



Oregon

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September 11, 2013

TO: Land Conservation and Development Commission

FROM: Bob Rindy, Senior Policy Analyst

SUBJECT: **Agenda Item 13, September 26-27, 2013, LCDC Meeting**

LCDC POLICY AGENDA

I. SUMMARY

This item is intended for the Land Conservation and Development Commission (commission) to consider and approve a policy agenda for the 2013-15 biennium and for the longer term. This is LCDC's second hearing on the policy agenda; the commission began this discussion at its July 26, 2013, meeting based on a report by the Department of Land Conservation and Development (department). The department has proposed both a near-term and a long-term policy agenda (See Attachments A and B). The department is recommending that the commission approve the near-term policy agenda at this (the September 27, 2013) meeting, and continue its consideration of the long-term policy agenda until the November 14-15, 2013 meeting.

The department has invited public and stakeholder groups to participate in this discussion and to submit comments and suggestions for the policy agenda. An invitation to participate was emailed August 2, along with the July report, to individuals, organizations and local governments, and the report was posted on the department's web site with an invitation to comment. This item includes a public hearing. In addition to comments received by the department, the commission should expect to receive additional input from the public at the meeting. Comments that were received by the mailing date of this report are provided in Attachment C.

Previously, LCDC policy agendas have established policy priorities for the new biennium only. For the first time, the department is recommending that this policy agenda establish long-term policy priorities critical to the success of the Oregon land use program, in addition to near-term (this biennium) policy project priorities. A revised draft of the department's proposed long-term policy agenda is Attachment B to this report. The department is recommending that the commission receive testimony and discuss the proposed long-term policy agenda at this meeting, but postpone its adoption until the November LCDC meeting in order to provide the department time to address input by the commission and other interests. The department is recommending that the commission adopt the near-term policy agenda at this (the September 26-27 meeting) so that the department can begin critical and required policy projects. The commission may consider amendments in November if necessary based on its final long-term agenda.

The department's recommended near-term (2013-15 biennium) policy agenda is described below (in Section IV of this report), and is also summarized in Attachment A. The proposed near-term policy agenda includes: (1) projects already underway from last biennium, (2) new policy projects required as a result of the 2013 legislative session, and (3) several proposed new policy projects that, while not required by law, should be pursued this biennium if department resources are sufficient. Discussion in the meeting will probably focus primarily on this third category.

For additional information about this report, please contact Bob Rindy at 503-373-0050 ext 229, email at bob.rindy@state.or.us.

II. DEPARTMENT RECOMMENDATION

The department recommends that the commission receive public testimony and approve the proposed near-term (for the 2013-2015 biennium) policy agenda described in this report and summarized in Attachment A. The department recommends that the commission continue its discussion of long-term policy agenda, including goals, strategies and policy projects (Attachment B), to the November 14-15, 2013 meeting.

III. OVERVIEW

“Policy projects” are agency projects intended to result in new or amended statewide land use program policies. Policy projects include rulemaking or goal amendment proposals, workgroups established to propose or refine policy ideas, research projects to gather or process information to inform policy development, efforts to develop DLCD legislative proposals, and other special projects that are expected to establish new land use policy.

The commission began approving biennial policy agendas in 1993 and has continued that practice ever since. The statewide planning program faces a changing array of policy challenges and concerns that tend to come into focus at the start of each biennium, often in response to new legislation, but also due to recent court decisions interpreting the program, issues that have surfaced in the course of LCDC reviews of local comprehensive plans and periodic reviews, and in response to an array of other circumstances and events that affect the land use program.

Under state law the commission and the department are charged with maintaining, improving and updating the state's land use planning program, reviewing statewide goals and rules and considering other policy actions such as those required by legislative proposals. In that role, the commission periodically assesses the functioning of the land use program and responds to issues and concerns based on recommendations from the public, the department, the governor and the legislature. Under state law at ORS 197.040, LCDC is required to:

- Adopt, amend and revise statewide planning 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;

- Appoint advisory committees to aid the commission in carrying out ORS chapters 195, 196 and 197, and to provide technical and other assistance to such committees; 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 an LCDC Policy Agenda is not mandatory for the commission. While the agenda helps the commission and the department frame its priorities and identify, schedule, and manage policy tasks, the commission's approval of a policy agenda does not necessarily bind the commission or the department to pursuing all the projects on the agenda, nor does it prevent the pursuit of additional projects that are not included in the agenda. The intent of the agenda is to provide a road map for the commission and staff regarding near- and long-term program goals and objectives, and to identify projects and activities necessary to achieve these. It also informs the public and stakeholders about policy work that is scheduled or underway and work that will be pursued during the biennium. The commission typically revisits and updates its policy agenda halfway through the biennium.

When considering its policy agenda, and as it carries out projects on the agenda, the commission follows its Citizen Involvement Guidelines for Policy Development. The commission also invites comments and recommendations from local governments and other stakeholders. In recommending a policy agenda, the department considers the agency's budget and staff levels, its ongoing core responsibilities, and other needs and available resources.

The department is recommending that the commission approve an overall policy agenda consisting of both: (1) a list of near-term policy and rule-making activities described (below) in this section and summarized in Attachment A and (2) a set of long-term goals and objectives for improvements to the land use program and some specific long-term projects to carry out those objectives, as described in Attachment B to this report. The department believes it is essential to put the near term policy agenda in place as soon as possible, due to the need to begin work now on several mandated policy tasks.

The department recommends that the proposed long-term objectives and strategies need additional discussion and as such, the department is recommending that the long-term proposal not be approved in final form until the commission's November 14-15, 2013 meeting. The near-term policy agenda should be informed by and consistent with the draft long-term agenda, and as such, when the long-term agenda is approved, it is possible the near-term agenda may need adjustment.

IV. RECOMMENDED NEAR-TERM (2013-2015) POLICY AGENDA

This section summarizes the department's proposed near-term policy agenda. The department has organized its recommended list of near-term policy projects under three categories: (A) Ongoing projects from the previous biennium, (B) Required projects from the legislature, and (C) Additional recommended projects. The intent of each policy project is summarized. At the

end of the list of additional projects, this report also indicates projects that, after consideration, are not recommended for the near-term, but should be considered in the long term.

Note: to help align this near-term proposal with the draft long-term agenda proposal described in Attachment B, that attachment also includes a list of the recommended near-term projects as those listed below, but organized in a different manner, under the broad “program areas” recommended for the long-term policy agenda.

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Proposed 2013-2015 Policy Agenda

A. Ongoing Policy Projects Underway from 2011-2013 Biennium

Policy projects listed below were initiated in the previous (2011-2013) biennium and are still underway – the department recommends that these projects be continued this biennium:

- 1. Provide for Electronic Submission of Post-acknowledgement Plan Amendments (PAPAs):** In 2011, while adopting new rules to implement 2011 legislation intended to speed up the PAPA process, LCDC instructed the department to consider methods that would authorize electronic submission of local government notices of proposed and adopted plan amendments. The department took steps to provide this capability, and in April of this year it began the process of adopting rules to authorize such electronic submission. Final adoption of these rules is scheduled at LCDC’s September meeting.
- 2. Determine how ODOT’s Statewide Transportation Strategy for reducing Greenhouse Gas Emissions relates to the Statewide Planning Program:** The 2009 Legislature enacted legislation (HB 2001) directing state agencies to take a series of actions to help meet the state’s greenhouse gas (GHG) reduction goals. In 2011 LCDC adopted rules setting GHG reduction targets for the state’s metropolitan areas and in 2012 LCDC adopted rules to guide Metro in adopting a preferred “land use and transportation scenario” to meet its GHG reduction target. HB 2001 also directed the Oregon Transportation Commission (OTC) to adopt a Statewide Transportation Strategy (STS) that outlines how the state can meet state GHG reduction goals for the transportation sector. The OTC “endorsed” a draft strategy in spring 2013, and is now working on an “implementation plan” that will identify more specific actions. The STS includes a number of land use strategies and actions – including reduced UGB expansions, an increase in compact development, significant increases in transit service in metropolitan areas and significant increases in walking and cycling for short trips. While the land use planning program is generally supportive of these outcomes, it is likely that new or additional efforts would be needed to achieve the changes called for in the STS. ODOT staff has indicated that they will be reaching out to affected agencies (including DLCD) to engage in dialogue about this work. In the past, OTC and LCDC have convened a joint subcommittee to conduct such discussions. That approach may be useful here.
- 3. Potential Sage Grouse Listing Under the Federal Endangered Species Act (ESA):** In early 2012, the Oregon Sage Grouse Conservation Partnership (SageCon) was convened by

the Governor's Office, the Federal Bureau of Land Management (BLM) and the U.S. Natural Resources Conservation Service (NRCS). This effort was intended to ensure interagency and stakeholder coordination on issues related to sage grouse habitat conservation. The group consists of both state and federal teams, and the state team has been directed to begin work on an "All Lands, All Threats" plan for nonfederal lands to complement efforts already being conducted by the federal agencies. Four workgroups have been established to assist Oregon's efforts, including a Fire and Invasives team, a Habitat Fragmentation team, and a Mitigation and a Technical Team. Each group includes one or more core state agencies and is led by a member of the Governor's Staff. The state's goal is to demonstrate that listing the sage grouse as a threatened or endangered species under the Endangered Species Act (ESA) is not necessary because other methods determined by the team will accomplish the same goals as a listing.

- 4. Southern Oregon Pilot Project:** This was included in the 2009-2011 policy agenda 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. The project anticipated that a single county would reanalyze farm and forestland designations under current statewide planning goals, after rulemaking by the department and commission. The department began preliminary work on this project in the spring of 2011, but suspended work on it in response to (unsuccessful) 2011 legislation on similar topics focused on Southern Oregon counties. A subsequent Executive Order 12-07, supported by a legislatively approved funding package, transitioned this project into the Southern Oregon Regional Pilot Project focusing on Jackson, Josephine and Douglas counties. Work began in earnest on this project in December of 2012, and is expected to produce a petition for rulemaking to LCDC in the winter of 2014.
- 5. Oregon Natural Hazards Mitigation Plan Update:** Agency staff is working on many fronts to help Oregon communities become more resilient in the face of a range of natural hazards from coastal erosion and tsunamis to earthquakes, flooding, and drought. The Oregon Natural Hazards Mitigation Plan (NHMP, Plan) assesses risks from eleven hazards statewide, sets goals and establishes actions for mitigating risk and protecting people, property, and natural resources. The updated Plan will include an introduction to climate change and a discussion of how climate change is expected to impact each hazard. While DLCD has long been a principal participant in the statewide natural hazards mitigation program, this biennium marks the first time the Department has taken on the role of coordinator for the Oregon NHMP update. The update began in March 2013 and will be completed in February 2015.
- 6. Endangered Species Act (ESA) Consultation Concerning Floodplains:** Floodplain management and habitat protection is the central issue in the ongoing "ESA section 7 consultation" between the Federal Emergency Management Agency (FEMA) and the National Marine Fisheries Service (NMFS) regarding the National Flood Insurance Program (NFIP). One outcome of this process that seems increasingly likely would be a requirement that NFIP jurisdictions in Oregon (many cities and counties) incorporate salmon habitat protection measures into their floodplain permit review criteria. If so, the department may

propose changes to the Goal 5 implementing rules (OAR 660, div. 23) to synchronize state planning requirements with habitat protection measures required under the ESA.

- 7. Renewable Energy Planning for the Oregon Ocean Stewardship Area:** The department is working with state and federal agencies and stakeholders to identify a geographic location description of an area within the Oregon Ocean Stewardship Area where federal consistency requirements will apply to renewable energy proposals.
- 8. Oregon Estuary Planning:** The department is in the midst of a major update of the estuary portion of the statewide planning program. Several projects are under way currently that will feed into future updates of estuary plans on the coast. Current projects include the Estuary Project of Special Merit, which will update estuary inventory information available to local governments and the public. The department also has completed a contract to begin an estuary trends assessment. Finally, the department is conducting an internal regulatory assessment to determine what types of streamlining or other improvements may be needed in the regulatory framework with regard to estuaries.

B. New Policy Projects Required by the 2013 Legislature

The following policy projects are a direct result of legislation enacted in the 2013 session or legislatively adopted budget notes requiring specific DLCDC action:

- 1. Local “Legislative Plan Amendments” Budget Note:** As a result of a legislative proposal by the Central Oregon Cities Organization (COCO), which did not pass, a “budget note” was adopted by the 2013 legislature requiring the department to convene stakeholders to consider process improvements concerning “legislative amendments” to local land use plans and ordinances, and to report back to the 2015 legislature.¹ The proposed legislation had sought to establish the doctrine of “raise it or waive it” with regard to local “legislative” plan amendments. Current law for quasi-judicial proceedings incorporates this doctrine but providing the same procedure for legislative amendments is controversial; the budget note did not mention this doctrine, but this and other issues from the legislative discussion may come up. The outcome of this project is a report to the legislature, but it may include recommendations for LCDC.
- 2. UGB Rulemaking (HB 2254):** This new law passed by the 2013 legislature is intended to simplify the UGB process and is to be implemented through LCDC rules adopted within the next 18 months.² This rulemaking will be very complex. The commission must design new UGB methods for small and for large cities, and the new methods must meet certain performance standards in the law intended to provide for an adequate supply of land for development over a 14-year period, and to ensure that growth is efficient and that the rate of

¹ The department is seeking clarification as to whether this budget note was actually enacted by the full legislature or only by a ways and means subcommittee. This question was not resolved prior to mail out of this report.

² HB 2254 requires LCDC to adopt rules to implement the legislation by January 1, 2016. However, in discussions by the UGAC and subsequent committee hearings at the 2013 legislature, it was well understood that the commissions should attempt to adopt these implementing rules by January 1, 2015.

conversion of farm and forest lands does not increase in major regions of the state. The rules must require cities to have at least seven years of serviceable lands within the UGB (rather than the current 20-year supply of land that is not necessarily serviceable), and that all lands added to the UGB under the new methods are suitable for urbanization. The rules also must require cities to plan and zone lands to meet requirements for needed housing, and to avoid significant adverse effects on key transportation facilities. This rulemaking will require a rule advisory committee (RAC) and the department is recommending appointment of that committee at this (the September) LCDC meeting (see LCDC Agenda Item 9).

