Department of Land Conservation and Development

Frequently Asked Questions: Goal 5 Cultural Area Rulemaking

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Why is DLCD interested in adopting a rule for cultural areas?

Cultural areas are a Statewide Land Use Planning Goal 5 resource category without an implementing rule in Oregon Administrative Rules chapter 660, division 23 (division 23). Division 23 is a set of rules for implementing Goal 5. Division 23 covers 13 of the 14 Goal 5 resource categories. Division 23 was adopted in 1996 with an intention to add a rule for cultural areas later. Nearly thirty years later, DLCD, in cooperation with tribes and local government representatives is recommending a rule to guide identification, assessment, and protection of these important resources for current and future Oregonians.

One reason for the delay in developing a cultural areas rule was concern over Goal 5's emphasis on inventories and tribal representatives' concern over confidentiality. Another was executive order 96-30, issued that same year. EO 96-30 directed state agencies to improve formal relationships with Federally Recognized Tribes in Oregon. This directive has since been incorporated into state law. Participants at the time hoped that better state-tribe relationships would improve the outcomes of a DLCD rulemaking for the protection of cultural areas. However, due to the lack of recognition of significant cultural areas in many local comprehensive plans, better state-tribe relationships have not proven sufficient to improve protection of cultural areas important to tribes and Oregon communities.

What is a Goal 5 cultural area?

The draft rule defines cultural areas as *archaeological sites* and *landscape features of cultural interest*. A subset of sites that fit this definition will be significant sites to which local protection measures may be applied.

The definition of an archaeological site in the draft rule is very similar to the definition in Oregon Revised Statute (ORS) 358.905(1)(c). Essentially, it is a place where archaeological objects are located and preserved so that the contextual associations of the objects with each other or organic remains and geological deposits can inform our understanding of the site's origin.

Landscape areas of cultural interests are known to tribes and culturally identified groups. For tribes, they include sites: 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. For other culturally identified groups they include sites that are important to the history and experience of that group

Who determines if a site is a significant site?

The answer varies by type of resource.

For archaeological sites **-** The draft rule describes that a Goal 5 significant site shall have the same meeting as a site of archaeological significance, defined in ORS 358.905. A site of archaeological significance is:

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

Since field work and research is required to figure out if a site meets this definition, the draft rule requires that all sites be treated a significant site until proven otherwise.

For landscape features **-** Designation of a landscape feature as culturally significant will require a local public process, carried out by a city or county. The draft rule points to the assessment process described in OAR 660-023-0030 for determining significance. It also requires a local government to consider a Tribal Government an authoritative source of knowledge on landscape features that are significant to their tribe's culture.

How are Federally Recognized Tribes in neighboring states and non-federally recognized tribes considered a treated within the rule?

The draft rule considers tribal governments in neighboring states and all non-federally recognized tribes as culturally identified groups, who are welcome to participate in any public process.

How does the rule address a situation where a tribe feels the reason an area is important is confidential information?

For archaeological sites – The rule directs that local governments use information on archaeological sites to inform land use decisions and permit conditions in a manner that preserves confidentiality and is consistent with state law (see ORS 192.311 to 192.478 and 192.345 for public disclosure laws). Giving a landowner information about an archaeological site located on their property is not considered public disclosure. A tribe will need to decide when the benefit of sharing confidential information with a local

government or applicant, in the interest of protecting a site, is worth risking potential mistreatment of a site.

For Landscape areas – Tribes will need to decide when sharing information in the interest of protecting a site is worth the negative consequences they are concerned about.

How will the rule improve protections for cultural areas?

For archaeological sites – The draft rule requires that local governments inform people seeking development permits of existing state laws that protect archaeological sites and of state permit requirements in the event alteration of a site cannot be avoided. When a local government will review an application for land use authorization through a public process, local governments will notify Federally Recognized Tribes in Oregon* of proposed development that involves ground disturbance. A local government will include information on known or suspected archaeological sites received in response to these notices in the record for the application. The local government will recommend strategies for avoiding alteration of an archaeological site and refer applicants to the Starte Historic Preservation Office if alteration cannon be avoided.

