



# Oregon

Kate Brown, 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](http://www.oregon.gov/LCD)

July 7, 2016

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director  
Sadie Carney, Rural Policy Analyst and Communications Manager  
Dan Eisenbeis, Urban Policy Analyst and Legislative Coordinator

SUBJECT: **Agenda Item 16, July 21-22, 2016, LCDC Meeting**

## **LCDC POLICY AGENDA UPDATE**

### **I. AGENDA ITEM SUMMARY**

This agenda item is intended for the Land Conservation and Development Commission (LCDC or commission) to consider and approve an updated policy agenda for the balance of the 2015-17 biennium. The commission approved an initial version of the policy agenda at the September 2016 LCDC meeting in Astoria, which has been used to guide the policy work of the Department of Land Conservation and Development (DLCD or department) over the last year. This updated version of the policy agenda reflects relevant legislation passed in the 2016 short legislative session, clarification on projects and policy development that have advanced in the interim, and minor, unintentional omissions initially excluded in the 2015-17 policy agenda approved in September 2015. The department recommends the commission consider any testimony of those present and willing to comment, and adopt an updated policy agenda at this meeting.

“Policy projects” for purposes of this report means efforts intended to cause new or amended land use policies, including but not limited to rulemaking or goal amendments. Policy projects also include: task forces and workgroups (convened by DLCD) to recommend or refine policy ideas; research projects carried out to inform future policy development; and development of agency legislative proposals for future biennia.

The policy agenda covers the 2015-2017 biennium, though the department has also included a small number of complex policy projects anticipated to extend beyond that time frame. These projects include a research phase that will precede rulemaking or actual policy development. Longer term projects and policy items are addressed in the [DLCD Strategic Plan](#).<sup>1</sup> Department proposals for the policy agenda are summarized in Section III of this report.

---

<sup>1</sup> Accepted version: [http://www.oregon.gov/LCD/docs/publications/StrategicPlan2014-22\\_Draft.pdf](http://www.oregon.gov/LCD/docs/publications/StrategicPlan2014-22_Draft.pdf)

This agenda item is a public hearing and the commission has the opportunity to receive input from the public about policy needs and priorities related to the land use program.

For additional information, please contact Sadie Carney, Rural Policy Analyst and Communications Manager at 503-934-0036 or [sadie.carney@state.or.us](mailto:sadie.carney@state.or.us); or Dan Eisenbeis, Urban Policy Analyst and Legislative Coordinator at 503-934-0020 or [dan.eisenbeis@state.or.us](mailto:dan.eisenbeis@state.or.us).

## **II. BACKGROUND**

Policy shifts and adjustments to the statewide planning program frequently come into focus in response to new legislation, recent court decisions interpreting the program, policy concerns that surface in the course of LCDC reviews of local comprehensive plans and periodic reviews, and a variety of other circumstances.

In accordance with state law, the commission and the department are charged with maintaining, improving and updating the state land use program through rulemaking, legislative proposals, and other actions. In this role, the commission periodically monitors and assesses the status of the land use program and responds to current land use planning issues based on input from the public, the department, the governor and the legislature. More specifically, under ORS 197.040 LCDC must:

- Adopt, amend and revise goals consistent with regional, county and city concerns;
- Adopt and amend policies that the commission considers necessary to carry out state land use laws;
- Prepare, collect, or provide land use inventories (or cause to be provided);
- Appoint advisory committees to aid the commission in carrying out ORS chapters 195, 196 and 197, and to provide technical and other assistance, as the commission considers necessary, to each such committee; and
- Review the land use planning responsibilities and authorities given to the state, regions, counties and cities, review the resources available to each level of government and make recommendations to the Legislative Assembly to improve the administration of the statewide land use program.

The approval of a policy agenda is not a mandatory exercise for the commission, but it does provide a way to fulfill the requirements in law described above. While the agenda is intended to help the commission and department identify, prioritize, schedule, and manage policy work, the commission's approval of a policy agenda does not bind the commission or department to pursuing every project on the agenda, nor does it prevent the pursuit of additional projects not here listed.