- 3. Population Forecasting Rulemaking (HB 2253):** This legislation places the responsibility for population forecasting with the Population Forecasting Center at Portland State University (PSU) rather than with counties. The law will require new rules for implementation, both by DLCD and PSU. The law provides that the university must adopt rules “in consultation with the department” to carry out this program. The legislation also requires LCDC, in consultation with PSU, to adopt rules to implement the population forecasting program and to regulate the “transition” from population forecasts produced by counties under statutes in effect immediately before the bill to population forecasts produced by PSU under the new legislation.” PSU is already considering new rules, in coordination with the department. The department is proposing to initiate the LCDC rulemaking after PSU has completed its rulemaking. PSU rules will regulate the process for forecasting, while LCDC rules will clarify the applicability, and the “phasing in” of new PSU forecasts.
- 4. Rulemaking to Authorize Youth Camps on Farmland (HB 3098):** A bill enacted in the 2013 session authorizes youth camps in EFU zones, and requires LCDC to adopt rules to provide for this use. The LCDC rules must be based on current rules authorizing youth camps in forest zones, although it is not clear at this point whether all the elements of those rules may be simply translated into new rules for farmland. HB 3098 was proposed in response to a request for expansion of the Younglife facilities in Jefferson and Wasco Counties, although the initial bill was adjusted considerably during legislative consideration.
- 5. Housekeeping: Align Farm and Forest Rules with New Legislation:** Several existing rules for farm and forest land must be updated to conform to new legislation, The department suggests combining this rulemaking into a single project to address recent statute changes, including: HB 2393 – small-scale poultry processing; HB 2441 – agricultural buildings in forest zones; HB 2704 – transmission line review criteria; HB 2746 – EFU replacement dwellings; HB 3125 – forest land divisions.

C. New Policy Projects Recommended by the Department

In addition to the projects described in subsections A and B of this section, the department has considered several other policy issues and concerns. The department recommends that the following policy projects should be considered for the coming biennium, provided sufficient staff and other resources are available. The projects listed below are not numbered to suggest any particular priority.

- 1. State Agency Coordination (SAC):** Under ORS 197.040(2)(e), LCDC must “*Coordinate planning efforts of state agencies to assure compliance with goals and compatibility with city and county comprehensive plans.*” Statutes require that state agencies carry out programs affecting land use consistent with statewide goals and in a manner compatible with acknowledged local comprehensive plans. The department last updated state agency coordination administrative rules, in 1989. Most SAC agreements for agencies that conduct programs that concern land use were approved by the commission around 1990 and have not been updated since. The department proposed successful legislation in 2009 which modified statutes related to SAC. That legislation provided that DLCD “should” update SAC processes and revise related rules (OAR 660, divisions 30, 31). However, the department’s approved budget did not include funding for this project and therefore it has not been pursued. The work to update rules (OAR 660, divisions 30 and 31) may involve changes to standards for amending such agreements, and will require considerable updating of rules in division 31, which concerns applicability of land use goals during state permit review. Several state agencies are considering updates to their state agency coordination agreements. Work on particular agency agreements will require staff and other resources for each agency and for the department. The department proposes that this project begin by working with those agencies that wish to pursue updates to their SAC programs, and that rulemaking be initiated later based on lessons learned in these updates. (Some “housekeeping” rulemaking could be pursued earlier if necessary to align the rules with the 2009 statute amendments).
- 2. Keeping Plans Up To Date:** Over the past decade a series of legislative measures have substantially narrowed the scope of periodic review by exempting small cities (less than 10,000 pop.), and all counties, from the requirement to periodically review local land use plans. As a result, many (20-year) local land use plans have not been updated since acknowledgement in the early- to mid-1980s. With diminished funding, and ultimately with the phasing out of periodic review, new strategies are needed to ensure plans are updated and remain in compliance with statewide goals. Either as part of the effort to adopt new UGB rules or as a stand-alone project, the commission should convene a forum this biennium to consider ideas and recommendations for ensuring land use plans are maintained and updated. Related to this, many LCDC rules and statutes name periodic review as the “trigger” to implement particular requirements. As a result of the narrowed scope of periodic review, many of these land use policies have not been implemented and therefore have no effect. It is noted that HB 2254 provides that cities using the new UGB methods are not required to go through periodic review, but that law requires LCDC to “...by rule, specify alternate means to ensure that the comprehensive plan and land use regulations of [a city that uses the new method] comply with the statewide land use planning goals and are updated over time to reflect changing conditions and needs.”
- 3. Citizen Involvement and Engagement:** The commission’s Citizen Involvement Advisory Committee (CIAC) was tasked by LCDC with recommending methods to further citizen involvement that do not impose new costs on local governments or (if possible) that reduce costs for local governments. The CIAC has begun this discussion and will be working on this in the 2013-2015 biennium. It is possible that some of these recommendations will consist of

new policies that LCDC may wish to implement, and as such this recommendation is provided here as a place-holder.

- 4. Industrial Land Planning (Goal 9):** Economic development planning received considerable attention in the 2013 legislature, in part as a result of a legislative proposal by DLCD (which did not pass). The department recommends that the commission continue to address concerns about industrial sites and economic development, both for urban and rural areas of the state. This should begin as a Forum and a scoping task. This project will likely take more than one biennium.
- For the 2013-2015 biennium, the department recommends this project begin with a workgroup to consider direction and clarity for Goal 9 planning by jurisdictions within the Metro UGB. The recent Metro UGB and Metro urban reserve decisions by LCDC demonstrated that there is not clarity as to how Goal 9 and “employment needs” should be considered and provided for within the Metro area since Goal 9 does not apply to Metro, but does apply to cities within the Metro UGB, and since Metro is required under Goal 14 to provide adequate land for long term employment needs. This workgroup could recommend rulemaking.³
 - For the longer term, the department recommends a study of the availability of developable industrial sites throughout the state, and a determination of ways to ensure adequate development-ready sites are being provided in both large and small cities.⁴ This project could begin in the 2013-2014 biennium if department resources are available.
 - Also for the long term, the department recommends that the Forum continue to explore ideas toward a faster land use process for the so-called “Big Fish” employment opportunities. The legislation developed for the 2013 session failed to achieve a consensus on this concept, but many ideas from that discussion merit further review.
- 5. Transportation Planning Rules (TPR) Adjustments:** Two minor adjustments to OAR 660, div. 12, the transportation planning rules, should be considered in the near-term:
- Amend the TPR to exempt Milton-Freewater from transportation planning rule requirements pertaining to metropolitan areas. The rules currently require newly designated Metropolitan Planning Organization (MPO) areas to develop “regional TSPs” that meet the TPR, within 3 years of designation. This year three new metropolitan areas will be designated: Albany, Grants Pass and Milton-Freewater. Per federal rules, Milton-Freewater would be part of the state of Washington’s Walla-Walla metropolitan area. A similar situation arose in 1991 because Rainier is part of Washington’s Longview-Kelso metropolitan area. LCDC addressed this by excluding Rainier from the definition of a “metropolitan area” in those rules. A logical extension of this approach is to exempt Milton-Freewater as well. (Milton-Freewater is roughly 7000 population, Rainier was 2000).

³ Note: when LCDC completed major amendments to the Goal 9 rules in 2005, they agreed that a “second phase” Goal 9 rulemaking should be undertaken “later” to resolve issues concerning application of Goal 9 in Metro area cities. To date, this project has not been initiated.

⁴ Several policy ideas regarding “employment land” in UGBs were proposed by the Governor’s Urban Growth Advisory Committee (UGAC) in 2012. Some of these were presented in a separate piece of legislation, HB 2255, which did not pass, and some were incorporated into HB 2254 as part of the new streamlined UGB process.

- Change TPR references to MPOs for local governments in metropolitan areas: In 2006, the Commission amended the TPR to clarify requirements for planning in metropolitan areas. A new rule was added to clarify how federally required planning should be done by MPOs, related to TPR required planning done by cities and counties. These changes recognized that the TPR doesn't directly regulate MPOs (because they don't make land use decisions). The 2006 amendments called for but did not make corresponding amendments to certain rules in the TPR. As such, the rules currently include outdated references to "MPOs" that need to be corrected for consistency.
6. **Urban Service Agreements:** Legislation considered in the 2013 session (HB 3124) would have required urban service agreements between special districts and cities by a date-certain. The bill did not pass, but as a result of legislative discussions the department suggested reconvening the ad-hoc workgroup that was considering this issue just prior to the session (the department sponsored a discussion of this issue in a subcommittee of the UGAC last December). While state law requires urban services agreements for certain jurisdictions, this requirement is implemented through periodic review and compliance has been very spotty, especially as periodic review has been considerably reduced in scope over the last decade. The department's UGB legislation (HB 2254) requires such service agreements for cities over 10,000 that opt to use the new UGB process, but special districts are urging such agreements for possibly other cities, possibly a large number, that do not choose to use the new process. The interests participating in this December 2012 discussion generally agreed that they had made considerable progress in identifying issues and beginning to work on ideas to resolve them. The department recommends reconvening this committee and attempting to reach consensus on new legislation for the 2015 legislative session.
 7. **Metro Area Annexation Issues:** Metro has made a concerted attempt to follow streams and other natural features in establishing its UGB and urban reserve boundaries. However, that has resulted in some properties with portions inside the boundary and portions outside. Land outside UGBs cannot be easily divided from the urban portions, primarily due to minimum lot size requirements in laws to protect farm and forest land. An unintended consequence of this is that the "urban" portions of lands that straddle the UGB or Reserve boundaries are difficult to annex and develop, since such annexations typically should not include the rural portions of the property, and because the portion of the property outside the UGB may be smaller than the required minimum lot size for farm (or forest) land. Under this proposed policy project, the department will explore first whether this can be resolved by new or amended administrative rules (such as rules for goal exceptions or minimum lot sizes). If rule solutions are not possible, this project will propose new legislation, which either the department or Metro area governments would prepare for the 2015 legislature.
 8. **Farmland Protection.** There is a growing need to clarify agri-tourism related rules on farmland. The department recommends the commission consider both long term and near term projects to resolve these issues. For the near-term, the department recommends an administrative rule change to align LCDC rules with recent statutes (SB 960). This would involve adding a cross-reference in division 33 to the agri-tourism standards at ORS 215.213(11) and 215.283(4) for any of the following uses that would involve agri-tourism:

commercial activities in conjunction with farm use, private parks, home occupations and farm stands. This change is needed because applicants are currently circumventing the statutory standards intended to apply to agri-tourism by applying for other uses that lack clear definitions but are being interpreted by counties to allow agri-tourism.

- 9. Wildlife Standard for Solar Projects:** In February 2013, the Co-Chairs of the 2012 House Interim Committee on Energy, Environment and Water sent a letter to the LCDC chair requesting that the commission “undertake a rulemaking to amend the current wildlife standard that applies to the siting of solar projects on farmland.” The letter included an attachment with specific wording recommended by a workgroup appointed by the interim committee. The department recommends that the commission convene a workgroup to consider this proposal and make recommendations regarding amendments to administrative rules on this topic (OAR-660-033-0130(38)(h)).
- 10. Measure 49 Transferred Development Rights (TDRs):** Approximately 4950 new Measure 49 (M49) dwellings are authorized on EFU and Forest land. Some (or many) of these potential dwelling rights could be “transferred” to other lands if a functioning TDR program was established for M49 properties. Currently there is no such program, although M49 itself provides authorization for such a program. The department is recommending that an advisory committee be convened to consider administrative rules to define and clarify how counties can authorize transfer of development rights (TDR) programs for Measure 49 properties.
- 11. Metolius Transfer of Development Opportunities (TDO’s):** A bill in the 2013 legislature (HB 3536) was proposed to authorize significant new resort development at the existing Aspen Lakes golf course in Deschutes County but did not pass. This bill, in part, proposed using previously authorized Metolius “transferred development opportunities” (TDO’s) created through legislation in 2009 that protected the Metolius River. As a result of discussions with legislators and the Governor’s office, the department agreed to sponsor a stakeholder work group in the interim which would evaluate options to use the TDO’s on the Cyrus family property at Aspen Lakes. Ultimately these TDO’s may be exercised somewhere in the region, if not necessarily on this property. If this project results in reasonable proposals that have a consensus, implementation will probably require new legislation for the 2015 legislative session.
- 12. Ocean Shoreline Protection:** Work with Oregon Parks and Recreation Department by jointly sponsoring a Coastal Fellow to conduct a preliminary analysis of the location of shoreline protection structures and the spatial distribution of properties that are eligible or ineligible for future armoring. This analysis will enable a comprehensive overview of locations where balancing competing uses will be especially challenging in coming years, and be used to inform future policy making.

VI. OTHER PROJECTS CONSIDERED

The department considered several other proposals for policy projects this biennium, but declined to recommend these for the near-term due to insufficient staff resources. These projects

are important and should be included on the proposed long-term policy agenda. They include:

- Amend Metro rural reserves rules to authorize certain rezonings of exception lands within the rural reserves;
- Amend rules concerning public parks to resolve issues identified during last year's "Public Parks Forum" with OPRD;
- Address concerns with rules for private parks in EFU zones (see comments from Mark Greenfield in Attch C);
- Provide rules and standards to guide counties in identifying and zoning "non-resource land"; and
- Amend current rules for the "protection" of aggregate source areas in order to address concerns from ODOT that sites owned by ODOT and critical for maintaining Oregon highways cannot meet current standards for "significance."

VII. PREDICTED BASE WORKLOAD FOR THE DEPARTMENT

The department's capacity to pursue policy projects is constrained by the availability of staff and other resources. While the department is funded and directed to pursue policy work described above, the majority of the agency's staff and resources are focused on the core work of the department, especially ongoing assistance and advice to local communities. The policy agenda is in large part intended to focus limited department policy staff and resources on the key projects the legislature and commission considers necessary or highest priority in order to maintain and improve state statewide land use policy.

In recommending near-term policy work, the commission should be mindful of the resources needed for the department's core responsibilities, or DLCD's "base workload" for purposes of this report. DLCD's base workload is described here, very summarily, through rough estimates of the amount of program staff and other resources necessary to perform periodic review, technical assistance and a large number of other mandated responsibilities. In general, this workload is borne by program staff assigned to support these responsibilities, but much of this work also demands time and effort by the commission as well as grant resources.

A significant portion of the base workload (and a key constraint for the commission to consider in establishing its policy agenda) is indicated by the number of jurisdictions entering periodic review and the number of UGB decisions expected to be coming to LCDC for review over the next two years. For the 2013-15 biennium:

- Nine jurisdictions are in periodic review currently. It is unknown how much time these reviews will take, but some will be significant and several may come in around the same time later this biennium. The department does not expect to require any new jurisdictions enter into periodic review in the 2013-15 biennium.
- DLCD regional representatives have identified at least 14 cities that are currently working on UGB amendments and that are likely to be submitted to the department for review during 2013-15.
- Umatilla and Morrow counties are currently working on a re-use plan for the Umatilla Chemical Depot, a major plan amendment.

- Damascus is still working on the development of its comprehensive plan and implementing regulations, due for review by the department in August.

Core staff also manages periodic review and technical assistance grants and plan amendments, and given the current budget climate, DLCD staff's "hands-on" technical assistance is crucial to some smaller cities and counties. The base workload also includes tasks managed by the Coastal and Planning Services divisions.

