proposed rule while offering suggestions for improvement.

#### **a. Issues discussed at the September 2024 hearing and proposed edits to the draft rule**

- 1) *Issue 1: Status under the new rule of existing local regulations that protect archaeological sites and accommodation for local protection strategies for archaeological sites that are not required by the rule.*

Existing provisions for protecting cultural areas in local codes will not be affected by the rule as it does not require local governments to amend their comprehensive plans or development codes. Staff have added a subsection (8)(b) clarifying that a local government may adopt new protections for archaeological sites in addition to the protection measures in section (5) of the rule.

The optional protection strategy described in subsection (8)(b) is a local requirement for pre-construction archaeological surveys in areas identified by the local government as having a high likelihood of archaeological sites. Subsection (8)(c) points to procedures described in OAR 660-023-0040 and 660-023-0050 for adopting local limits on development to avoid or minimize impacts to an archaeological site that is identified in a pre-construction survey.

- 2) *Issue 2: The relationship with the Eastern Oregon solar siting rule for the application of Goal 5 when a use conflicting with a significant cultural resource is a photovoltaic solar power generation facility, located on sites or areas identified under OAR 660-023-0195.*

Discussion at the September 2024 hearing centered on the uncertainty of this provision given that OAR 660-023-0195 will not be adopted until after this rule is adopted. Accordingly, staff have removed reference to OAR 660-023-0195 in section (2)(f) of the draft rule.

- 3) *Issue 3: Concern about retaining the option for landscape features important to other culturally identified groups to be assessed for significance and protected through local code provisions.*

There is a consensus between commissioners that the rule should keep the option for protection of sites significant to culturally identified groups other than Tribes. The draft rule remained unchanged.

- 4) *Issue 4: Whether local governments and Tribes in Oregon will have enough time and resources to prepare for implementation of rule provisions that apply directly.*

Hearing these concerns, staff have set the effective date for the rule to January 1, 2026. The department is committed to using existing staff and technical assistance programs to support the work of local governments and tribes over the coming years to promote and assist protecting significant cultural areas.

## **b. Additional concerns raised during the public comment period and proposed edits to the draft rule**

- 1) *Legislative versus quasi-judicial review of applications.*

Some comments expressed concern over the rule specifying that an application to add a landscape feature of cultural significance to a local inventory of Goal 5 significant resource sites must be processed as a legislative amendment. In response, section (4)(c) of the rule no longer specifies whether an amendment will be legislative or quasi-judicial. The local government will make that determination based upon established principles of case law when it receives an application.

2) *Processing applications for a legislative amendment.*

The City of Portland commented that the city does not have a process for a person or group to apply to add a landscape feature of cultural significance to a local inventory of Goal 5 significant resource sites. The department has not identified any statutory or other legal obstacles to local governments processing such an application.

While some local governments do not allow a person or group to submit an application for a legislative amendment to its comprehensive plan, others do allow such applications. The delayed application of the rule will allow the city and other local governments with similar code provisions to adjust their application review structure, so staff are not proposing any changes to the rule in this regard.

3) *Addressing potential conflicts between newly identified significant cultural landscapes and existing significant Goal 5 aggregate sites.*

The Oregon Department of Transportation and the Oregon Aggregate and Concrete Producers Association submitted separate comments on the same topic. Both parties requested clarification that local authorizations for mining aggregate on Goal 5-protected aggregate sites are preserved if a landscape feature of cultural significance — or the impact area for the resource — is identified in the protected mining area. The department has added this clarification to section (2) of the rule.

4) *Time frame for tribes responding to notices.*

The rule requires notices to be sent to tribes but does not set a window in which responses to notices must be received. In the case of a quasi-judicial permit application, the intention is to have responses to notices inform the applicant and contribute to the local government's review within the time frame established for that review. In the case of a proposed urban growth boundary amendment, responses will inform a local government's review within the time frame established for that process. The department added clarification to the draft rule that a local government must include responses from tribes, received prior to the first evidentiary hearing, in the hearing's record.

5) *Consistency with ORS 197.772, owner consent for designating historic resources.*

There is some overlap between the Goal 5 cultural areas and Goal 5 historic resources. In a narrow set of circumstances, a landscape feature of cultural significance will be subject to ORS 197.772. This statute requires that a local government allow a property owner to refuse to consent to any form of historic property designation. ORS 358.480 defines historical property as real property listed on the National Register or that has been determined to be eligible for listing in the National Register by the State Historic Preservation Officer. Properties listed on the National Register are not subject to the cultural areas rule. Rather, they are addressed in the Goal 5 historic resources rule, OAR 660-023-0200. See section (2)(c) of draft rule. Properties determined eligible for the National Register by the State Historic Preservation Officer but not listed could be designated as significant resources and protected under this rule. For this reason, the department has added section (4)(d) to clarify when ORS 197.772 applies.

- 6) *Concern about the ability to submit an application to designate a landscape feature significant without owner consent.*

The decision to protect a site comes after a determination of significance. Property owners are entitled to participate in the process described in OAR 660-023-0040, which informs the protection decision.