### **III. UPDATED POLICY AGENDA**

Consistent with DLCD’s Strategic Plan, the department recommends the commission update the policy agenda for the balance of the 2015-17 biennium. For all policy projects, mandatory or otherwise, this report provides a summary of project intent. The department is prepared to provide additional detail.

#### **A. Ongoing Projects from 2013-2015 Biennium**

The list below includes projects that are already underway or recently concluded from the 2013-15 policy agenda:

##### **1. Southern Oregon Pilot Project (SORPP)      *DLCD Strategic Plan Goal 1 Medium Effort, Staff and Commission***

This was included in the 2009-2011 and 2013-2015 policy agendas as a pilot project consistent with 2009 legislation (HB 2229). That legislation was based on recommendations from the Big Look Task Force to explore regional decision making.

*Status: Mostly complete*

- *Final products for SORPP will be presented by the participating counties to the commission at the September 22-23, 2016 commission meeting. Final products were received by DLCD on June 30, 2016, and do not include a request for rulemaking.*

##### **2. Review of Metropolitan Greenhouse Gas Emissions Targets      *DLCD Strategic Plan Goal 2 Complex Effort, Staff and Commission***

In 2011 the commission adopted rules setting greenhouse gas reduction targets for metropolitan areas. This project includes review of the targets as well as existing metropolitan transportation planning requirements to improve the regional transportation planning process and make it easier for metropolitan areas to meet state, regional, and local objectives. This project will include rulemaking.

*Status: In progress*

- *A “Metropolitan Area Transportation Planning” Rulemaking Advisory Committee (RAC) has been formed. The initial RAC meeting was held on May 26, 2016 and the second meeting was held on July 6, 2016. A public hearing for proposed rule changes is anticipated in November 2016, rule adoption is anticipated in January 2017.*

**3. Tsunami Resilience Planning**

*DLCD Strategic Plan Goal 2  
Complex Effort, Staff Only*

The department has been working with local governments along the coast to incorporate guidance from the publication “Preparing for a Cascadia Subduction Zone Tsunami: A Land Use Guide for Oregon Coastal Communities” into their plans. The department is providing technical assistance and financial resources where possible to assist local governments.

*Status: Ongoing*

- *The Oregon Coastal Management Program (OCMP) was successful in obtaining a grant from the National Oceanic and Atmospheric Administration (NOAA) for a coastal program “Project of Special Merit” for tsunami land use work with local governments along the Oregon coast. The OCMP is tentatively planning to work with Cannon Beach, Tillamook County (including a number of rural communities), Waldport Florence, Reedsport and Coos County (including Charleston/Barview). The department also has additional but limited NOAA 309 resources to do tsunami resilience work with several more communities to be selected in the near future. The resources will enable the department to accelerate its tsunami resilience efforts overall with local government partners. The anticipated projects will generally include two parts, (1) Department of Geology and Mineral Industries Beat the Wave modeling/mapping which is an important part of tsunami resilience planning, and (2) local tsunami land use resilience work utilizing the DLCD tsunami land use guide.*

**4. UGB Rulemaking (HB 2254)**

*DLCD Strategic Plan Goal 2  
Complex Effort, Staff and Commission*

Streamlining of the Urban Growth Boundary (UGB) expansion process was implemented through LCDC rules adopted in December, 2015. This rulemaking began in 2013 after the passage of HB 2254 and was very complex. The UGB RAC postponed work on developing a replacement for periodic review for jurisdictions that use the new, simplified UGB amendment process.

*Status: Mostly complete*

- *Rules for the simplified UGB method and rule amendments for the traditional UGB method adopted in December 2015; Rulemaking regarding periodic review replacement was initiated in May 2016. The initial RAC meeting was held on June 14, 2016, and the second meeting will be held on July 18, 2016. A public hearing for proposed rule changes and possible adoption is scheduled for September 2016.*

**5. Citizen Involvement and Land Use Program Outreach Improvements**

*DLCD Strategic Plan Goal 3  
Low Effort, Staff and Commission*

The commission's Citizen Involvement Advisory Committee (CIAC) has been tasked with recommending methods to further citizen involvement that do not cost local governments or that reduce costs for local government. Results of a committee designed survey sent to local government planners (Oregon cities and county) in regard to current Goal 1 practices in Oregon will be presented at the September 2016 LCDC/CIAC joint meeting.

