



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD



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TO: Land Conservation and Development Commission
FROM: Jim Rue, Acting Director
SUBJECT: **Agenda Item 9, March 14-16, 2012, LCDC Meeting**

DIRECTOR'S REPORT Supplemental

V. REPORT ON THE 2012 LEGISLATIVE SESSION

The 2012 Legislative Session adjourned *Sine Die* on March 5, 2012. Very little legislation regarding land use was considered in the 76th Legislative Session. The department tracked only about 25 "policy bills" in this session (many other statewide measures not related to land use were tracked by Operations Services for fiscal, budget or personnel reasons). During the last regular session over 100 bills relating to the program, the department or land use were introduced.

Of the bills this session that affect the land use program, only four were enacted. These are shown on the attached tracking summary (Attachment C), along with the relating clause and other descriptive information, and described below:

1. Marine Reserves, SB 1510. This bill added 3 new marine reserves and surrounding marine protected areas at Cape Falcon, Cascade Head and Cape Perpetua to the state's 2 existing reserves at Red Fish Rocks and Otter Rock. The Department of Fish and Wildlife received funding to development the baseline data and conduct the monitoring, and must report back to the legislature in 2022 on the performance of the reserves. The reserve and protected areas prohibit most extractive or development uses and cumulatively restricts fishing from 3% of the state's territorial sea.
2. Redmond Industrial Site, SB 1544. This bill authorizes the City of Redmond to rezone a 465-acre plot of land "notwithstanding" transportation planning rules intended to ensure that transportation impacts are addressed with rezoning. Although the bill provides waivers to the TPR for this site, through negotiations with DLCD and ODOT that occurred as part of the legislative process, the city has committed to phased local mitigation and transportation management plan that will meet the transportation and development needs of the region. The subject land is in the city's urban growth boundary but is currently zoned as open space. If rezoned, this parcel would allegedly become the

state's largest for industrial use. Although the land had been zoned industrial in the 1980's, it was changed to an open space zone in preparation for the Deschutes County Fair in 1980. The bill requires at least one 50 acre parcel to be retained as large lot industrial, and includes other provisions to ensure industrial zoning for the site.

3. Dog Training on EFU, SB 4170. This bill adds “the breeding and raising of dogs” to the definition of uses permitted on farm land. It authorizes dog training and testing as an outright permitted use in exclusive farm use zone under specified circumstances and permits a higher intensity of use as a conditional use. It limits dog training classes to 6 per day as an outright use. It also modifies the authority to establish dog kennels on high value farmland, reversing the current LCDC rule that restricts kennels from high value farmland. In addition, Section 4 of the bill intends that LCDC not be able to exercise its powers to restrict dog training classes, testing trials and commercial boarding kennels on high value farmland.
4. Annexation of Noncontiguous Territory, HB 4089. This bill allows extension of extraterritorial services to a property that is not contiguous to a city provided the land owner consents to eventual annexation. While it generally applies only to properties under certain circumstances, those circumstances probably apply only to a single property outside of Eugene. The bill is effective on passage but sunsets January 1, 2013

There are three bills relating to land use that had significant attention during the session but did not pass, but that pertain to issues that will require further consideration by the commission and the department as a result of the legislative proposals:

- HB 4078 Solar Siting on rural land – this bill had both an informal presentation and a later hearing. The bill then died in committee. During the informal presentation, Richard Whitman and LCDC Chair Worrix appeared before the House Energy, Environment and Water Committee. Whitman announced that the Governor's Office will request that the commission consider adjusting its recently adopted rule regarding solar facilities on farmland, in OAR 660, division 33, to consider raising the threshold for siting a photovoltaic solar energy generation facility on non-arable lands. Specifically, the request will be to allow such a facility through a conditional use permit on 250 acres; currently that limit is 100 acres. With direction from the commission, staff will prepare the appropriate rule amendment for consideration at the next commission meeting.
- HB 4095 Regional Farm and Forest Land Definitions – this bill reintroduced a similar proposal from the 2011 legislative session, HB 3615, which did not pass but would have allowed three southern Oregon counties to propose different “regional” definitions of farm and forest lands than the definitions currently in Goals 3 and 4. Both the previous and current bill would require significant costs to agencies and the three counties, which the proposed legislation would have provided for in the form of budget augmentation for state agencies and grants to the counties. This session, HB 4095 did not pass out of the Ways and Means Committee, although several amendments to the previous legislation were put forth. Nevertheless, \$550,000 was inserted in the department budget in the end-

of-session “rebalance bill”. These funds are for support to the three southern counties identified in HB 4095, and to support the department in enacting a “pilot regional land use planning project”. Further direction will be coming from the Governor’s Office regarding this funding. At this time there is no information to indicate that the direction from the Governor will be different from the requirements in the proposed legislation itself had it been enacted.

