

Attachment A

Goal 5 Cultural Areas Draft Rulemaking Charge

October 19, 2023

Context

Department of Land Conservation and Development (DLCD or department) staff recommend that the Land Conservation and Development Commission (LCDC or commission) initiate a rulemaking process to revise and replace existing administrative rules that implement Statewide Land Use Planning Goal 5 for Cultural Areas. This addition would move the rules to Oregon Administrative Rule (OAR) chapter 660, division 23 (Procedures and Requirements for Complying with Goal 5), the division that describes methods local governments may use to comply with Goal 5. The overarching intent of the rule making is to encourage ongoing coordination among tribes, state agencies and local governments in pursuit of protecting significant cultural resource sites important to Oregon.

Draft Charge

Any proposed rule amendment should implement the intent of Statewide Land Use Planning Goal 5, *Natural Resources, Scenic and Historic Areas, and Open Spaces* as interpreted by commission. To benefit all Oregonians, staff recommend that the revised rule should support implementation of Goal 5 for Cultural Areas by Oregon local governments. If initiated by the commission, DLCD's Director shall appoint a Rulemaking Advisory Committee (RAC) to provide guidance to agency staff in preparing the draft rule. RAC members would accordingly be charged to work with agency staff to recommend new rules within OAR chapter 660, division 23 for Land Conservation and Development Commission consideration that:

- Defines Goal 5 cultural areas.
- Describes a process for identifying significant, as defined by Goal 5, cultural area resource sites.
- Considers a process for referencing and/or utilizing confidential inventories of Native American human remains, funerary objects, sacred objects and objects of cultural patrimony maintained by the Oregon State Historic Preservation Office (SHPO) and any of the nine Federally Recognized Tribes in Oregon (Oregon Tribal Governments).
- Considers a process for referencing and/or utilizing confidential inventories of archaeological objects and sites maintained by the Oregon State Historic Preservation Office (SHPO) and any of the nine Federally Recognized Tribes in Oregon (Oregon Tribal Governments).
- Considers a process for referencing/utilizing confidential inventories of cultural areas that may or may not also be archaeological sites, maintained by the Oregon State Historic Preservation Office (SHPO) and individual Oregon Tribal Governments.
- Supports awareness of and compliance with state laws, rules, and permit requirements (ORS 97.740-760, ORS 358.905-961, ORS 390.235, OAR 736-051-0000 to 0090, and ORS 97.010(6)(a) and (b)) that apply to archaeological sites as they apply to potential impacts from grading, excavation, and other development authorized by local governments.
- Establishes a process for soliciting and incorporating information from Oregon Tribal Governments on where and when local governments might employ avoidance and other measures to further

compliance with state laws and rules and the respectful treatment of artifacts and human remains in land use discussions, decisions, implementation, and actions.

- Establishes a process for soliciting and incorporating information from Oregon Tribal Governments on where and when local governments should employ avoidance and other measures to preserve physical and visual access to landscape features that have significant, cultural value to one or more tribes; including sites not subject to protection under current state laws and statutes.
- Provides clear direction for keeping information on archaeological sites, Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony confidential, as directed by ORS 192.345 (11).
- Provides an opportunity for entities other than Native Americans to seek local recognition of and protections for resource sites of cultural value to their community.
- Considers the intersection of OAR 660-023-0200, Historic Resources, and OAR 660-023-0230, Scenic Views and Sites with directives established in the new rule.
- Recognizes differences between local regulation of public land and private land and local regulation of public actions and non-public actions and identify thresholds and procedures appropriate for development in these different scenarios.

Staff recognize the need for processes that prioritize confidentiality when information is shared by Tribal Governments or SHPO to inform protection strategies for cultural areas.

Draft List of Interests to be Represented on a Rulemaking Advisory Committee:

- City planners
- County planners
- League of Oregon Cities
- Association of Oregon Counties
- Representatives of Oregon's federally Recognized Tribes
- Representatives of land use advocacy organization(s)
- Representatives of property rights organization(s)
- Private developer(s)
- Agency representatives (ex officio)
 - o Legislative Commission on Indian Services
 - o State Historic Preservation Office
 - o State Police
 - o Oregon Department of Transportation

Staff also request a liaison from the Land Conservation and Development Commission to attend meetings and help keep the commission up to date at their regular meetings.

Recommended Action [For Commission in November]

DLCD staff recommend that the commission initiate rulemaking and direct the department to prepare a rule for Cultural Areas to be added to OAR chapter 660, division 23. The department recommends the commission delegate to the director the appointment of a Rulemaking Advisory Committee to assist the department in developing well-informed recommendations. While ideal, staff do not recommend that consensus among RAC members be required. Majority and minority views may be delivered with the final recommendations for commission members to consider.