*Status: Ongoing*  
[none]

**6. Goal 5 Rule Amendments related to the Endangered Species Act and the National Flood Insurance Program**

*DLCD Strategic Plan Goal 2  
Complex Effort, Staff and Commission*

The National Marine Fisheries Service issued a Biological Opinion to the Federal Emergency Management Agency (FEMA) on April 14, 2016 after a Section 7 consultation under the Endangered Species Act (ESA). The Biological Opinion determined that the National Flood Insurance Program (NFIP), administered by FEMA, results in the loss of habitat for ESA listed species through floodplain alterations and development. FEMA will need to revise the NFIP to ensure the objectives of the Reasonable and Prudent Alternatives (RPA) included in the Biological Opinion are met.

*Status: Not started. Recommend deferral until FEMA revises the NFIP requirements*

- *The rulemaking was proposed to facilitate local governments' compliance with any new requirements from FEMA. FEMA is in the process of conducting regional meetings with support from DLCD staff to develop a timeline and process for making the change to the NFIP. Staff expects that rulemaking will be appropriate; however, this work will not start until FEMA determines the new NFIP requirements.*

**7. Technical Amendments Concerning Road Alignments in Rural Areas**

*DLCD Strategic Plan Goal 1  
Low Effort, Staff and Commission*

In May 2015, the commission accepted the department's recommendation to amend the rural reserves rules to address an anomaly in the exceptions provisions for roads. The specific circumstance involves an extension for Arndt Road, where an exception has already been taken and approved, but the county would like to modify the location.

*Status: Complete*

- *This rulemaking was initiated in September 2015, and concluded with rule adoption in January 2016.*

**B. Policy Projects Required by the 2015 Legislature**

Rulemaking required to address statutory changes made by the 2015 Legislature is complete with the following exceptions:

- **SB 120** – Directs LCDC evaluate the transportation planning rules, and, if necessary, adopt or amend rules relating to transportation improvements.

*Status:*

- *Public hearing and rule adoption scheduled for July 2016. The department will also provide a report on implementation of SB 120 to the legislature in September 2016.*

- **HB 3222** – Modifies provisions authorizing LCDC enforcement order with regard to clear and objective standards required for needed housing within UGBs.

*Status:*

- *Staff proposes removal from the policy agenda. (Rulemaking is not necessary.)*

- **HB 2831** – Clarifies that a property line adjustment may not be used to increase parcel sizes for M49 parcels in resource zones.

*Status:*

- *Staff proposes removal from the policy agenda. (Rulemaking is not necessary.)*

**C. New Policy Projects Required by the 2016 Legislature**

Rulemaking is required to address statutory changes made by the following legislation enacted in 2016:

- **Housing**

- **HB 4079** – Directs LCDC to adopt rules on or before July 1, 2017 for a pilot UGB expansion process for affordable housing. The bill also directs LCDC to select two pilot projects, one from a city with a population of 25,000 or less and one from a city with a population over 25,000, from nominations made by local governments. The commission initiated rulemaking in May 2016. *Complex Effort, Rulemaking*

**D. New Policy Projects Proposed by the Department**

**1. Goal 5 Historic Resource Protection**

*DLCD Strategic Plan Goal 2  
Medium, Staff and Commission*

The purposes of the proposed amendments are to (1) achieve a well-articulated base level of protection for historic resources listed in the National Register of Historic Places (National Register) that can be applied directly without the need to amend local codes; (2) clarify the

circumstances under which the owner consent provisions in ORS 197.772(1) apply to resources listed in the National Register; (3) better explain how the standard Goal 5 process described in OAR 660-023-0030 through 0050 is augmented by the Secretary of the Interior’s Standards and Guidelines for Archeology and Historic Preservation, published by the National Park Service; and (4) clarify who has standing under the owner consent provisions of ORS 197.772(2) and highlight an alternate path for removing a local historic designation.

See staff report for Agenda Item 11, July 21-22, 2016 LCDC meeting.