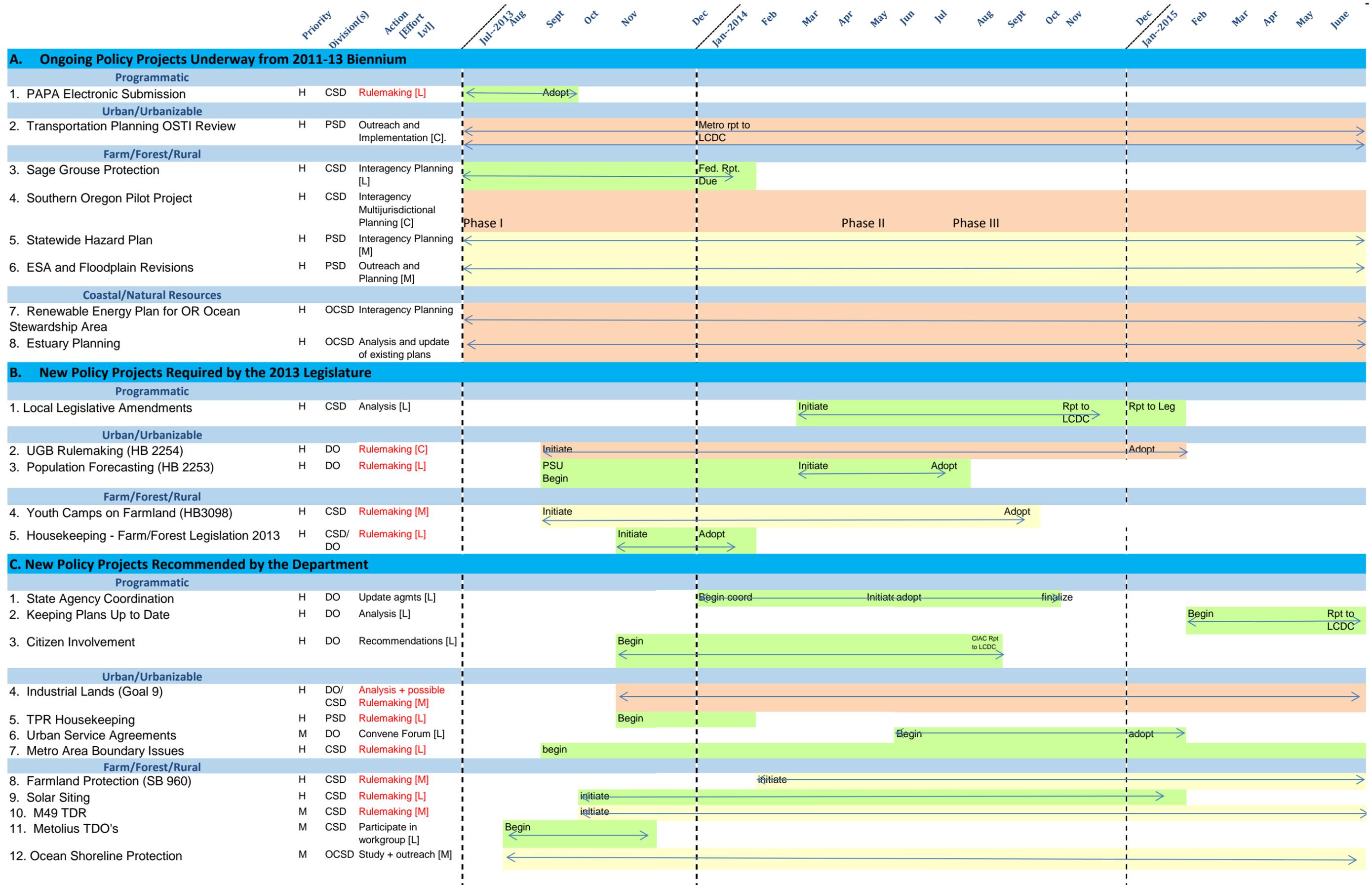
VIII. SUMMARY OF DEPARTMENT RECOMMENDATION

The department recommends that the commission receive public testimony and approve the proposed near-term policy agenda described in this report and summarized in Attachment A for the 2013-15 biennium. The department recommends that the commission continue its discussion of long-term policy goals, strategies and policy projects (see Attachment B), provide additional direction to staff, and consider final approval of this proposal at its November 2013 meeting.

IX. ATTACHMENTS

- A. Proposed Policy Agenda Matrix
- B. Draft Long Term Policy Agenda
- C. Citizen Involvement Guidelines for Policy Development
- D. July 17, 2013, DLCD Staff Report with preliminary Policy Agenda Recommendations
- E. Public Testimony

LCDC Policy and Rulemaking Agenda 2013-15
 (see Policy Agenda document for detail)



RECOMMENDED LONG-TERM POLICY AGENDA

The department is recommending that the commission establish a long-term policy agenda that establishes policy goals and strategies for several biennia. In doing so, the commission should follow the model of the governor's budget, and should be informed by and aligned with both the Governor's budget's ten year outlook, as well as DLCD's adopted "Mission and Strategic Goals" (Attachment D). The LCDC long-term policy agenda should be organized around a set of distinct, cross-cutting "priority areas" that are core to the Oregon land use program. For each of these priority areas the policy agenda should express long-term goals, a set of strategies to achieve the long-term goals. Ultimately, a set of metrics to measure progress toward these goals should be considered, which may include new or revised agency performance measures.

It is recommended that the over-arching "priority areas" to organize the long-term policy agenda should consist of the following:

- Programmatic and Process Elements
- Urban and Urbanizable Lands
- Farm, Forest and other Rural Lands
- Coastal and Natural Resources (includes natural hazards and climate change initiatives).

For each of these priority areas, the department suggests the following long-term goals and strategies:

Programmatic and Process Elements

Recommended Long-Term Policy Goals: *Improve core programmatic and procedural elements of Oregon's land use planning program and develop and coordinate strategic initiatives with state agencies and local governments.*

Recommended Strategies:

- Wind down periodic review and engage stakeholders to establish new viable methods to ensure local plans are kept up to date (including replacing periodic review as the trigger for key programs and outcomes).
- Update state agency coordination rules and other tools and reinvest in efforts to update coordination agreements with agencies that operate programs that affect land use.
- Continue to improve and streamline core procedures for land use notice, review and appeal.
- Simplify, streamline, and improve the effectiveness of both regulatory and non-regulatory methods to achieve statewide, regional and local land use outcomes expressed by the statewide planning goals.
- Maintain and improve citizen involvement in both state and local planning and advance public outreach and education with respect to the statewide land use program.
- Provide local government with services and resources to support their comprehensive planning processes.

Urban and Urbanizable Land

Recommended Long-Term Goals: *Promote sustainable, vibrant communities that provide a healthy environment, sustain a prosperous economy, and ensure a desirable quality of life. Encourage continued improvement in urban efficiency and assist cities to create well-functioning communities that are desirable places to live and work.*

Recommended Strategies:

- Establish a new simplified process for UGB amendments as provided in HB 2254.
- Continue to improve and clarify key provisions of agency rules regarding employment land planning (including processes for jurisdictions that choose to not use the new simplified UGB rules).
- Improve procedures and requirements for urban reserve planning to improve clarity and avoid adversely affecting farm land.
- Provide new, effective methods to encourage affordable housing in urban areas and to provide all citizens of the state housing choices to meet their needs with respect to housing type, location, and price.
- Convene key stakeholders to advance land use and other strategies to ensure adequate public facilities are planned and provided to support urban development on urban and urbanizable land.
- Increase access and availability to transit, rail, bicycle, and pedestrian travel.
- Convene key agencies, stakeholders, and experts to identify barriers and develop policies to make it easier to carry out planned development within existing urban areas.
- Reduce the time and expense of UGB amendments and make amendments more predictable, particularly for smaller cities.
- Focus state and local planning on areas that are growing most rapidly.
- Continue to participate in the Regional Solutions Centers to develop collaborative regional partnerships.

(Note: Below are the governor's long-term strategies; consider aligning with these in establishing LCDC strategies regarding urbanization)

- *“Grow Oregon’s traded sector and industry clusters; “Increase access and availability to transit, rail, bicycle, and pedestrian travel;*
- *“Support regional solutions and align local, regional, and state economic development priorities;*
- *“Improve the regulatory environment for large and small businesses.”*

Farm, Forest and other Rural lands:

Recommended Long-Term Goal: *Steward the state’s working farm and forest land base, develop new tools to sustain working farms and forest management, and prevent sprawl.*

Recommended Strategies:

- Maintain and enhance policies to preserve farm and forest land and resource management activities occurring on those lands, including standards for land divisions, dwellings and related uses.
- Promote the use of new tools and techniques to achieve permanent protection of highly productive farm and forest land in key locations.
- Explore innovative and flexible approaches to recognize regional circumstances that should be reflected in farm and forest protection methods.
- Develop and implement measures to limit conflicts and cumulative impacts of nonfarm uses on farm and forest operations.
- Prevent rural residential sprawl and its adverse impacts on UGBs, public facilities, resource management, wildlife habitat and wildfire.

(Note: below are the governor’s strategies to consider, align and include with LCDC strategies)

- *develop new tools to sustain working farms and forestland;*
- *Maintain a balance of sustainable timber supply while sustaining environmental protections on public and private forest lands;*

Coastal and Natural Resources

Recommended Long-Term Goal: *Protect ocean, coastal and natural resources for future generations and ensure that Oregon’s communities are resilient to natural hazards.*

Recommended Strategies:

- Maintain and enhance Oregon’s estuary planning program through continued inventories and trend assessments and programmatic changes in response to new information.
- Help communities be more sustainable in the face of natural hazards, including coastal erosion, tsunamis, earthquakes, flooding, and drought.
- Build on the Climate Change Adaptation Framework and continue to monitor and improve Oregon’s response to the effects of climate change on communities, infrastructure, and the natural environment.
- Protect natural resources in all areas of the state and conserve scenic, historic, and open space resources by guiding development to less sensitive areas.

RECOMMENDED NEAR TERM PROJECTS BY PRIORITY AREA

- Programmatic and Process:
 - Keeping plans up-to-date: Establish work group to consider ideas to replace periodic review (PR) and provide new methods for keeping plans up to date, including ways to replace PR as a “trigger” for other issues and programs. Plan for eventual phase-out of PR due to HB 2254.
 - State agency coordination (SAC): Renew and update state agency coordination program. Work with 2 to 4 particular agencies as pilot in revised process.

- Convene stakeholder group to assess and evaluate needed administrative rule updates (rulemaking to be pursued in the subsequent biennium)
 - Streamline PAPA notice provisions (electronic notice and other ideas)
 - Establish a work group to consider ways to improve process and notice with regard to local “legislative land use decisions”
 - Citizen involvement and land use program outreach improvements (work with CIAC to propose and refine ideas)
 - TPR “housekeeping” rule amendments.
- Urban and Urbanizable Land:
 - UGB rulemaking to implement new statutes (HB 2254)
 - Population forecast rules (in conjunction with PSU in response to HB 2253)
 - Industrial Lands Planning/Economic Development Planning policy improvements (Goal 9 rules “phase 2” and related tasks)
 - Transportation Planning (OSTI outreach and implementation)
 - Infrastructure planning and Finance: Public facilities service agreements forum with stakeholders
- Farm, Forest and Other Rural Lands:
 - Youth Camps rulemaking
 - Southern Oregon Pilot project
 - Implementation of Metolius TDOs (workgroup to evaluate use at Aspen Lakes)
 - Housekeeping required by new farm and forest related legislation
 - Measure 49 transfer of development rights (TDR) refinement
 - Farmland protection program improvements (commercial activities, events, etc)
- Coastal and Natural Resources (including hazards and climate change initiatives):
 - CZARA
 - Estuary Planning and development of tools
 - ESA and floodplain revisions (initiated at federal level)
 - Ocean Planning for non-territorial sea with BOEM
 - Development of statewide hazard plan
 - Participate in Sage Grouse Conservation Partnership (SageCon taskforce)
 - Solar facilities rulemaking

ALIGNMENT WITH THE GOVERNOR’S 2013-2015 BUDGET

The commission’s long-term policy agenda (described above) was modeled after the governor’s 10-year outlook in that it includes Policy Goals (“What we want to accomplish”) and Strategies (“How we get there”). The Governor’s budget for 2013-15 provides a “ten year outlook” as well as a near term budget, and is built around five “cross-cutting priorities that Oregonians have identified as critical to securing a prosperous future”: Education, Jobs and Innovation, Healthy People, Safety, and Healthy Environment. For each of these “priorities,” the Governor’s budget establishes 10-Year Goals (“What we want to accomplish”), a Strategy (“How we get there”), and Success Metrics (“How we measure progress”). Not all of these areas intersect with the state

land use program, but at least two outcome areas, Healthy Environment and Jobs and Innovation, especially pertain to the program.

The Governor's plan for a Healthy Environment establishes a 10-year goal, that "Oregon's environment is healthy and sustains our communities and economy." The plan recommends several "strategies" to achieve the goal and among those the following strategies seem to have the most relevance to the land use program:¹

- Simplify Oregon's land use program and develop new tools to sustain working farms and forestland,
- Help local governments invest in improved water and wastewater systems,
- Increase access and availability to transit, rail, bicycle, and pedestrian travel,
- Balance ecological and economic interests to improve the health of watersheds, and fish and wildlife habitat,
- Implement Oregon's Ten Year Energy Action Plan.

The Governor's plan for Jobs and Innovation establishes the 10-year goal that "Oregon has a diverse and dynamic economy that provides jobs and prosperity for all Oregonians."

Under this goal, the plan recommends several "strategies" to achieve the goal, and among those, the following seem to have the most relevance to the land use program:

- Grow Oregon's traded sector and industry clusters,
- Support regional solutions and align local, regional, and state economic development priorities,
- Improve the regulatory environment for large and small businesses, and
- Maintain a balance of sustainable timber supply and environmental protection on private and state forest lands.

The long-term policy agenda should also consider and align with DLCD's Mission and Strategic Goals (Attachment D).

¹One of the statewide metrics to measure progress toward this goal is expressed as: "Wildland forest loss is limited to 2,500 acres per year and intensive agricultural land loss to 3,500 acres per year." The department should consider ways to align with this metric in crafting its key performance measures.

LAND CONSERVATION AND DEVELOPMENT COMMISSION CITIZEN INVOLVEMENT GUIDELINES FOR POLICY DEVELOPMENT

Approved by LCDC on April 23, 2004

I. Purpose

The purpose of these guidelines is to provide and promote clear procedures for public involvement in the development of Commission policy on land use. The Commission values the involvement of the public and interested parties in all phases of planning, including development of Commission policy. These guidelines are intended to provide the Commission and the Department with practical guidance on public involvement during policy development, consistent with and in some cases beyond the legal requirements of the Attorney General's Model Rules of Procedure, state law, and the Commission's administrative rules.

The Commission and the Department shall follow these guidelines to the extent practicable in the development of new or amended statewide planning goals and related administrative rules, and in other significant policy development activities related to the statewide land use program.

