



# Oregon

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TO: Land Conservation and Development Commission

FROM: Richard Whitman, Director

SUBJECT: **Agenda Item 6c, December 2, 2010, LCDC Meeting**

## General Information Concerning Rulemaking

In past rulemaking proceedings, the Commission (through the Department) often has filed notice of the rulemaking with the Secretary of State at a time when the form of the proposed rule amendments is still very much in flux. The advantage of this practice is that it encourages public participation early in the process. The disadvantage is that it generally has the effect of making it difficult to be specific in the rulemaking notice and impact statements required by statute.

As a result of some recent court decisions interpreting Oregon's rulemaking statutes, the Department is recommending that the Commission make several changes in its rulemaking practices. First, we recommend that the Commission's rules advisory committees specifically be asked, as part of their responsibilities, to review and comment on a draft statement of need and fiscal impact *before* the notice of the rulemaking is filed with the Secretary of State. Typically, this will mean that once a RAC has settled on a recommended draft proposed rule, the Department will prepare a draft statement of need and fiscal impact, which should then be reviewed by the RAC and commented on. Second, those comments should then be reflected in the final notice of rulemaking and required statements. Finally, please note that the required statements now include specific elements relating to the effects of the rule on small businesses.

These changes likely will mean one to two additional RAC meetings for each rulemaking. As a result, rulemaking efforts generally should be expected to require close to six months to complete. This additional time and effort should be considered by the Commission as it reviews the next update of its policy agenda (now scheduled for next Spring).