- HB 4090 had consideration until late in the session, but ultimately did not pass. It would have authorized the owner of land within an urban growth boundary that is not provided with sanitary sewer or water services to cause the city or another public or private provider of sanitary sewer and water services to connect service facilities and serve the property if the owner pays all costs to connect and deliver the service, regardless of the proximity of the land to current city limits or services. Allegedly this bill concerned land outside of Oregon City, but amendments to the bill also concerned fire stations in Keizer. Although the bill did not pass, a seemingly related budget note was inserted in the department’s budget, requiring the department to report to the 2013 legislative session regarding local compliance with statutes regarding urban service agreements. These statutes (Attachment B to this report) were enacted in 1993, requiring special districts and cities to adopt agreements that, among other things, determine the future service area for each provider of the urban services and specify whether the urban service will be provided in the future by a city, county, district, authority or a combination. Reportedly, many service districts and local governments have never completed this requirement. The budget note will require DLCD to inventory compliance with this statute for cities over 10,000 and suggest ways to achieve compliance.

Attachment A

**From LFO report regarding SB 5701
Budget Reconciliation**

Senate Bill 5701, as amended, is the budget reconciliation bill that implements the Co-Chairs' budget plan, and provides for a rebalanced state budget for the 2011-13 biennium. The bill also includes technical adjustments and actions approved by the Joint Interim Committee on Ways and Means.

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Department of Land Conservation and Development

To support an anticipated Governor's directive to pilot a regional land use planning project, \$200,000 General Fund was added to the agency's budget to support rulemaking and related activities. In addition, \$350,000 General Fund was appropriated to the Department for distribution to Jackson, Josephine, and Douglas counties through intergovernmental agreements. The counties will use these funds to complete technical studies, mapping, and preparation of materials required for preparing a petition to the Land Conservation and Development Commission for rulemaking to consider regional definitions of agricultural and forest lands.

As part of the statewide rebalance plan, the agency's budget is reduced by \$265,752 General Fund to capture one-time budget savings achieved by holding positions vacant and through the agency director taking a job rotation to the Governor's office. Personal services expenditures are reduced by \$33,801 General Fund to capture the agency's share of the statewide effort to restructure state government business operations and management of agency programs. The budget also reflects a \$3,239 General Fund reduction in State Government Service Charges from a change in the state's e-government funding model.

The following budget note was adopted:

BUDGET NOTE

The Department of Land Conservation and Development shall prepare a report that identifies which counties and cities with a population over 10,000 people have completed or not completed the following:

1. The requirement of urban service agreements contained in ORS 195.
2. Approved facilities plans.

The report shall include the date the county and city's comprehensive plan was approved by the Land Conservation and Development Commission. The report shall include options to bring counties and cities into compliance with the ORS and shall be presented to the Joint Committee on Ways and Means prior to the 2013 legislative session."

Wording from SB 5701, enrolled bill:

SECTION 20. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium beginning July 1, 2011, out of the General Fund, the amount of \$200,000, which may be expended for payment of expenses related to regional land use planning activities.

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SECTION 22. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium beginning July 1, 2011, out of the General Fund, the amount of \$350,000, for grants to Jackson, Josephine and Douglas counties for expenses related to regional land use planning activities.

Attachment B

(Urban Service Agreements)

195.060 Definitions. As used in ORS 195.020, 195.065 to 195.085 and 197.005, unless the context requires otherwise:

(1) “District” has the meaning given that term in ORS 198.010. In addition, the term includes a county service district organized under ORS chapter 451.

(2) “Urban growth boundary” means an acknowledged urban growth boundary contained in a city or county comprehensive plan or an acknowledged urban growth boundary that has been adopted by a metropolitan service district council under ORS 268.390 (3).

(3) “Urban service” has the meaning given that term in ORS 195.065. [1993 c.804 §12]

195.065 Agreements required; contents; county responsibilities. (1) Under ORS 190.003 to 190.130, units of local government and special districts that provide an urban service to an area within an urban growth boundary that has a population greater than 2,500 persons, and that are identified as appropriate parties by a cooperative agreement under ORS 195.020, shall enter into urban service agreements that:

(a) Specify whether the urban service will be provided in the future by a city, county, district, authority or a combination of one or more cities, counties, districts or authorities.

(b) Set forth the functional role of each service provider in the future provision of the urban service.

(c) Determine the future service area for each provider of the urban service.

(d) Assign responsibilities for:

(A) Planning and coordinating provision of the urban service with other urban services;

(B) Planning, constructing and maintaining service facilities; and

(C) Managing and administering provision of services to urban users.