II. Public Involvement Objectives in Development of Commission Policy

- To provide meaningful, timely, and accessible information to citizens and interested parties about policy development processes and activities of the Commission and the Department.
- To promote effective communication and working relationships among the Commission, the Department, citizens and interested parties in statewide planning issues.
- To facilitate submittal of testimony and comments to the Commission from citizens and interested parties and the response from the Commission to citizens and interested parties about issues of concern with regard to policy proposals.

III. Public Participation and Outreach Methods

A. Citizen Involvement Guidelines

In order to guide the Commission and the Department in planning for and conducting procedures and activities that will result in a significant new or amended statewide land use policy, such as a new or amended statewide planning goal or an administrative rule, the Commission and the Department shall adhere to the following guidelines to the extent practicable:

1. Consult with the CIAC on the scope of the proposed process or procedure to be followed in the development of any new or amended goal, rule or policy;
2. Prepare a schedule of policy development activities that clearly indicates opportunities for citizen involvement and comment, including tentative dates of meetings, public hearings and other time-related information;
3. Post the schedule, and any subsequent meeting or notice announcements of public participation opportunities on the Department's website, and provide copies via paper mail upon request;

4. Send notice of the website posting via an e-mail list of interested or potentially affected parties and media outlets statewide, and via paper mail upon request; and
 5. Provide background information on the policy issues under discussion via posting on the Department's website and, upon request, via paper mail. Such information may, as appropriate, include staff reports, an issue summary, statutory references, administrative rules, case law, or articles of interest relevant to the policy issue.
 6. Develop a database of names of citizens interested in participating in LCDC land use policy development on general or on specific issues. The department shall maintain this database. In addition, information should be provided on the department's website to notify the public of opportunities to serve on advisory committees or workgroups."
- B. In establishing committees, workgroups, and processes for the development of new or amended goals, rules or policies, the Commission and the Department shall consider the complexity of the issues, diversity of interests among interested parties, availability of expertise, potential effects of resolution of the issue on local communities, tribes, citizens and interested parties, and the degree of expressed citizen interest. Depending on these considerations with respect to a particular policy issue, the Commission may:
1. Appoint an advisory committee that includes citizens, local officials, tribal representatives, experts, and other affected or interested parties in order to provide advice and assistance to the Commission on a particular policy issue, prepare options or alternatives and perform other tasks as appropriate. Information about meetings and actions of the advisory committee shall be made available in a variety of media, including the Department's website. The Commission shall indicate whether an advisory committee may make recommendations to the Commission through testimony of individual members, or make recommendations as a single body, including minority opinions.
 2. Authorize the Department to establish an advisory committee that includes affected parties, technical experts and other knowledgeable individuals in order to provide advice and assistance to the Director and the Department on a particular policy issue, prepare options or alternatives, and provide advice and information on the political, practical, technical, and scientific aspects of a potential new or amended policy. Such advisory committees to the Department are referred to as "workgroups" and their meetings shall be open to the public. While these meetings are not necessarily subject to the requirements of the Open Meetings Law, the Department shall strive to comply with the provisions of that law with respect to notice and other requirements. The Department shall report to the Commission when it appoints a workgroup in order to provide an opportunity for the Commission to consider and, if necessary, amend the group;
 3. Choose to not establish an advisory committee or workgroup, provided LCDC and the Department shall explain its reasons for not doing so, either in the public notice advertising the start of a goal, rule, or other policy making project or by means of Commission minutes.

- C. The Commission, when establishing an advisory committee, or the Department, when establishing a workgroup, shall:
1. Clearly define the task or role of the committee or group, including the authority of an advisory committee to provide the Commission with recommendations independent from the Department staff;
 2. Assure that Department staff provides adequate support, within the limitations noted below;
 3. Require minutes of committee meetings to be prepared and drafts of proposed goals or rules be distributed prior to subsequent committee or workgroup meetings, when timelines permit, and within the limitations noted below;
 4. Assure the involvement of local government staff or elected officials and affected tribes, where warranted, with notice to local elected officials that employ local staff appointed to a committee or workgroup; and
 5. Consider geographic representation in appointing committees or workgroups.
 6. Provide information to members of advisory committees and workgroups, and an opportunity for discussion, to ensure that there is a common understanding about (a) how recommendations will be developed; (b) opportunities to present minority opinions and individual opinions; (c) the time commitment necessary to attend workgroup meetings and related activities and to read background materials; (d) opportunities to discuss background and technical information with department staff; and (e) any potential liability or exposure to litigation as a result of serving on a committee or workgroup.
 7. In evaluating the particular interests to be represented on particular advisory committees or workgroups, the commission should consider appointment of a workgroup member not affiliated with any of the groups affected by or otherwise interested in the matter at hand. This member would be charged with determining and representing the very broad interests of citizens in general, rather than the interests of any particular person or group that may otherwise advocate for or against a policy proposal.
- D. The Commission shall encourage flexibility and innovative methods of engaging the public in its policy activities and shall seek the assistance and advice of citizens affected by or with an interest in the proposed policy issue. To this end the Commission may convene short - term technical panels or focus groups (real or virtual), hold conferences, conduct on-line surveys, and carry out other means of gathering information. Where a goal, rule or significant policy process primarily affects a certain region, and where advisory committee or workgroup meetings are confined to that region, notice and opportunities to comment shall also be made available to citizens and interested parties in other regions of the state. Where appropriate, the Commission shall consider collaborative rulemaking under ORS 183.502.
- E. The Commission is cognizant that the level of public involvement and outreach described in these guidelines will be difficult or impossible without adequate staff support from the Department, and that the scope of efforts to promote and facilitate public participation and outreach will be limited based on the adequacy of staff and funding resources.

- F. None of the activities described herein are intended to conflict with or replace any of the public notice or comment opportunities provided under state law or administrative rules.
- G. The Commission may waive or modify these guidelines, as necessary and reasonable, including emergency circumstances or when a rulemaking issue is not significant. When the commission chooses to waive or modify these guidelines, it shall explain its reasons for doing so.

IV. Communication with Citizens

A. Understandable Information

The Commission and the Department shall provide to citizens information that is essential to understanding the policy issues at hand and shall endeavor to make this information easily understood and readily accessible. The Commission and the Department shall identify Department staff or other experts who shall be available to answer questions and provide information to interested citizens.

B. Notice of Decisions

The Commission and the Department shall provide notice of decisions to citizens who have requested information and/or participated in the development of policy. This notice shall be by e-mail except paper mail when specifically requested. Notice shall direct citizens to the Department's website where the decision, background information, staff reports, rationale for the decision, and other information will be available.

C. Costs

Paper copies of items may be mailed upon request subject to fees that may be established by the Department to recover costs (the Commission has established copy fees under OAR 660-040-0005).

D. Appeal Information

Information on appeals procedures shall be available on the Department's website and shall be referenced, when appropriate, in notices to citizens, above.

E. Electronic Communication

While the Commission and the Department recognize that not all citizens presently have or desire direct home access to electronic communications or the agency website on the Internet, the Commission also recognizes the numerous advantages of electronic communication. The Commission is committed to using this medium as a primary means of communication and distribution of information of interest to citizens and shall encourage the Department to employ web-based communication technologies to provide a broad range of information to citizens and to facilitate communication between the Commission and citizens.

V. Applicability

These guidelines are effective April 26, 2004, and supercede the previously adopted Citizen Involvement Program adopted October 7, 1977 and Public Involvement Policy adopted May 4, 2001. The Department is directed to consult with CIAC with regard to new and ongoing projects, including advisory committees and workgroups appointed for those projects, at the earliest scheduled CIAC meetings. However, in the event the meeting schedule of those committees will not allow timely consultation on policy projects intended to begin in accordance with the schedule adopted by LCDC, the Department is directed to proceed with those projects and to consult with CIAC at the earliest opportunity.



Oregon

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July 17, 2013

Item 13

Attachment D

TO: Land Conservation and Development Commission

FROM: Bob Rindy, Senior Policy Analyst

SUBJECT: **Agenda Item 9, July 25-26, 2013, LCDC Meeting**

LCDC POLICY AGENDA

I. SUMMARY

This item is the first of two scheduled opportunities for the Land Conservation and Development Commission (LCDC) to discuss and make decisions about a policy and rulemaking agenda for the 2013-15 biennium. Historically, the commission has approved a policy agenda at the beginning of each biennium, in the late summer or early fall, in order to guide policy work for the biennium. The department is recommending that the commission begin the discussion at its July meeting and reach a final decision on a policy agenda at its September 26-27, 2013, meeting.

“Policy projects” for purposes of this report means efforts that are intended to cause new or amended land use policies, including but by no means limited to rulemaking or goal amendments. Other types of policy projects include: task forces and workgroups established (by DLCD or others) or convened to recommend or refine policy ideas; research projects to gather information to inform future policy development; efforts toward the development of future agency legislative proposals, and; other types of special projects that are expected to establish policy (such as the ongoing Southern Oregon Pilot Project regarding farm and forest land protection in that region).

Previous policy agendas have established the commission’s policy priorities (and the department’s priorities) for the biennium only. The department is instead recommending that the overall policy agenda establish both a long-term and a near-term policy agenda. Initial department ideas for the policy agenda are summarized in Attachments A and B to this report. It is important to emphasize that these are preliminary proposals for discussion purposes. The department is recommending that the public and stakeholder groups be invited to participate in this discussion prior to and at the September meeting, and to submit comments and suggestions for the policy agenda.

While recommending that this policy agenda provide a long term (five or ten-year) policy outlook in addition to a shorter (biennial) outlook, the department is also recommending that the policy agenda be informed by and, where possible, aligned with the ten-year outlook in the

Governor's recommended budget for 2013-15. Following the Governor's budget, the department recommends that the commission's policy agenda establish long-term goals and strategies for a set of distinct, cross-cutting policy or program areas where continued policy improvements are critical to both the long-term and near-term success of the Oregon land use program.

Along with the long-term view described above, this report recommends a near-term list of policy projects to guide department and commission work during the 2013-15 biennium. The recommended near-term projects include some that are already underway and several new policy projects that are required by laws enacted during the 2013 legislative session. In addition, the department recommends consideration of several new near-term policy projects that, while not required by law, are of high importance and could be initiated this biennium if department resources permit.

This item is also intended as a public hearing so that the commission may receive input from the public about the policy needs and priorities related to the land use program. Ideas not described in this report may be presented at the hearing or in writing. Due to the proximity of the legislative session with the preparation of this report, the department has not yet solicited input on the recommended policy agenda. The department will invite interested citizens and stakeholders to provide input before the September commission meeting.

For additional information about this report, please contact Bob Rindy at 503-373-0050 ext 229, email at bob.rindy@state.or.us.

II. DEPARTMENT RECOMMENDATION

The department is recommending that the commission begin the discussion of the policy agenda at this (July) meeting, including public comment and a discussion about proposed policy priorities. The department requests that, in the July meeting, the commission attempt to provide more detailed direction to the department in framing a final policy agenda proposal for the September 26-27 LCDC meeting.

The department's recommendation is as follows:

- Begin discussion of long-term policy goals that organize policy focus under broad cross-cutting categories, such as program improvements, urban, rural, and coastal/natural resources;
- Invite citizens and stakeholders to submit ideas and recommendations for policy projects, and to comment on the department proposal;
- Align the long-term policy agenda with the governor's 10-year plan, as well as with the department's strategic goals;
- Begin discussion of suggested near-term policy projects (i.e., for the 2013-15 biennium). The department has recommended a list (see Attachment A) that includes ongoing projects, legislatively required projects, and additional recommended projects if department resources are sufficient.

III. OVERVIEW

The commission began approving biennial policy agendas in 1993 in order to focus and schedule its policy response to outstanding issues and concerns. LCDC has continued that practice ever since. The statewide planning program faces unique policy challenges that tend to come into focus at the start of each biennium, often in response to new legislation but also due to: recent court decisions interpreting the program, policy concerns that have surfaced in the course of LCDC reviews of local comprehensive plans and periodic reviews, and a variety of other circumstances. The new 2013-15 biennium is no exception and there are a number of pressing issues both ongoing and new.

In accordance with state law, the commission and the department are charged with maintaining, improving and updating the state land use program through rulemaking and other actions such as legislative proposals. 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 the department identify, schedule, and manage policy work tasks, the commission's approval of a policy agenda does not necessarily bind the commission or the department to pursuing all the projects on the agenda, nor does it prevent the pursuit of additional projects that are not listed. The intent of the agenda is to provide a road map for the commission, and to direct staff regarding policy activities. It also informs the public and stakeholders about policy work that is underway or intended. The commission typically revisits and updates its policy agenda halfway through the biennium.

When considering its policy agenda, and as it carries out projects on the agenda, the commission follows its Citizen Involvement Guidelines for Policy Development (Attachment C). The commission also invites comments and recommendations from local governments and other stakeholders. In recommending a policy agenda, the department considers the agency's budget and staff levels, its ongoing core responsibilities, and other needs and available resources.

IV. PRELIMINARY RECOMMENDATION FOR POLICY AGENDA

Long-Term Outlook. The department is recommending that, for the first time, this policy agenda should establish both a long-term as well as a near-term plan for policy work. The department suggests that the commission's policy agenda should begin with a long-term outlook with respect to state land use policy goals. Consistent with this long term look, the department is also recommending that the commission approve a list of near-term policy projects for the 2013-15 biennium, and a list of individual projects for future subsequent biennia (see Attachment A).

In recommending a long-term outlook, the commission should consider the current DLCD Mission and Strategic Goals (Attachment D). Further, the commission should align this outlook with the Governor's recommended budget for 2013-15. That budget was presented in the context of a "ten year outlook," which marked a significant departure from previous biennial budgets. The Governor's budget "was prepared with a long-term framework to guide it, built on strategic priorities and outcomes rather than existing programs, and it aims to achieve ambitious goals over the next decade." The Governor's budget emphasizes and is built around five "cross-cutting priorities that Oregonians have identified as critical to securing a prosperous future," concerning Education, Jobs and Innovation, Healthy People, Safety, and Healthy Environment. For each of these "priorities," the budget establishes 10-Year Goals, Strategies & Metrics.

The Governor's 10-Year Goals, Strategies & Metrics. The Governor's plan outlines five priorities or "outcome areas," specifically: Education, Jobs & Innovation, Healthy People, Safety, and Healthy Environment. For each of these areas, the plan establishes a 10-year Goal ("What we want to accomplish"), a Strategy ("How we get there"), and Success Metrics ("How we measure progress"). Not all of these areas intersect with the state land use program and the work of the commission. However, the department recommends that the policy agenda be aligned with at least two of these outcome areas: Healthy Environment and Jobs and Innovation.

The Governor's plan for a Healthy Environment establishes a 10-year goal, that "Oregon's environment is healthy and sustains our communities and economy." The plan recommends several "strategies" to achieve the goal and among those the following strategies seem to have the most relevance to the land use program:¹

- Simplify Oregon's land use program and develop new tools to sustain working farms and forestland,
- Help local governments invest in improved water and wastewater systems,
- Increase access and availability to transit, rail, bicycle, and pedestrian travel,
- Balance ecological and economic interests to improve the health of watersheds, and fish and wildlife habitat,
- Implement Oregon's Ten Year Energy Action Plan.