**E. Department Policy Projects**

**2. Non-Resource Lands Rulemaking**

*DLCD Strategic Plan Goal 1  
Complex, Research and Rulemaking*

Develop a “non-resource lands” policy that is integrated with resource lands protection strategies, including consideration of carrying capacity, environmental and habitat protection, infrastructure requirements and availability and other factors. [Note: “Non-resource lands” are those rural lands that are not suitable for production of farm or forest products due to the physical properties of the land, e.g., poor quality soils.] There are currently no standards to guide counties in identifying and zoning non-resource lands.

*Status: Ongoing*

- *Staff has begun a series of information gathering efforts with State agencies, county planners, and stakeholder groups. See also [May 19, 2016, Staff Report](#)<sup>2</sup> (Agenda Item 6). [Note: this policy item will extend beyond the 2015-2017 biennium]*

**3. Farmland Protection Improvements**

*DLCD Strategic Plan Goal 2  
Complex, Research and Rulemaking*

This effort consists of three related projects:

1. Minor and technical changes to EFU rules: These proposed changes are intended to provide technical clarifications, delete out-of-date references and make several other minor and technical amendments.
2. Research and Forum: Because many farmland protection improvements are related or overlapping, staff believes the best approach would be to begin with research, follow with a forum of stakeholders, and end with proposed rule amendments. A forum will assist staff in identifying new opportunities and issues of concern, and allow for presentation of an integrated package of proposed changes to the commission at its conclusion.
3. Possible Rulemaking/Program Development: Following conclusion of department research and a hosted forum, rulemaking or other program development would

---

<sup>2</sup> [https://www.oregon.gov/LCD/docs/meetings/lcdc/052016/Item\\_6\\_Nonresource\\_Land\\_Report.pdf](https://www.oregon.gov/LCD/docs/meetings/lcdc/052016/Item_6_Nonresource_Land_Report.pdf)

respond to the knowledge gained through forum participation and stakeholder identified issues.

*Status: Ongoing*

- *Minor and technical rule amendments were made in January and March 2016.*
- *Development of a work plan to support the research portion of this effort is currently underway. [Note: this policy item will extend beyond the 2015-2017 biennium]*

**4. Forest Property Line Adjustment Fix**

*DLCD Strategic Plan Goal X*

*Low Effort, Research, Rulemaking*

Implement a standard that prevents serial property line adjustments (PLAs) from qualifying parcels for template dwellings that would otherwise not qualify for this use. Staff has become aware of proposed serial PLAs in forest zones on the coast that would “walk” existing, non-qualifying forest parcels to a location close enough to pre-1993 parcelization and dwellings so as to qualify the parcels for template dwellings. This use of PLAs would create development rights where none now exist. The potential adverse impacts of such use of the PLA process could be quite significant, particularly among current and former commercial forest land holdings. In addition to the potential loss of productive forest land, this use of PLAs could result in lot sizes well below ten acre and could jeopardize big game habitat protections. Staff proposes to research the potential for a rulemaking fix or, if necessary, a legislative fix and has identified this as an urgent issue of concern; Division 6.

*Status:*

- *The department, as approved by the commission in March 2016, is proposing a legislative concept to address this issue in the 2017 legislative session. Accordingly, this policy item should be removed from the 2015-2017 Policy Agenda.*

**V. RECOMMENDATION**

The department recommends the commission receive any public testimony, provide input, and adopt the changes to the policy agenda outlined in Section III of this report, as follows:

1. Additions:
  - a. HB 4079 Rulemaking
  - b. Goal 5 Historic Resource Protection
2. Deletions:
  - a. HB 3222 – no rulemaking required
  - b. HB 2831 – no rulemaking required
  - c. Forest Property Line Adjustments (will be pursued as legislation)

**VI. ATTACHMENTS**

A. Staffing and Scheduling Matrix

B. DLCD Strategic Plan:

[http://www.oregon.gov/LCD/docs/publications/StrategicPlan2014-22\\_Draft.pdf](http://www.oregon.gov/LCD/docs/publications/StrategicPlan2014-22_Draft.pdf)