(e) Define the terms of necessary transitions in provision of urban services, ownership of facilities, annexation of service territory, transfer of moneys or project responsibility for projects proposed on a plan of the city or district prepared pursuant to ORS 223.309 and merger of service providers or other measures for enhancing the cost efficiency of providing urban services.

(f) Establish a process for review and modification of the urban service agreement.

(2)(a) Each county shall have responsibility for convening representatives of all cities and special districts that provide or declare an interest in providing an urban service inside an urban growth boundary within the county, for the purpose of negotiating an urban service agreement. A county may establish two or more subareas inside an urban growth boundary for the purpose of such agreements. If an urban service is to be provided within the boundaries of a Metropolitan Service District, a county shall notify the Metropolitan Service District in advance of the time for cities and special districts to meet for the purpose of negotiating an urban service agreement, and the Metropolitan Service District shall exercise its review, advisory and coordination functions under ORS 195.025.

(b) When negotiating for an urban service agreement, a county shall consult with recognized community planning organizations within the area affected by the urban service agreement.

(3) Decisions on a local government structure to be used to deliver an urban service under ORS 195.070 are not land use decisions under ORS 197.015.

(4) For purposes of ORS 195.020, 195.070, 195.075, 197.005 and this section, “urban services” means:

- (a) Sanitary sewers;
- (b) Water;
- (c) Fire protection;
- (d) Parks;
- (e) Open space;
- (f) Recreation; and
- (g) Streets, roads and mass transit.

(5) Whether the requirement of subsection (1) of this section is met by a single urban service agreement among multiple providers of a service, by a series of agreements with individual providers or by a combination of multiprovider and single-provider agreements shall be a matter of local discretion. [1993 c.804 §3]

195.070 Agreement factors. (1) The following factors shall be considered in establishing urban service agreements under ORS 195.065:

- (a) Financial, operational and managerial capacity to provide the service;
 - (b) The effect on the cost of the urban service to the users of the service, the quality and quantity of the service provided and the ability of urban service users to identify and contact service providers, and to determine their accountability, with ease;
 - (c) Physical factors related to the provision of the urban service;
 - (d) The feasibility of creating a new entity for the provision of the urban service;
 - (e) The elimination or avoidance of unnecessary duplication of facilities;
 - (f) Economic, demographic and sociological trends and projections relevant to the provision of the urban service;
 - (g) The allocation of charges among urban service users in a manner that reflects differences in the costs of providing services to the users;
 - (h) Matching the recipients of tax supported urban services with the payers of the tax;
 - (i) The equitable allocation of costs between new development and prior development;
- and
- (j) Economies of scale.

(2) The extent of consideration of the factors set forth in subsection (1) of this section is a matter of local government and special district discretion. [1993 c.804 §4]

195.075 Agreement provisions and considerations. (1) Urban service agreements entered into under ORS 195.065 shall provide for the continuation of an adequate level of urban services to the entire area that each provider serves. If an urban service agreement calls for significant reductions in the territory of a special service district, the urban service agreement

shall specify how the remaining portion of the district is to receive services in an affordable manner.

(2) Units of local government and special districts that enter into an urban service agreement shall consider the agreement's effect on the financial integrity and operational ability of each service provider and its protection of the solvency and commitments of affected service providers. When an urban service agreement provides for the elimination, consolidation or reduction in size of a service provider, the urban service agreement shall address:

- (a) The capital debt of the provider and short- and long-term finances;
- (b) Rates;
- (c) Employee compensation, benefits and job security; and
- (d) Equality of service. [1993 c.804 §5]

195.080 Application of comprehensive plans and land use regulations. Nothing in ORS 195.020, 195.060 to 195.085, 195.205 to 195.235, 197.005, 197.319, 197.320, 197.335 and 223.304 shall be construed to prevent planning for, installation of or connection to public facilities or services consistent with acknowledged comprehensive plans and land use regulations. [1993 c.804 §6]

195.085 Compliance deadlines. (1) No later than the first periodic review that begins after November 4, 1993, local governments and special districts shall demonstrate compliance with ORS 195.020 and 195.065.

(2) The Land Conservation and Development Commission may adjust the deadline for compliance under this section when cities and counties that are parties to an agreement under ORS 195.020 and 195.065 are scheduled for periodic review at different times.

(3) Local governments and special districts that are parties to an agreement in effect on November 4, 1993, which provides for the future provision of an urban service shall demonstrate compliance with ORS 195.065 no later than the date such agreement expires or the second periodic review that begins after November 4, 1993, whichever comes first. [1993 c.804 §§7,8]