¹One of the statewide metrics to measure progress toward this goal is expressed as: "Wildland forest loss is limited to 2,500 acres per year and intensive agricultural land loss to 3,500 acres per year." The department should consider ways to align with this metric in its key performance measures.

The Governor's plan for Jobs and Innovation establishes the 10-year goal that "Oregon has a diverse and dynamic economy that provides jobs and prosperity for all Oregonians." Under this goal, the plan recommends several "strategies" to achieve the goal, and among those, the following seem to have the most relevance to the land use program:

- Grow Oregon's traded sector and industry clusters,
- Support regional solutions and align local, regional, and state economic development priorities,
- Improve the regulatory environment for large and small businesses, and
- Maintain a balance of sustainable timber supply and environmental protection on private and state forest lands.

In summary, the commission's long-term policy agenda should align with the governor's 10-year outlook, especially those elements described above, including Goals² ("What we want to accomplish") and Strategies ("How we get there"). A preliminary way to accomplish this is outlined below.

Recommended Long-Term Outlook for the LCDC Policy Agenda: The department is recommending that the commission follow the model of the governor's budget in establishing its long-term policy agenda, and that this long-term agenda be aligned with the Governor's ten year outlook to the extent possible. In other words, the LCDC policy agenda should be organized around a set of distinct, cross-cutting priority areas that both define the Oregon land use program and where clear goals and strategies are critical to the long-term success of the program. For each of these priority areas the policy agenda should express long-term goals, a set of strategies to achieve the long-term goals, and (ultimately but not now) a set of metrics to measure progress toward these goals, which may include new or revised performance measures.

Preliminarily, it is recommended that these over-arching "priority areas" or "categories" with respect to the long-term policy agenda for the land use program should consist of the following:

- Program Improvement
- Urban and Urbanizable Land
- Farm, Forest and other Rural Lands
- Coastal and Natural Resources (including hazards and climate change initiatives).

There are certainly other possible ways to organize the long-term agenda around cross-cutting priority categories and the department is open to suggestions in this regard. There has been some discussion about trying to organize around "urban" and "rural communities," i.e., in the more traditional understanding of the terms "urban and rural" where smaller communities are considered "rural" and "urban" would apply to larger population centers. However, in part because of the distinctly different definitions of those terms in land use parlance, and because the goals for urban policy are generally no different inside the UGBs of smaller, more rural communities than for larger "urban communities," the department is instead recommending the

² We should consider whether to use a different term than "goals" to avoid confusion with "the statewide planning goals."

four categories bulleted above. For each of these categories, this report suggests – for discussion purposes – the following long-term goals and strategies:

Program Improvement

Recommended Long-Term Goals: *Improve Oregon's land use planning program and develop and coordinate strategic initiatives with other state agencies and local governments.*

Recommended Strategies:

- Wind down periodic review and engage stakeholders to establish new viable methods to ensure local plans are kept up to date (including replacing periodic review as the trigger for key programs and outcomes).
- Update state agency coordination rules and other tools and reinvest in efforts to update coordination agreements with agencies that operate programs that affect land use.
- Continue to improve and streamline core procedures for land use notice, review and appeal.
- Simplify, streamline, and improve the effectiveness of both regulatory and non-regulatory methods to achieve statewide, regional and local land use outcomes expressed by the statewide planning goals.
- Maintain and improve citizen involvement in both state and local planning and advance public outreach and education with respect to the statewide land use program.
- Provide local government with services and resources to support their comprehensive planning processes.

Urban and Urbanizable Land

Recommended Long-Term Goals: *Promote sustainable, vibrant communities that provide a healthy environment, sustain a prosperous economy, and ensure a desirable quality of life. Encourage continued improvement in urban efficiency and assist cities to create well-functioning communities that are desirable places to live and work.*

Recommended Strategies:

- Establish a new simplified process for UGB amendments as provided in HB 2254.
- Continue to improve and clarify key provisions of agency rules regarding employment land planning (including processes for jurisdictions that choose to not use the new simplified UGB rules).
- Improve procedures and requirements for urban reserve planning to improve clarity and avoid adversely affecting farm land.
- Provide new, effective methods to encourage affordable housing in urban areas and to provide all citizens of the state housing choices to meet their needs with respect to housing type, location, and price.
- Convene key stakeholders to advance land use and other strategies to ensure adequate public facilities are planned and provided to support urban development on urban and urbanizable land.
- Increase access and availability to transit, rail, bicycle, and pedestrian travel.

- Convene key agencies, stakeholders, and experts to identify barriers and develop policies to make it easier to carry out planned development within existing urban areas.
- Reduce the time and expense of UGB amendments and make amendments more predictable, particularly for smaller cities.
- Focus state and local planning on areas that are growing most rapidly.
- Continue to participate in the Regional Solutions Centers to develop collaborative regional partnerships.

(Note: Below are the governor's long-term strategies; consider aligning with these in establishing LCDC strategies regarding urbanization)

- *“Grow Oregon’s traded sector and industry clusters; “Increase access and availability to transit, rail, bicycle, and pedestrian travel;*
- *“Support regional solutions and align local, regional, and state economic development priorities;*
- *“Improve the regulatory environment for large and small businesses.”*

Farm, Forest and other Rural lands:

Recommended Long-Term Goal: *Steward the state’s working farm and forest land base, develop new tools to sustain working farms and forest management, and prevent sprawl.*

Recommended Strategies:

- Maintain and enhance policies to preserve farm and forest land and resource management activities occurring on those lands, including standards for land divisions, dwellings and related uses.
- Promote the use of new tools and techniques to achieve permanent protection of highly productive farm and forest land in key locations.
- Explore innovative and flexible approaches to recognize regional circumstances that should be reflected in farm and forest protection methods.
- Develop and implement measures to limit conflicts and cumulative impacts of nonfarm uses on farm and forest operations.
- Prevent rural residential sprawl and its adverse impacts on UGBs, public facilities, resource management, wildlife habitat and wildfire.

(Note: below are the governor’s strategies to consider, align and include with LCDC strategies)

- *develop new tools to sustain working farms and forestland;*
- *Maintain a balance of sustainable timber supply while sustaining environmental protections on public and private forest lands;*

Coastal and Natural Resources

Recommended Long-Term Goal: *Protect ocean, coastal and natural resources for future generations and ensure that Oregon's communities are resilient to natural hazards.*

Recommended Strategies:

- Maintain and enhance Oregon's estuary planning program through continued inventories and trend assessments and programmatic changes in response to new information.
- Help communities be more sustainable in the face of natural hazards, including coastal erosion, tsunamis, earthquakes, flooding, and drought.
- Build on the Climate Change Adaptation Framework and continue to monitor and improve Oregon's response to the effects of climate change on communities, infrastructure, and the natural environment.
- Protect natural resources in all areas of the state and conserve scenic, historic, and open space resources by guiding development to less sensitive areas.

V. PROPOSED NEAR-TERM POLICY PROJECTS

In addition to, and consistent with the long-term goals and strategies, the department recommends that this policy agenda include a set of near-term policy projects for the 2013-15 biennium. These are described in greater detail in the next section.

For all the near-term projects described here, mandatory or otherwise, this report provides only a summary of the intent of the project. The department is prepared to provide additional detail at the commission meeting. Attachment A to this report, Proposed Policy Agenda Matrix, provides an at-a-glance summary of the recommended near-term (and long-term) projects.

This report does not discuss specific ideas for future LCDC legislative proposals but the department is mindful of the limited opportunities for agencies to propose legislation and the lengthy required timelines in advance of the session for agencies proposing legislation. Agencies must propose legislation at the beginning of April 2014 in order for DAS and the Governor's office to consider and approve such proposals. Policy work leading up to proposed legislation must begin well in advance of this mandatory deadline.

To display near-term project proposals for the 2013-15 Biennium, the department has organized near term projects in two different ways. First, under the four cross-cutting focus areas recommended above for the long term. Second, the same projects, but organized under the following three categories: ongoing projects, mandated projects, and additional recommended projects. In this second list (below) the department provides more detailed information about particular projects.

Near Term Subjects by Priority Area:

- Programmatic:
 - Keeping plans up-to-date: Establish work group to consider periodic review (PR) and related issues, including need to replace current PR “trigger” for other issues and programs; new methods for keeping plans up to date; eventual phase-out of PR program due to HB 2254)
 - State agency coordination (SAC): Renew and update state agency coordination program, including SAC agreements with 2 to 4 particular agencies, and an assessment and evaluation of needed administrative rules updates (rulemaking to be pursued in the subsequent biennium).
 - Streamline PAPA notice provisions (electronic and other ideas)
 - Establish work group to develop improved processes for local “legislative land use decisions”³
 - Citizen involvement and land use program outreach improvements (with CIAC)
 - TPR “housekeeping” rule amendments.

- Urban and Urbanizable Land:
 - UGB rulemaking to implement new statutes (HB 2254)
 - Population forecast rules (in conjunction with PSU in response to HB 2253)
 - Transportation Planning (OSTI outreach and implementation)
 - Infrastructure planning and Finance: Public facilities service agreements forum with stakeholders
 - Industrial Lands Planning/Economic Development Planning policy improvements (Goal 9 rules “phase 2” and related tasks)

- Farm, Forest and Other Rural Lands:
 - Youth Camps rulemaking
 - Southern Oregon Pilot project
 - Implementation of Metolius TDOs (workgroup to evaluate use at Aspen Lakes)
 - Housekeeping required by new farm and forest related legislation
 - Measure 49 transfer of development rights (TDR) refinement
 - Farmland protection program improvements (commercial activities, events, etc)

- Coastal and Natural Resources (including hazards and climate change initiatives):
 - CZARA
 - Estuary Planning and development of tools
 - ESA and floodplain revisions (initiated at federal level)
 - Ocean Planning for non-territorial sea with BOEM
 - Development of statewide hazard plan
 - Participate in Sage Grouse Conservation Partnership (SageCon taskforce)
 - Solar facilities rulemaking

³ This will include efforts to address local government concerns that appellants are not required to raise all issues with specificity in local “legislative” hearings.

Proposed Near-Term Policy Project List:

A. Ongoing Projects from 2011-2013 Biennium

The list below includes projects that are already underway from the previous policy agenda:

- 1. Southern Oregon Pilot Project:** This was included in the 2009-2011 policy agenda 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. The project anticipated that a single county would reanalyze farm and forestland designations under current statewide planning goals, after rulemaking by the department and commission. The department began preliminary work on this project in the spring of 2011, but suspended work on it in response to (unsuccessful) 2011 legislation on similar topics focused on Southern Oregon counties. A subsequent Executive Order 12-07, supported by a legislatively approved funding package, transitioned this project into the Southern Oregon Regional Pilot Project focusing on Jackson, Josephine and Douglas counties. Work began in earnest on this project in December of 2012, and is expected to produce a petition for rulemaking to LCDC in the winter of 2013.
- 2. Consider how ODOT's Statewide Transportation Strategy for reducing Greenhouse Gas Emissions relates to Statewide Planning Program:** HB 2001 – adopted by the 2009 Legislature – directs state agencies to take a series of actions to help meet the state's greenhouse gas (GHG) reduction goals. The commission adopted rules setting GHG reduction targets for the state's metropolitan areas in 2011 and adopted rules guiding Metro in the development and adoption of a preferred land use and transportation scenario to meet its GHG reduction target in 2012. Other provisions of HB 2001 direct the Oregon Transportation Commission (OTC) to adopt a statewide transportation strategy that outlines how the state can meet state GHG reduction goals for the transportation sector. The OTC "endorsed" a draft strategy in spring 2013, and is now working on an "implementation plan" for the strategy that will identify more specific actions to carry out the strategy – including identifying other partner agencies to help implement the Statewide Transportation Strategy (STS). The STS includes a number of land use and land use related strategies and actions – including reduced UGB expansions, an increase in compact development, significant increases in transit service in metropolitan areas and significant increases in walking and cycling for short trips. While the land use planning program is generally supportive of these outcomes, it is likely that new or additional efforts would be needed to achieve the changes called for in the STS. ODOT staff has indicated that they will be reaching out to affected agencies (including DLCD) to engage in dialogue about this work. In the past, OTC and LCDC have convened a joint subcommittee to conduct such discussions. That approach may be useful here.
- 3. Electronic Submission of PAPAs:** This rulemaking to authorize electronic submission of local government notices of proposed and adopted plan amendments is underway and scheduled for adoption at the commission's September meeting.

4. **Potential Sage Grouse Listing under ESA:** In early 2012, the Oregon Sage Grouse Conservation Partnership (SageCon) was convened by the Governor's Office, BLM and the Natural Resources Conservation Service (NRCS) to serve as an ongoing opportunity for interagency and inter-stakeholder coordination on issues related to sagebrush and sage grouse habitat conservation. The group has been broadly divided into state and federal teams with the state team directed to begin work on an "All Lands, All Threats" plan for nonfederal lands to complement efforts being conducted by the federal agencies. Four workgroups have been established to assist Oregon's efforts: Fire and Invasives, Habitat Fragmentation, Mitigation and a Technical Team. Each group includes one or more core state agencies and is led by a member of the Governor's Staff. The state's goal is to demonstrate that listing the sage grouse as a threatened or endangered species under the Endangered Species Act (ESA) is not necessary. (See LCDC Agenda Item 7)
5. **Estuary Planning:** The department is in the midst of a major update of the estuary portion of the statewide planning program. Several projects are under way currently that will feed into future updates of estuary plans on the coast. Current projects include the Estuary Project of Special Merit that will update estuary inventory information available to local government and the public. The department also has a contract to begin an estuary trends assessment. The agency is also conducting an internal regulatory assessment to determine what types of streamlining or other improvements may be needed in the regulatory framework with regard to estuaries.
6. **Ocean Planning:** Work with state and federal agencies and stakeholders to identify a geographic location description or area within the Oregon Ocean Stewardship Area where federal consistency will apply to renewable energy proposals.

B. New Policy Projects Required by the 2013 Legislature

1. **UGB Rulemaking (HB 2254):** The legislation proposed by UGAC simplifies the UGB process, but is to be implemented through LCDC rules adopted within the next 18 months. This rulemaking will be very complex. The commission must design new UGB methods for small and large cities, and the new methods must meet certain performance standards ensuring an adequate supply of land for development over a 14-year period, ensuring that growth is efficient and that the rate of conversion of farm and forest lands does not increase in major regions of the state. The rules must require cities to show that they have at least seven years of serviceable lands within the UGB (rather than the current 20-year supply of land that is not necessarily serviceable), and that all lands added to the UGB under the new methods are suitable for urbanization. The rules also must require cities to plan and zone lands to meet requirements for needed housing, and to avoid significant adverse effects on key transportation facilities.
2. **Population Forecasting Rulemaking (HB 2253):** This legislation places the responsibility for population forecasting with the Population Forecasting Center at Portland State University and provides rulemaking responsibility to the university "in consultation with the department" to carry out this program. However, the legislation also requires LCDC, in

consultation with the State Board of Higher Education, to adopt rules to implement the population forecasting program and to regulate the “transition from population forecasts produced [under statutes in effect immediately before the bill] to the application of population forecasts produced [under the new legislation].”