The draft rule states that local governments will send notice to tribes with an ancestral connection to land within a local government's jurisdiction. The Oregon Legislative Commission on Indian Affairs will provide each city and county a list of the Federally Recognized Tribes in Oregon that have has such a connection to their jurisdiction.

For landscape areas – The draft rule points to the steps described in OAR 660-0030, 0040, and 0050 for identifying significant cultural areas and determining a local strategy for protecting significant sites. These steps are referred to as the standard Goal 5 process. These process steps in division 23 are the same as that described in OAR chapter 660, division 16, which are the set of rules that currently cover Goal 5 cultural areas. The draft rule also provides some directives, specific to landscape areas, to be integrated into the standard process. Because culturally significant landscape features vary, it is not possible to know what limits to development might be considered and employed for avoiding or mitigating impacts to a site.

The draft rule also describes a notice procedure for all development on rural lands that are reviewed through a public process. The notice requirement and treatment of responses to a notice is similar to that required for development proposals that that involve ground disturbance. The intention is to facilitate discussion about possible impacts to landscape features that are not on a local inventory yet are important to one or more tribes. Measures to avoid impacts will be advisory to an applicant.

Will the rule make it more difficult to obtain a local development permit?

The rule as drafted will not add new requirements or restrictions on new development.

Will the rule make it more difficult to expand an urban growth boundary?

The draft rule emphasizes an existing provision in division 23, which requires a city or Metro to assess a Goal 5 resource for significance if information about the site is entered into the record of a UGB amendment process. This is relevant to landscape features, which cities must add to a local inventory of significant sites before local measures to protect the site can be adopted. Like for other Goal 5 resource categories, a city must apply the relevant division 23 rules and complete the Goal 5 process to determine if protections will be applied. The draft rule states that a city can delay adoption of protection measures for significant landscape features until annexation of the site.

Will there be a cost of administering the new rule and who will pay the cost?

There will be costs, mostly staff time, associated with implementing the new rule. With DLCD support providing model procedures, local governments will be responsible for amending application forms and procedures for reviewing applications and the cost of providing notices to tribes. DLCD, with assistance from the State Historic Preservation Office and the Legislative Commission on Indian Services, will prepare guidance and templates to make it easier for local governments to complete these tasks. Local governments will also be responsible for assessing the significance of culturally important landscape areas identified during a UGB amendment process. The cost of completing the Goal 5 process for significant sites might be covered by the city or by an applicant at the time of annexation. This scenario of applying Goal 5 at the time of a UGB amendment is already required by division 23 in OAR 660-023-0250(3).

We recognize that a significant burden of the cost would be born by tribes in Oregon as they choose to participate in local land use process.

The draft rule does not directly add costs for landowners or developers. However, the applicant will continue to bear the cost of compliance with existing state laws that protect archaeological sites when development could impact a known site or when the risk of inadvertent discovery of a site is high. Costs could include hiring an archeologist to survey the development site. Information obtained by a survey can inform an inadvertent discovery plan or an application for a state archaeological permit.

There are two optional pathways for adding a landscape feature to a local inventory of significant sites. One is available to local governments and the cost of the plan amendment would be covered by the local government. The other is available to anyone making application to add a significant landscape feature to a local inventory, in which case the cost would be covered by the applicant.

Additional information on the impacts of the rule may be found in the notice document, linked here. DLCD's independent consultant found minimal costs for local government to implement the rule.

Will the rule make it more difficult for local governments conduct municipal projects?

The planning and execution of municipal projects is not expected to change. However, to the degree the proposed rule and associated outreach improves awareness of and compliance with existing archaeological laws and state permit requirements, local governments may incorporate additional steps when preparing for municipal projects that require ground clearing and excavation.

Will local governments have time to adjust application and review steps to comply with the rule?

Yes. The affective date for the rule specified in the public notice is January 1, 2026. This will give local governments time to prepare for changes to their application, notice, and review processes.