- 7) *Additional clarification on when a local government shall defer to protection specified through section 106 of the National Historic Preservation Act.*

Projects connected to a federal action are reviewed under section 106 of the National Historic Preservation Act (NHPA). Culturally important landscape features fall under one or more categories of historic resource covered under this federal law. Section (6)(d) of the draft rule requires that local jurisdictions defer to protections established through the NHPA 106 review process. In the revised draft rule, staff have clarified that the NHPA 106 review process must be completed for such deference to occur.

### **III. Recommended Action**

DLCD recommends the commission adopt the proposed rule for Goal 5 cultural areas, OAR 660-023-0210, and the amendment to OAR 660-023-0250.

Recommended motion: I move the commission adopt amendments to Oregon Administrative Rules chapter 660 division 23 as recommended by the department and shown in Attachment A.

Optional approval motion: I move the commission adopt amendments to Oregon Administrative Rules chapter 660 division 23 as recommended by the department in Attachment A with the following changes: [identify changes].

### **IV. Attachments**

- A.** Draft Rule, OAR 660-023-0210, with changes since the September 27, 2024, hearing, and amendments to OAR 660-023-0250
- B.** Rulemaking charge
- C.** RAC membership list
- D.** Goal 5 Public Comment

## NOTICE OF PROPOSED RULEMAKING

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 ~~on which events occurred that are important to~~ that support traditions the history of a culturally identified group.

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

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

~~(g) “Site of archaeological significance” as defined in ORS 358.905, means:~~

~~(A) Any archaeological site on, or eligible for inclusion on, the National Register of Historic Places as determined in writing by the State Historic Preservation Officer; or~~

~~(B) Any archaeological site that has been determined significant in writing by an Indian tribe.~~

~~(hg)~~ “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) 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 ~~(ESEE)~~ pursuant to OAR 660-023-0040 in order to inform a local program to protect cultural resource sites that are also protected under ORS 358.905 to 358.961 and subject to permit requirements in OAR chapter 736, division 51.

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

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

(e) A cultural area significant for its culturally significant vista, which is identified as a significant scenic resource in a local comprehensive plan shall be subject to protection measures in the local code for that site and is not subject to this rule.

~~(f) When the use conflicting with a significant cultural resource is a photovoltaic solar power-generation facility, located on sites or areas identified under OAR 660-023-0195, the provisions of OAR 660-023-0195 and local codes adopted under the rule supersede the provisions of this rule. 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.

~~(ab)~~ The ~~Oregon Archaeological Records Remote Access (OARRA)~~ database is maintained by ~~the Oregon State Historic Preservation Office—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.

~~(cb)~~ ~~For sites listed in OARRA, 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 sites, as directed in section (5), regardless of whether the resources ~~are~~ is designated in the local plan.

~~(de)~~ 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 law-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 [laws-statutes](#) and rules governing excavation of a significant archaeological site.

~~(d) An archaeological site is significant under this rule if it meets the ORS 358.905(1)(b) definition of a site of archaeological significance. An archaeological site shall be treated as significant until the site is evaluated by a professional archaeologist and SHPO concurs with a determination that the site is not eligible for listing on the National Register and confirms that the office has not been informed in writing by an Indian tribe that it is significance to that tribe.~~

#### (4) Local Inventory of Significant Cultural Landscape Features

(a) A landscape feature of cultural interest is significant if a local government has determined to be significant through application of the OAR 660-023-0030 assessment process. When assessing significance of a site, a local government shall recognize the use of a site for ceremonial gatherings or harvest of traditional foods and materials as an indication of the quality, when assessing the importance of the site compared to other known examples of the same resource. A local government shall consider a Tribal Government an authoritative source of knowledge on landscape features that are significant to their tribe's culture.

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

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

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

~~(e)~~ Except as provided in paragraph (7)(a)(B), a local government shall adopt protection measures for a ~~culturally significant~~ 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.

~~Goal 5~~ Protection for ~~significant~~ 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 ~~laws~~ statutes and rules. Measures that arise from application of this section for characterizing and avoiding alteration of a suspected archaeological site or a known site for which boundaries have not been established in OARRA will be advisory to an applicant.

(a) All local application forms for authorizations that involve ground disturbance must include a statement informing the applicant that it is unlawful to disturb an archaeological site without first obtaining a permit required by OAR chapter 736, division 51 and of steps to take in the event of unintentional discovery of an archaeological site.

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

(A) Notify tribes within seven days of receiving the application to request information about the potential for negative impacts to a known or suspected archaeological site. ~~The local government shall inform the applicant of responses received prior to its completeness determination and include information on their correspondence with notified tribes and the applicant in the record for the application.~~ Notice to tribes shall include the following information:

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

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

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

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

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

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

(A) Grading

(B) Foundation installation

(C) Installation of underground utilities

(D) Mining of aggregate or minerals

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

~~(fe)~~ When information is entered into the record ~~by a participant in the public process~~ for either an action described decision listed in subsection (b) ~~or (ed), by a tribe or other entity,~~ 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 ~~civil~~ means to ensure adequate protection of the site, such as acquisition of easements, public dedications, or transfer of title.