3. **Rulemaking to Authorize Youth Camps on Farmland (HB 3098):** This bill authorizes youth camps in EFU zones, and requires LCDC to engage in rule-making based on current rules authorizing youth camps in forest zones. This bill was in response to a request for expansion of the Younglife facilities in Jefferson County.
4. **Budget Note:** As a result of a Central Oregon Cities Organization (COCO) legislative proposal (which did not pass), a budget note was adopted by the 2013 legislature requiring the department to convene stakeholders to study ways process improvements and appeals standards with respect to “legislative” amendments to local land use plans and ordinances, and to report back to the 2015 legislature. One such issue raised in the proposed legislation concerned the doctrine of “raise it or waive it,” which currently applies to quasi-judicial land use proposals at the local level, but not to “legislative” amendments. For quasi-judicial amendments, appellants may only raise issues to LUBA that were raised in a local proceeding with enough specificity for the local government to address the concern. However, in such proceedings, local governments are required to provide notice that sufficiently describes proposals and standards that will be used to judge such proposals, and timelines are set to ensure adequate time to raise issues prior to final adoption. However, notice for “legislative proposals” (typically broad plan amendments such as UGB amendments) do not have such notice safeguards, so any proposal to provide for “raise it or waive it” would need to include significant adjustments to notice for such amendments.
5. **Housekeeping: Align DLCD Rules with New Legislation:** This would combine rulemaking into a single project to address statutory changes, including the following:
 - HB 2393 – small-scale poultry processing;
 - HB 2441 – agricultural buildings in forest zones;
 - HB 2704 – transmission line review criteria;
 - HB 2746 – EFU replacement dwellings;
 - HB 3125 – forest land division changes;

C. New Policy Projects Recommended by the Department

1. **Revise “Wildlife Standard” for Solar Projects:** In February 2013, the Co-Chairs of the 2012 House Interim Committee on Energy, Environment and Water sent a letter to the LCDC chair requesting that the commission “undertake a rulemaking to amend the current wildlife standard that applies to the siting of solar projects on farmland.” The letter included an attachment with specific wording recommended by a workgroup appointed by the interim committee. The commission should convene a workgroup to consider and make recommendations regarding these or other proposed amendment to administrative rules on this topic (OAR-660-033-0130(38)(h)).

2. **Metolius TDO's:** HB 3536 authorizing significant new resort development at the existing Aspen Lakes golf course in Deschutes County did not pass. However, as a result of discussions with legislators and the Governor's office during consideration of this bill, the department agreed to sponsor a stakeholder group discussion in the interim to evaluate options to transfer the previously authorized Metolius "transferred development opportunities" (TDO's) to the current Cyrus family property at Aspen Lakes. These TDO's were created through legislation in 2009 that protected the Metolius, and ultimately they may be exercised, somewhere, if not necessarily on this property.
3. **Urban Service Agreements:** Legislation considered in the 2013 session (HB 3124) would have required urban service agreements between special districts and cities by a date-certain. The bill did not pass, but as a result of discussions the department agreed to reconvene the ad-hoc workgroup that was discussing this issue just prior to the session. While state law requires such agreements, that law is implemented through periodic review and compliance has been very spotty. The department's legislation (HB 2254) requires service agreements for cities over 10,000 that opt to use the "new UGB process," but special districts will continue to push for completion of these agreements for other cities that do not choose to use the new process. The department sponsored a discussion of these issues, as a facilitated subcommittee of the UGAC, at the end of 2012. The interests participating in that discussion generally agreed that they had made considerable progress in identifying issues and beginning to work on ideas to resolve them.
4. **Measure 49:** Administrative rules are needed to define and clarify how counties can authorize transfer of development rights (TDR) programs for Measure 49 properties. Approximately 4950 new Measure 49 (M49) dwellings are authorized on EFU and Forest land. Some (or many) of these potential dwelling rights could be "transferred" to other lands if a functioning TDR program was established for M49 properties. Currently there is no such program, although M49 itself provides authorization for such a program.
5. **Periodic Review Replacement:** Over the past ten to fifteen years, legislation has substantially narrowed the scope of periodic review (PR), ultimately by exempting small cities (less than 10,000 in population), and all counties, from the requirement to follow the statutory PR process. Legislation (HB 2254) on UGB simplification provides that cities using the new UGB methods are not required to go through periodic review. The phasing out of this process has many ramifications that need to be carefully considered:
 - Local land use plans are increasingly out of date. Many land use plans have not been updated since acknowledgement in early- to mid-1980s. As this time period continues to lengthen, concern will only increase. Lack of funding is likely the main reason local governments do not update their plans, but also the controversy and attention to other priorities funded by steadily decreasing local budgets. Periodic review has provided both funding and assistance, and requires that local governments prioritize update work. With diminished funding, and ultimately with the phasing out of periodic review, new strategies will be needed to ensure plans are updated.
 - Several rules and laws are triggered only by periodic review. Many LCDC rules and statutes name periodic review as the "trigger" for planning to implement a variety of

particular requirements. As a result of the narrowed scope of PR, many of these requirements have not been implemented for most cities and counties. This includes some specific requirements for housing planning, transportation system plan updates, airport planning, and many types of natural and cultural resources under Goal 5. State laws mandating coordination agreements among districts and local governments are triggered only by periodic review, as are laws about buildable land inventories (land subject to open space tax assessment) and planning for manufactured dwelling parks. Remediating this, such as establishing new deadlines or other “triggers” for local compliance, would be complex and highly controversial, and would require a combination of new rules and laws, as well as funding and – most important – buy-in by local governments and the legislature. Some of these requirements could be revised or removed, either by the legislature or LCDC.

- Phasing out periodic review. HB 2254 Periodic Review is replaced for some but not all cities by HB 2254: New legislation provides a more streamlined UGB process, and expressly waives periodic review for cities that use the new process. However, it is anticipated that some cities will not use the new process, and as such, those cities will still be required to enter periodic review. Also, the new legislation does not apply to Metro area cities. Over the long term, and perhaps even in the near term, a decreasing number of cities will enter PR. The department will thus be maintaining and operating a significant land use program (PR) that only applies to a relatively few cities in the state.

6. State Agency Coordination: State agencies are increasingly seeking to update state agency coordination agreements. Under ORS 197.040(2)(e), LCDC must “*Coordinate planning efforts of state agencies to assure compliance with goals and compatibility with city and county comprehensive plans.*” Under ORS 197.180, State agencies shall carry out their duties with respect to programs affecting land use in compliance with statewide goals and rules and in a manner compatible with acknowledged comprehensive plans and land use regulations. The department last updated state agency coordination (SAC) agreements in administrative rules in 1989. Most SAC agreements for agencies that conduct programs that concern land use were adopted around 1990 and have not been updated since. The department proposed successful legislation in 2009 which modified statutes and indicated DLCD “should” update the SAC processes and revise related rules (OAR 660, divisions 30, 31). The department’s and related agencies’ budgets do not include funding for this project and therefore it has not been pursued. The work to update rules (OAR 660, div. 30 and div. 31) is substantial by itself. Work on particular agency agreements will generally require staff and other resources for each agency. Several agencies have expressed an interest in updating their SAC agreement.

7. Metro Area Boundary Issues: Metro has made a concerted attempt to follow streams and other natural features in establishing its UGB and its urban reserve boundaries. However, that tends to leave many properties with portions inside the boundary and portions outside. As a result, annexation and development is turning out to be difficult for the “urban” portion of lands that straddle the UGB or Reserve boundaries. In order to annex only part of the property, local governments generally conclude that such properties would need to be divided because the portion outside the UGB should not be included in the annexation.

However, often the ‘remainder’ portion of a property outside the boundary is smaller than the required minimum lot size for farm (or forest) land. It is likely this will require a statute change, but the department should explore whether there are administrative rule options available.

- 8. Citizen Involvement:** 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. A list of ideas and other recommendations are anticipated early in the 2013-15 biennium.
- 9. TPR Housekeeping:** Two “housekeeping” adjustments to OAR 660, div. 12, transportation planning rules should be considered:
 - Amend TPR to exempt Milton-Freewater from TPR’s requirements for metropolitan areas. TPR requires newly designated Metropolitan Planning Organization (MPO) areas to develop “regional TSPs” that meet the TPR within 3 years of designation. This year three new metropolitan areas will be designated. In addition to Albany and Grants Pass, Milton-Freewater is (per federal rules) part of the Walla-Walla metropolitan area. We faced a similar situation in 1991 because Rainier is part of the Longview-Kelso metropolitan area. We addressed this by excluding Rainier from the definition of a “metropolitan area” in 0005(14). The logical extension of this approach is to amend the rule to exempt Milton-Freewater as well. (FYI, Milton-Freewater is roughly 7000 population, Rainier 2000).
 - Change TPR references to MPOs for local governments in metropolitan areas: In 2006, the Commission amended the TPR to clarify requirements for planning in metropolitan areas. A new rule was added to clarify how federally required planning should be done by MPOs related to TPR required planning done by cities and counties. These changes recognized that the TPR doesn’t directly regulate MPOs (because they don’t make land use decisions). The 2006 amendments called for but did not make corresponding amendments to certain rules in the TPR. As such, these rules include outdated references to “MPOs” that need to be corrected for consistency.
- 10. Industrial Lands (Goal 9):** Several new ideas for economic development planning, especially with regard to employment land in UGBs, were considered by UGAC. Some of these were included in HB 2254 and became law, but will need refining in the rulemaking process. In addition, several ideas were put forward in a separate piece of legislation, HB 2255, which did not pass. However, additional ideas for further policy refinements in Goal 9 should be considered. When the commission completed major amendments to the Goal 9 rules in 2005, they agreed that a “second phase” rulemaking should be considered “soon” with emphasis on resolving some Goal 9 questions in the context of the Metro UGB. The recent Metro UGB and Metro urban reserve decisions by LCDC demonstrated that there is a considerable amount of disagreement as to how Goal 9 and “employment needs” should be applied in the Metro area. The commission should consider refining this policy and resolving this confusion.

11. Farmland Protection Improvements. A range of possible activities is identified below, pending further analysis of work load, the department may only be able to address a near-term need to clarify agri-tourism related rules. Depending resources, possible additional projects include:

- Rulemaking to address commercial activities in conjunction with farm use” and provide additional clarification. Recent interpretations, bolstered by the lack of definition and court decisions, have provided unanticipated ways around safeguards in the “events” and “winery” statutes developed over the past several years.
- Clarify allowed events and activities in EFU zones not related to on-site agriculture and not limited in number or type in a manner that minimize impacts on nearby agriculture.

VI. PREDICTED BASE WORKLOAD FOR THE DEPARTMENT

The department’s capacity to pursue policy projects is constrained by the availability of staff and other resources. While the department is funded and directed to pursue policy work described above, the majority of the agency’s staff and resources are focused on the core work of the department, especially ongoing assistance and advice to local communities. The policy agenda is in large part intended to focus limited department policy staff and resources on the key projects the legislature and commission considers necessary or highest priority in order to maintain and improve state statewide land use policy.

In recommending near-term policy work, the department is mindful of the resources needed for its core responsibilities, DLCD’s “base workload” for purposes of this report. DLCD’s base workload is described below very summarily through rough estimates of the amount of program staff and other resources necessary to perform periodic review, technical assistance and a large number of other mandated responsibilities. In general, this workload is borne by program staff assigned to support these responsibilities, but much of this work also demands time and effort by the commission as well as grant resources.

A significant portion of the base workload (and a key constraint for the commission to consider in establishing its policy agenda) is indicated by the number of jurisdictions entering periodic review and the number of UGB decisions expected to be coming to LCDC for review over the next two years. For the 2013-15 biennium:

- Nine jurisdictions are in periodic review currently. It is unknown how much time these reviews will take, but some will be significant and several may come in around the same time later this biennium. The department does not expect to require any new jurisdictions enter into periodic review in the 2013-15 biennium.
- DLCD regional representatives have identified at least 14 cities that are currently working on UGB amendments and that are likely to be submitted to the department for review during 2013-15.
- Umatilla and Morrow counties are currently working on a re-use plan for the Umatilla Chemical Depot, a major plan amendment.
- Damascus is still working on the development of its comprehensive plan and

implementing regulations, due for review by the department in August.

Core staff also manages periodic review and technical assistance grants and plan amendments, and given the current budget climate, DLCD staff's "hands-on" technical assistance is crucial to some smaller cities and counties. The base workload also includes tasks managed by the Coastal and Planning Services divisions.

VI. RECOMMENDATION

The department is recommending that the commission begin the discussion of the policy agenda at this (July) meeting, including public comment and a discussion about proposed policy priorities. The department requests that, in the July meeting, the commission attempt to provide more detailed direction to the department in framing a final policy agenda proposal for the September 26-27 LCDC meeting.

The department's recommendation is as follows:

- Begin discussion of long-term policy goals that organize policy focus under broad cross-cutting categories, such as program improvements, urban, rural, and coastal/natural resources;
- Invite citizens and stakeholders to submit ideas and recommendations for policy projects, and to comment on the department proposal;
- Align the long-term policy agenda with the governor's 10-year plan, as well as with the department's strategic goals;
- Begin discussion of suggested near-term policy projects (i.e., for the 2013-15 biennium). The department has recommended a list (see Attachment A) that includes ongoing projects, legislatively required projects, and additional recommended projects if department resources are sufficient.

VI. ATTACHMENTS

- A. Proposed Policy Agenda Matrix
- B. Ideas for Policy Projects
- C. Citizen Involvement Guidelines for Policy Development
- D. DLCD Mission, Principles and Goals



Item 13
Attachment E
Public Testimony

To: Land Conservation and Development Commission
From: 1000 Friends of Oregon
Date: September 4, 2013

Re: LCDC Policy Agenda – Comments of 1000 Friends of Oregon

Thank you for the opportunity to provide input to your draft 2013-15 Policy Agenda. Following are both general and specific comments on the draft of July 17, 2013.

I. General Comments – *Governor’s 10-Year Plan*

We support the staff’s recommendation that the Commission move to adopting a near-term agenda (biennial) agenda, as well as a long-term agenda, or at least a long-term context for the policy agenda. We also support aligning the agenda with the *Governor’s 10-Year Plan for Oregon*. Among other things, we hope this leads to better alignment of state agency objectives and actions than has sometimes occurred in the past.

The staff explains that the *Governor’s 10-Year Plan* has five priority outcome areas, and recommends that LCDC’s Policy Agenda be aligned with two of them: Healthy Environment, and Jobs and Innovation. However, the staff recommendation neglects a priority outcome area that clearly is strongly tied to the state’s land use and transportation program: Healthy People. In addition, the draft Policy Agenda fails to fully address Jobs and Innovation Outcome area.