C. DLCD Mission, Principles and Goals:

[http://www.oregon.gov/LCD/pages/about\\_us.aspx](http://www.oregon.gov/LCD/pages/about_us.aspx)

Staffing and Scheduling Matrix – 2015-17 Updated Policy Agenda

Ongoing Projects from the 2013-15 Biennium				2016						2017					
				Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
<b>Southern Oregon Regional Pilot Project</b>	<u>Sadie Carney</u> , Josh LeBombard, Rob Hallyburton, Katherine Daniels/Tim Murphy, Amanda Punton	Mostly complete	Medium			■									
<b>Metropolitan Area Transportation Planning</b>	<u>Dan Eisenbeis</u> , Matt Crall Bill Holmstrom, Cody Meyer	RAC Convened	Complex					◆				★			
<b>Tsunami Resilience Planning</b>	<u>Matt Spangler</u> , Laren Wooley, Dave Perry	Ongoing	Medium												
<b>UGB Rulemaking</b>	<u>Bob Rindy</u> , Carrie MacLaren, Rob Hallyburton, Matt Spangler, Gordon Howard, Robert Mansolillo, Tom Hogue	Rules Adopted Dec 2015	Complex			★									
<b>Citizen Involvement and Land Use Program Outreach Improvements</b>	<u>Sadie Carney</u>	Ongoing	Low												
<b>Goal 5 Rule Amendments related to ESA and NFIP</b>	<u>Sadie Carney</u> , Amanda Punton, Chris Shirley, Matt Crall	Rulemaking – Scoping	Complex												?
<b>Technical Rule Amendments Concerning Road Alignments in Rural Areas</b>	<u>Dan Eisenbeis</u> , Carrie MacLaren, Bill Holmstrom	Rules Adopted Jan 2016	Low												
<b>Sage Grouse Baseline Disturbance Rules</b>	<u>Jon Jinings</u>	Rules Adopted Jan 2016	Medium	■											■

Required by Legislation

2015															
<b>HB 2457 – UGB Parcel Straddle</b>	<u>Sadie Carney</u> , Katherine Daniels	Rules Adopted March 2016	Low												
<b>HB 3282 – Periodic Review</b>	<u>Rob Hallyburton</u>	Rules Adopted Jan 2016	Low												
<del>HB 3222 – LCDL Enforcement Order for housing</del>															
<b>HB 3214 – Rezoning of residential exception areas</b>	<u>Rob Hallyburton</u> , Katherine Daniels, Jon Jinings	Rules Adopted Jan 2016	Low												
<b>SB 120 – Evaluation of TPR</b>	<u>Dan Eisenbeis</u> , Bill Holmstrom, Matt Crall	RAC Convened	Medium							★					
<del>HB 2831 – M49 parcel property line adjustment</del>															
<b>HB 3400 – Rules related to marijuana</b>	<u>Sadie Carney</u> , Katherine Daniels	Rules Adopted Jan 2016	Low												
2016															
<b>*HB 4079 – UGB expansion for housing: pilot project</b>	<u>Dan Eisenbeis</u> , Gordon Howard, Evan Manvel	RAC Convened	Complex									◆		★	■

New Policy Projects Proposed by the Department

<b>*Goal 5 Historic Resource Protection</b>	<u>Rob Hallyburton</u> , Amanda Punton	Rulemaking	Medium	◆											★
---	--	------------	--------	---	--	--	--	--	--	--	--	--	--	--	---

Department Policy Projects

<b>Non-Resource Lands</b>	<u>Sadie Carney</u> , Jon Jinings, Tim Murphy, Robert Mansolillo	Ongoing	Complex												
<b>Farmland Protection Improvements</b>	<u>Sadie Carney</u> , Tim Murphy, Rob Hallyburton, Robert Mansolillo	Ongoing	Complex												
<b>Forest Property Line Adjustment Fix</b>	<u>Sadie Carney</u> , Tim Murphy	2017 Leg.	Medium												

\*New Projects (proposed)

Deleted Projects (proposed)

◆ Initiate Rulemaking    
 ◆ Public Hearing    
 ★ Adoption    
 ■ Status/Informational Briefing  
 Low    
 Medium    
 Complex