~~(gf)~~ When information is entered into the record for review of an applications described in subsection (b) 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.

~~(hg)~~ When information on a known or suspected archaeological site is entered into the record of a UGB expansion 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.

~~(ih)~~ 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 areas~~ of cultural significance

(a) For a landscape ~~areas~~feature found to be culturally significant under section (4), a local government shall complete the Goal 5 process and adopt a program to achieve the goal as provided in OAR 660-023-0040, as modified by subsection (c) of this section, and OAR 660-023-0050 except as provided in subsection (b).

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

(c) An ESEE analysis shall include consideration of applying the following limits to conflicting uses as part of a program to protect a landscape feature of cultural significance.

(A) For sites that are significant due to use of the immediate area (*e.g.* gathering first foods, traditional location of ceremonies, trails):

(i) Avoidance through clustering and other means to preserve the area as open space and the preservation of existing public access; and

(ii) Establishment of time windows when access is restricted to members of the tribe or cultural group engaging in the activity from which the basis of the site's significance is derived.

(B) For sites that are significant due to a culturally significant vista (*e.g.* landform features used for wayfinding, landform features integral to a tribe's legends/traditions/~~stories~~):

(i) Limits on structure heights to preserve the vista; and

(ii) Sspecifications on the use of non-reflective surfaces.

(d) For projects with a federal nexus, ~~and for which a review has been completed under the~~ requirements of section 106 of the National Historic Preservation Act, a local government shall defer to measures for mitigating impacts to a landscape ~~feature~~areas 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 ~~expansion~~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) ~~Local~~ For local authorization subject to quasi-judicial review on rural lands, a local government shall notify tribes to request information on the potential of the proposed development to negatively impact a landscape area-feature of cultural value to one or more tribes.

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

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

(e) Prior to the first evidentiary hearing for a permit application, described under subsection (b), for which one or more tribes have indicated the potential for a negative impact, the local government shall offer to arrange a meeting with the tribe(s) and applicant. The purpose of the meeting is to discuss potential impacts to landscape areas-features of cultural value to the tribe or tribes and voluntary measures for avoiding or minimizing impacts.

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

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

(8) ~~Local government to government consultation programs~~ Optional and additional local protection strategies

(a) ~~(a)~~ As an alternative to protecting sites of cultural significance to one or more as provided the baseline protections described in sections (5), ~~(6)~~, and (7), a local government ~~may, for the purpose of protecting sites of cultural significance to one or more tribes, adopt~~ may adopt a local protection program as a plan amendment after January 1, 2025, enabled by a memorandum of understanding with one or more tribes as provided in paragraph (B).

(A)

A local program that replaces protections described in sections (5) and (7), shall ~~be~~

~~(i) inconsistent with subsections (b), (c), and (e).~~

(i) When adopting a local program for consultation with tribes under this section, a local government shall make findings on consistency be consistent with the principles for establishing tribal relationships described in guidance from LCIS.

(ii) ~~(ii) A local government that proceeds under this section shall provide opportunities for~~

~~community-wide participation when developing the program to incorporate different perspectives on the benefits of protecting significant cultural resource sites.~~

~~(d) For identifying potential significant archaeological sites, a local government may augment OARRA with tribal or local government inventories.~~

~~(B)e~~ 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 (6)~~ only as it pertains to the cultural areas of the tribe or tribes party to the memorandum of understanding. The standards and review requirements of the local program that diverge from the baseline protections in sections (5), ~~(6)~~, and (7) shall be described in the adoption materials.

~~(C)f~~ Notification to a local government by a tribe of withdrawal from a memorandum of understanding, upon which the government-to-government consultation program relies, will cause the local government to resume compliance with the baseline protections in sections (5), ~~(6)~~, and (7).

(b) In addition to baseline protections in section (5) and as an alternative to OAR 660-023-0030, a local government may identify areas with a high likelihood of containing archaeological sites and require preconstruction surveys within such areas.

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

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

(9) Applicability 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~~expansion~~ process or an application for a legislative amendment to a comprehensive plan as provided in subsection (4)(c). A local government may adopt procedures for consulting with tribes on the decisions described in subsection (5)(b) and subsection (7)(a) that could impact cultural areas that are of value to one or more tribes.

(b) A local government shall apply the standards and protection measures described in subsection (4)(c) and sections (5), (6), and (7) directly except as provided by subsection (c) ~~and (d)~~.

(c) When a local government develops a program under section (8)(a), review and protection elements of that program shall replace some or all of the requirements of sections (5), ~~(6)~~, and (7), as these sections pertain to the tribe with which a consultation agreement has been reached and are covered by a memorandum of understanding.

~~(d) When a local government chooses to develop a local program to identify and protect significant cultural areas that are significant to a group of Oregonians with a common cultural heritage, it must do so pursuant to OAR 660-023-0030 to 660-023-0050 except as provided in section 8(b).—~~

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 ~~ORS 197.633(3)(g)~~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