A. Healthy People Outcome

The lack of calling out the Healthy People Outcome as it relates to DLCD’s and LCDC’s mission is distressing. The *Governor’s Plan* itself explicitly highlights the connections to land use (described below). Omitting the Healthy People Outcome indicates a serious lack of understanding by the Department of the connections between the built environment, access to food, and healthy Oregonians.

The *Governor’s Plan* Healthy People Outcome is: “Oregonians are healthy and have the best possible quality of life at all ages.” The Plan describes five strategies to achieve this, three of which are directly tied to land use and transportation:

- “ - Shift resources to focus on prevention of chronic disease.
- Ensure all Oregonians have access to decent housing which meets their basic needs and allows them to reach their full potential
- Ensure access to sufficient, nutritious and affordable food for all Oregonians.”¹

¹ *10 Year Plan for Oregon Project, Healthy People Policy Vision, p. 3*

The Healthy People Outcome describes tactics to carry out these strategies, including how to provide access to nutritious foods and opportunities for active living. Many of these relate directly to land use and transportation. For example, the Outcome proposes the following tactics (*emphasis added*):

“Strategy 2: Shift resources to focus on prevention of chronic disease

“Surrounding environments affect food choices and the opportunities to be physically active. These environments where people work, live and play directly contribute to their ability to balance healthy eating with physical activity. *Despite the well-known benefits of physical activity, many adults and children live, work and play in environments that make getting daily physical activity difficult.*”²

* * *

“Strategy 4: Ensure all Oregonians have access to decent housing which meets their basic needs and allows them to reach their full potential.”³

“A safe, comfortable living environment is the foundation for a healthy life, regardless of income level. When families and individuals are secure in their housing, they are able to tend to other human needs and to pursue opportunities to thrive. For middle-and upper-class people, the private real estate market generally provides adequate choices in rental and ownership housing. And for those of more modest means, federal, *state and even local government has long used a variety of strategies and tools to make affordable housing available using a variety of tools.* However, these strategies do not reach all of the people who need them.

* * *

“Here in Oregon, affordable housing is provided in different forms, however for the purposes of this plan, the focus will be on rental housing. Rental housing is where the state has the most discretion, and is also the segment of the market serving a higher proportion of low income and vulnerable residents.

* * *

“There are numerous layers of government involved in the provision of rental housing. * * *Other players include local public housing authorities, community action agencies, as well as *city and county governments....*”⁴

* * *

² Healthy People, p. 12.

³ Id., p. 15.

⁴ Id., pp. 15-16.

“Location can also be a major health determinant. It is well documented nationally that people who live in high poverty neighborhoods have statistically worse health outcomes. *The availability of healthy, affordable food choices, the accessibility of health services, school and work commute times, and even recreational opportunities all contribute to the health condition of Oregonians. Where a person lives within the state is an important factor in determining their health opportunities and risks.*

“Another way in which housing impacts health is in its affordability.”⁵

The *Governor’s Plan* provides many specific actions that state agencies should take to achieve the *Plan’s* outcomes. Although the Commission and Department are not specifically mentioned in the Healthy People section, you have a major opportunity to take actions that support this outcome. Two actions of particular note in the *Governor’s Plan* are:

- “Engage Oregon’s Regional Solutions structure to better partner with local communities in identifying areas of opportunity for housing.
- Ensure Oregon policies intentionally remove barriers that prevent all individuals from having the opportunity to access to healthy and stable housing in vibrant neighborhoods that promote physical activity and social networks.”⁶

Providing land appropriately zoned and in the right location to meet the full range of housing needs, removing unnecessary regulatory barriers to diverse housing types, and providing a built environment that allows physical activity, are part of the core of the land use program. [We urge the Commission to direct staff to integrate the Healthy People Outcome and strategies of the Governor’s 10-Year Plan with the Agenda.](#)

B. Jobs & Innovation Outcome

The draft Policy Agenda fails to address as fully as it should the *Governor’s Plan* Jobs & Innovation Outcomes. The draft Agenda cites only the following five strategies from the Jobs & Innovation Outcomes:⁷

- “Grow Oregon’s traded-sector and industry clusters
- Support regional solutions and align local, regional, and state economic development priorities
- Improve the regulatory environment for large and small businesses
- Maintain a balance of sustainable timber supply and environmental protection on private and state forest lands.”

However, the draft Agenda overlooks or fails to fully apply several other significant strategies and goals described in the *Plan*, particularly as they apply to the **agriculture industry** and **infrastructure**. These strategies include:⁸

⁵ Id., p. 16.

⁶ Id., p. 18.

⁷ Agenda, p. 5.

⁸ See, e.g., *Governor’s Plan*, Economy & Jobs Outcome, pp. 1, 5, 7, 9, 11, 12.

- having a recession-resilient economy;
- investing in home-grown value-added products to sell out-of-state; supporting cluster industries;
- coordinating land use, transportation and economic development;
- better coordination of and accurate evaluation of the costs of infrastructure; more efficient use of existing infrastructure;
- the importance of affordable housing;
- focusing on economic development opportunities inside urban growth boundaries (UGBs).

One of the most significant resulting oversights in the draft Agenda’s description of the Jobs and Innovation Outcomes is the lack of highlighting **agriculture** *to at least the same extent as does the Governor’s Plan*. Agriculture is Oregon’s #2 industry, of which 80% is traded sector (half out of state, half internationally-traded); it provides 12% of all employment in Oregon and it weathered the recession better than any other major industry in Oregon.

The *Governor’s Plan* prioritizes rapid growth in the agricultural industry sector; one of its success metrics is, “The value of Oregon’s agricultural exports increase by at least 50%.” Agriculture is a traded-sector, recession-resilient, cluster industry that employs a large percentage of Oregonians, uses little infrastructure, and has many opportunities for value-added products. Jobs in cities across the state rely on healthy agricultural and forestry industries, including employment in processing, equipment sales and repair, tourism, value-added manufacturing, exporting, insurance and banking, to name just a few. Yet the draft Agenda totally ignores this.

We find this is an irresponsible way to handle core part of Oregon’s economy, employment, and identity, and of the *Governor’s Plan*, particularly for an agency whose core mission includes protection of the land base for the farming and forestry industries. However, unfortunately we are not surprised. We believe the Department has long failed to understand and advocate for agriculture as the heavy-hitter it is in Oregon’s industrial strength. The Department continues to neglect agriculture as part of the state’s and the Department’s **Goal 9 (Economy)** mission.

The *Governor’s Plan* also advocates a more aggressive and coordinated approach to planning for, obtaining financing for, evaluating the cost of, and using more efficiently **infrastructure** than the draft Agenda recommends.

Below are examples of additional goals and strategies from the *Governor’s Plan* Jobs & Innovation Outcomes that should be reflected in the Policy Agenda (*emphasis added*).

“Policy makers must be intentional about creating opportunities for Oregon’s small and medium homegrown businesses, Oregon’s entrepreneurs, Oregon’s universities and spin-offs from *traded-sector companies—strengthening Oregon’s economy from the bottom up.*⁹

⁹ Jobs & Innovation Outcomes, p. 1.

“A central component of Oregon’s economic strategy has been and should continue to be “traded sector” businesses, those that market goods and services outside Oregon.”¹⁰

“1. Use a “cluster strategy” focused on key traded sector industries....”¹¹

“Companies selling their products and services outside of Oregon drive the state’s economy, bringing in fresh dollars and supporting families, local businesses, and government services. These traded sector companies tend to “cluster” because they draw competitive advantages from their proximity to competitors, to a skilled workforce, to specialized suppliers, and to a shared base of sophisticated knowledge about their industry. Clusters can help lower costs, accelerate innovation, and ultimately increase economic activity in Oregon. By identifying Oregon’s key traded sector industries and paying special attention to their needs, policy makers have a way of thinking about how to grow Oregon’s economy and create more high-paying jobs. [Agriculture is listed as a key existing industry]¹²

“1.2 Amplify local and state economic effects and make Oregon’s economy more resilient

“Seven main ideas work together to accomplish this strategy:

“1.Support a bottom up network for identifying and prioritizing local, regional and state-wide needs, opportunities, and economic development priorities.

“2.Promote and foster in-state supply chains and foster the purchasing power of local and state governments with intentional outreach to historically underrepresented businesses.

“3.Promote and protect the inherent value in local communities, recognizing available resources at hand, such as energy, water resources, *forests, rangelands, recreation*, waste streams, *food and agriculture*, and ecosystem services that Oregon can produce, maximize and conserve. These resources bring both direct and indirect economic benefit.

“6.Ensure a cost effective and coordinated wildfire protection system that provides for the protection of life, natural resources and communities by minimizing large wildfires.”¹³

“This means recognizing and capturing value from local systems, such as energy conservation, *food production* and Oregon’s waste streams, as well as responsibly using

¹⁰ Id., p. 2.

¹¹ Id., p. 3

¹² Id., p. 3

¹³ Id., p. 4

and protecting Oregon’s natural resources such as forests, water resources, rangelands and fisheries.”¹⁴

“Strategy 2: Be more effective, integrate economic and community planning, project finance, infrastructure, and regulatory services from the bottom up for efficient.

* * *

“In addition, Oregon must protect, *preserve and invest in its infrastructure assets*. The state has a backlog of improvements it must make to its existing traditional infrastructure as well as an interest in growing investment in new infrastructure capacity such as smart grid and broadband data capacity, water resources, transportation and sophisticated waste management. *Ensuring viable forest products and agriculture infrastructure is also critical* to maintaining forest health, agricultural lands health, and the economic and social health of Oregon’s rural communities.

* * *

“A strategic approach will require *improved coordination between transportation, land use and economic development planning*”¹⁵

“Align transportation, land use and other infrastructure planning so that investment of state resources reflects state and local priorities and assures the value of those investments over time.”¹⁶

“2.3 Integrate at a regional and local level planning for transportation, land use, housing, workforce development and infrastructure

* * *

“Localization of decision-making aims to create complete and livable communities, and supports state and regional planning that integrates housing, land use, economic and workforce development in a manner that creates and sustains jobs and economic opportunities.”¹⁷

“The Department of Land Conservation and Development (DLCD) must look at opportunities for partnering with local communities on streamlining decision-making on development opportunities for jobs and affordable housing within existing Urban Growth Boundaries and work on partnerships that bring much needed investment into communities (Healthy Environment Strategy 4).

“Business Oregon should develop criteria that evaluate potential job creation opportunities as well as *full cost and benefit accounting to evaluate potential investments in public needs.*

¹⁴ Id., p. 5.

¹⁵ Id., p. 7.

¹⁶ Id., p. 8.

¹⁷ Id., p. 9.

“Business Oregon should identify lands and redevelopment opportunities within the Urban Growth Boundaries that are available closer to work force housing or in existing designated Industrial Areas.

“State partnerships on state and community capital projects should consider these design elements:

- o **Design**—Design streets, buildings and public spaces to human scale to ensure *pedestrian access*.
- o **Community Cores**—An economically vibrant downtown or town center combining commercial, cultural, civic and recreational uses strengthens a community. *These areas should be accessible to a large proportion of the community by means other than automobiles.*
- o **Public Spaces**—Livable communities require open spaces that serve the entire community in the form of parks, squares and greens. Design boulevards, streets and paths to be beautiful, pleasant places.
- o **Balanced Transportation**—*Transportation should balance pedestrian, transit, and auto access to reduce dependence on autos and provide secure, convenient and affordable mobility for all citizens.*
- o **Diversity**—Livable communities contain a mix of housing and employment opportunities for all citizens including underserved communities.
- o **Environmental Sustainability**—Livable communities respect the natural terrain, drainage, landscape and vegetation of the community with superior examples contained within parks or open space. Protect, restore and maintain natural systems to provide a sustainable flow of values and benefits
- o **Public Safety**—Livable communities are places where streets, buildings and public spaces are designed to human scale so that pedestrian safety is ensured.”¹⁸

The Commission should direct staff to integrate fully the *Governor’s Plan Jobs & Innovation Outcome with the Policy Agenda*. This should result in a DLCD/LCDC Policy Agenda that, among other things, recognizes that protection of agricultural land is key to the state’s economy and Goal 9; infrastructure costs must include life-cycle costs of operation and maintenance, repair, and replacement; that DLCD and Business Oregon should work differently to focus on development and redevelopment inside UGBs; and that affordable housing is part of economic development.

II. Other General Comments

A. Climate Change

Although the Commission’s, Department’s, and state’s involvement in various climate-related projects is sprinkled throughout this document, *the agency’s role in how Oregon addresses climate change should be clearly articulated and upfront, as part of the short- and long-term Policy Agenda.*

¹⁸ *Id.*, pp. 11-12.

B. Citizen Involvement

The draft Policy Agenda states in various places that the Department intends to “maintain and improve citizen involvement”¹⁹ and that it will “invite citizens and stakeholders to submit ideas and recommendations for policy projects.”²⁰ However, the very way in which the Department is soliciting input on this draft Agenda demonstrates just how far we believe the Department and Commission must go to fully engage a broad spectrum of Oregonians. For example:

- The draft Policy Agenda is too long, the organization is unclear, and its subsections are overlapping. While a full Agenda might indeed be a lengthy document, at a minimum the redundancies could be eliminated and an Executive Summary and Table of Contents provided.
- One needs to be fairly knowledgeable about Oregon’s land use program to understand this draft Agenda.
- The solicitation of comments is during a time of year (August) when it is difficult to get the attention of many.
- It seems the distribution of this Agenda was to the “usual suspects” on the usual DLCD mailing list(s). And you will certainly receive input from us and other usual suspects. However, both this traditional communication method and the list leave out many individuals, organizations, businesses, community groups, and nonprofits that do have an interest in the land use program or, more significantly, would be interested if they knew about it and understood how land use impacts their fields. For example, DLCD and LCDC should be talking with public health advocates (including the Oregon Health Authority), affordable housing providers, small business organizations and neighborhood business groups, CSA and organic farmers, farm-to-school groups, climate change groups, and so on.

The Department needs to move beyond general declarations about citizen involvement. We recommend that the Department propose a significant, robust, multi-year outreach program to re-engage Oregonians statewide with the land use program and its power and potential to address many challenges and opportunities our state and communities face. This outreach should have clear metrics and achievable outcomes. It should be grounded in fact-based education materials that provide information about the program’s performance for the last 40 years, as well as the choices and trade-offs policymakers face today. We would be happy to work with the Department to design such a program, if the Department is prepared to make a serious commitment to it.

III. **Specific Comments**

Our specific comments are organized under the draft Policy Agenda’s topics. Due to the redundancies in the draft Agenda’s organization, our specific comments overlap with our general comments.

¹⁹ Agenda, p. 6.

²⁰ Agenda, p. 2.

A. Long-Term Outlook²¹

1. Program Improvements

We strongly support the need to replace the worthy objectives of periodic review with new and more robust method(s) to ensure plans stay up-to-date and meet the needs of all Oregonians. We look forward to working with the Department on this. As stated above, we also support improving citizen involvement in state and local planning.

We recommend adding an enhanced program of research and data-gathering by the Department so it and the Commission can better evaluate how the program and its individual elements are performing, and then apply this data to inform revisions and additions to the program.

2. Urban and Urbanizable Land

Many of the listed strategies should be achieved through the Commission's adoption of rules to implement HB 2254, and through the transfer to Portland State University of the population forecasting duties, as described in HB 2253.

Below are a few specific draft Agenda strategies (shown in red) with a brief comment after.

- “Establish a new simplified process for UGB amendments as provided in HB 2254.”

We support including rulemaking for HB 2254 and implementation of HB 2253 in this biennium, as reflected in Attachment A. In addition, this project's narrative should describe its link to implementation of the *Governor's 10-Year Plan* Healthy People Outcome, and to the work that DLCDC and ODOT will be doing to implement the Oregon Sustainable Transportation Initiative (OSTI) and Statewide Transportation Strategy (STS). In particular, the rules adopted under HB 2254 should support the provision of a built environment that allows for healthy living and reduces greenhouse gas emissions from the transportation sector, by creating more compact, walkable, mixed use communities, with a variety of housing choices, including denser housing.

However, the draft Agenda's description of HB 2254 is not accurate. The legislation's focus is on simplifying the process to evaluate the *capacity* of an urban growth boundary, and to ensure all options to meet any needed capacity are evaluated, *including but not only* a UGB expansion. *If* additional land is found to be needed, HB 2254 does provide a simpler way to move through alternative sites in priority order.

The strategy should read instead: “*Establish a new simplified process to evaluate UGB capacity and, if additional land is needed, to amend the UGB, as provided in HB 2254.*”

²¹ The Long-Term Policy Agenda starts on p. 4 of the Agenda.

- Continue to improve and clarify key provisions of agency rules regarding employment land planning (including processes for jurisdictions that choose to not use the new simplified UGB rules).

A larger problem than the *content* of existing agency rules exists: even when the rules are clear, we have experienced, and hear from local governments, that some DLCDC staff provide advice to cities, both in writing and orally, that is contrary to adopted rules and established case law concerning Goals 9 and 14.

Goals 9 and 14 and their rules largely reflect sound policy – they focus on development and redevelopment inside existing UGBs where urban infrastructure, services, and governance already exist, and on evaluating a city and its needs and opportunities in the local, regional, and state context. Improvements can be made—and likely will be, as part of HB 2254—to reflect changing demographics, global industry and energy trends, and better information and analytical tools. However, the overall content and direction of these is not the primary issue; rather it is the Department’s implementation.

Experienced planning staff at several Oregon cities have told us they sometimes get advice from DLCDC staff that is not legally or practically sound. They then find themselves in a difficult position: either ignore DLCDC advice, or follow it and risk a successful appeal and/or an ineffective plan.

Further, many cities don’t have much or any experienced staff dedicated to planning. These cities trust DLCDC staff to be the authority on Oregon’s land use system. When these cities pursue planning based on erroneous advice from DLCDC staff, and if their plans are later overturned or are practically ineffective, a great deal of time, energy, and money, scarce resources are wasted and the land use program is compromised.

The *Governor’s 10-Year Plan* is based on five “guiding principles.” Two of these are “Fiscal Sustainability: Deliver programs and services efficiently within available resources” and “Informed Decision Making: Rely on evidence-based information to inform policy decisions and decision makers.” [Consistent with the Governor’s Plan, we recommend better training, oversight, and coordination of DLCDC staff on the urban goals.](#)

The draft Policy Agenda’s recommends to “Continue to participate in the Regional Solutions Centers to develop collaborative regional partnerships.”²² This is an example of many statements in the draft Agenda that are about process, not substance. We have been told by DLCDC management staff that one reason Goal 9 is inconsistently implemented around the state is because the different Regional Solutions Center (RSC) teams are not consistently implementing the land use program. If true, this is alarming. RSC staff is responsible for implementing existing laws— whether land use, transportation, environmental quality, water, or something else. These laws do not change by virtue of having a RSC team. “Collaboration” is merely a process by which to coordinate and more effectively implement existing policy and law. It is not a substitute for policy. [We recommend clarifying the role of the RSC teams and DLCDC.](#)

²² Agenda, p. 7.

- “Improve procedures and requirements for urban reserve planning to improve clarity and avoid adversely affecting farm land.”

We support revisions to the (non-Metro) urban reserve process to prevent cities from continuing to add farm land to their urban reserves, while *unused* urban reserve capacity exists.

- “Provide new, effective methods to encourage affordable housing in urban areas and to provide all citizens of the state housing choices to meet their needs with respect to housing type, location, and price.”

The Department has long failed to adequately address Goal 10, Housing. Past efforts have focused largely on attempts to tie affordable housing to UGB expansions, an effort that failed for many reasons, including:

- UGB expansions are infrequent and do not occur in most cities, therefore a policy focused on UGB expansions misses most communities and Oregonians;
- UGB expansions are usually in areas far from schools, jobs, and services, and therefore do not provide an affordable or convenient place to live and therefore do not meet Goal 10’s definition of housing *need*;
- UGB expansions occur on raw land with no infrastructure, and the cost of providing that infrastructure generally makes the housing unaffordable to the homeowner/renter and the city.

Several times over the past years, 1000 Friends and the Homebuilders Association of Oregon have provided to the Department and Commission a list of actions that could be taken under the land use program to address affordability inside UGBs. That list is attached again.

Additionally, many cities face increasing challenges to their efforts to provide adequate multi-family and other diverse housing opportunities, due to opposition to up-zonings and efficiency measures. Consistent with our comments above on Citizen Involvement, the Department could play a key role by providing information on changing demographics and housing demand, planning assistance, and a toolkit of strategies for addressing ways to maintain the capacity of close-in residential land.

This draft Agenda strategy is directly tied to the *Governor’s 10-Year Plan’s* Healthy People and Jobs & Innovation Outcomes, as described above. Living affordably means also having transportation options and affordable infrastructure, as the Healthy People Outcome describes. The Department and Commission should shift its Goal 10 approach to affordable *communities*, and tie needed housing to the entire built environment.

However, housing is currently listed in Attachment A with a “placeholder” on the draft long-term agenda. We recommend moving the housing strategy to the near-term agenda, and focusing it on how to achieve the objectives of Goal 10 inside existing UGBs.

- “Convene key stakeholders to advance land use and other strategies to ensure adequate public facilities are planned and provided to support urban development on urban and urbanizable land.”

Better linking infrastructure planning – including operations and maintenance – and financing to land use and transportation planning is supposed to be a key outcome of HB 2254. It is also strongly emphasized in the Jobs & Innovation Outcomes of the *Governor’s Plan*. We recommend moving the task of linking infrastructure planning and realistic financing with land use planning to the near-term agenda, linked to HB 2254 rulemaking.

- “Increase access and availability to transit, rail, bicycle, and pedestrian travel.”

The Agenda should note that this strategy is directly tied to the *Governor’s 10-Year Plan’s* Healthy People and Jobs & Innovations Outcomes. It is also related to DLCD’s and ODOT’s requirements to implement SB 1059 and HB 2001, regarding reducing greenhouse gas emission from the transportation sector, through OSTI and STS.

Increasing access to transit, rail, bicycling, and walking should be described in Attachment A as an element incorporated into the near-term agenda for transportation planning, infrastructure planning, economic development planning, and housing.

3. Farm, Forest and Other Rural Lands

We agree with the long-term goal stated in the draft Policy Agenda. Stewardship and protection of resource lands continues to be the bedrock of the land use program. We also generally agree with the recommended strategies on page 7. However, we would like to note the framing of the strategy to “Explore innovative and flexible approaches to recognize regional circumstances that should be reflected in farm and forest protection methods.” The land use program already recognizes regional differences in dozens of places, yet “regional circumstances” are often cited by opponents of the land use program as a reason to dismantle it. It is now more important than ever to keep in mind that “[t]he preservation of a maximum amount of the limited supply of agricultural” and forest “land is necessary to the conservation of the state’s economic resources and the preservation of such land in large blocks is necessary in maintaining the. . . economy of the state. . .” ORS 215.243(2). Only approaches that respect this legislative directive should be explored.

We are also puzzled with the goal on page 4 to “[s]implify Oregon’s land use program and develop new tools to sustain working farms and forestland.” While simplification of the land use program and development of new tools to protect resource lands are both laudable goals, lumping them together in the same sentence appears to unnecessarily tie them together. We are eager to part of any discussion to simplify the land use program, where appropriate. We also would like to participate when new tools to sustain resource lands are developed.

4. Coastal and Natural Resources

We support the Commission's and Department's continued work on climate change adaptation.

B. Proposed Near-Term Policy Projects²³

1. Programmatic

As mentioned above, we support the need to replace the worthy objectives of periodic review with new and more robust method(s) to ensure plans stay up-to-date and meet the needs of all Oregonians. We recommend a better articulation of the objectives and success of periodic review, and how to make its replacement not only a way to keep plans “up to date,” presumably with changing laws, but also how to make land use plans tools to meet future challenges and opportunities. The work being done on scenario planning – both in Oregon and elsewhere – is a good example of how land use plans – integrated with transportation and infrastructure plans and financing - can accomplish this.

We also support updates to the state agency coordination program.²⁴

2. Urban and Urbanizable Land

We support the items listed under this topic. However, as reflected in our comments above, they should be tied to the *Governor's Plan* for Healthy People and Jobs & Innovation Outcomes. In particular, the work that DLCDC and ODOT will be doing to implement OSTI and STS (described in “Ongoing Projects from 2011-2-13 Biennium” in the Proposed Near-Term Policy Project list)²⁵ should be linked to the *Plan's* Healthy People and Jobs & Innovation Outcomes.

The item described as “Infrastructure Planning and Finance: Public facilities service agreements forum with stakeholders”²⁶ does not fully carry out the intent and language of HB 2254. Oregon's challenges call for more than a forum on public facility service agreements.²⁷ We recommend that the Department require better forecasting, planning, and financing of infrastructure, including evaluation of its life-cycle costs, in all UGB evaluations, Goal 11 implementation, and other large land use and transportation planning projects.

²³ Starts on draft Agenda, p. 8.

²⁴ For example, we have experienced the acute need to re-write the SAC with the Department of Aviation (ODA). Currently, the 1990 Department of Transportation SAC technically still applies to ODA. However, ODA has not been following the SAC, and recent airport facility plans have been adopted by ODA without any analysis or findings regarding goal compliance.

²⁵ Agenda, p. 10.

²⁶ Agenda, p. 9.

²⁷ Among other things, it seems to us that support for the item currently listed in the near-term agenda, “public service agreements,” could be provided by cities and special service districts, while Department staff time should be spent on the larger issue of infrastructure planning and financing, now included in Attachment A in the Long-Term agenda by a “placeholder.”

Many recent reports and studies, both in Oregon and nationally, have documented that a primary reason cities are facing fiscal crises is the inability to fund infrastructure operations, maintenance, and repair, much less build needed new infrastructure.²⁸ For example, see the League of Oregon Cities *2013 State of the Cities Report*,²⁹ the 1000 Friends survey of existing national and state studies titled *More Extensive is More Expensive*,³⁰ and the just-released national study titled *Building Better Budgets*.³¹ The latter study also documents that not only are the costs of infrastructure in compact, mixed-use communities at least 1/3 less expensive than sprawling development patterns, but “on an average per-acre basis, smart growth development produces 10 times more tax revenue than conventional suburban development.”³²

This is the type of information that we believe should inform a Goal 9 and Goal 14 strategy that fully addresses economically and environmentally sustainable urban places and economies. The Department should be leading this effort through educational materials and local government trainings, in conjunction with partner agencies including Business Oregon.

The item described as “Industrial Lands Planning/Economic Development planning policy improvements (Goal 9 rules ‘phase 2’ and related tasks)”³³ is not explained to this point in the draft Agenda, but is included later in a section titled “New Policy Projects Recommended by the Department.”³⁴

While we agree there is a need here, the draft Agenda’s description does not capture it. The Department should be a far more forceful and effective voice for economically and environmentally sustainable economic development, in conjunction with other agencies, and consistent with the portions of the Jobs & Innovation Outcomes we highlighted above. However, too often the Department’s and Business Oregon’s discussions seemingly drive at only one “solution” - more raw land - which for many reasons (for example, infrastructure costs, including life-cycle costs; location of land relative to where workers already live; transportation accessibility; emphasis on attract new, land-intensive businesses rather than investing in meeting the needs of existing businesses, etc.) is often not the right solution and, in fact, is not consistent with the *Governors’ Plan*. It is like the old adage - if the only tool you have is a hammer, every problem looks like a nail.

DLCD has many other tools at its disposal, such as transportation and infrastructure planning. Furthermore, so do other agencies and organizations with whom it should partner. If the Department decides to address economic development, we would like to participate. [Here are some tasks we recommend that the Department undertake:](#)

²⁸ The other primary reason is various unfunded employee benefits.

²⁹ <http://www.orcities.org/Portals/17/Premium/2013StateoftheCitiesweb.pdf>, pp.2-4

³⁰ <http://friends.org/infrastructure>

³¹ <http://www.smartgrowthamerica.org/documents/building-better-budgets.pdf>

³² Id., pp. iii and 6-7

³³ Agenda, p. 9.

³⁴ Agenda, p. 15.

- Develop a factual framework within which to address the economic development needs of existing communities, focusing on realistic aspirations, including growing existing businesses and increasing existing capacity inside the UGB through investments in infrastructure, brownfield clean-up, protection of industrial lands, and transportation.
- Develop much more robust factual underpinnings for the analysis of large lot needs. For example, according to DLCD staff, the Department has *no* information on the typical percentage of total jobs that locate on large lots, and *no* national or regional trend data on the consumption rate of large lots, relative to population, job growth, or any other metric. Yet the Department often encourages cities to provide large industrial lots, often at great infrastructure expense and on resource land, without, admittedly, the proper evidence to determine whether these lots are even needed.
- Develop useful and accurate tools, such as model codes and workbooks, for how to use Goal 9 to take into account, for example, information about where most job growth comes from; economic trends; infrastructure costs; industrial land preservation; and so on (described above).
- Develop a model guide for cities to do their own fiscal impact analysis of the life-cycle infrastructure costs of various development patterns or proposals. Describe under what circumstances this analysis would be useful (UGB expansion analysis, major land development analysis, scenario planning, etc...).
- Provide infrastructure cost information to small- and medium-sized cities.
- Develop a model code and comprehensive plan amendments for protecting industrial lands, or some types of industrial lands, from conversion to other uses (Metro's Regionally Significant Industrial Areas code is a place one could start)
- Explore, with other state agencies, other ways to protect key industrial sites from conversion to other uses, including through "patient landowner" acquisition.
- Research the extent of industrial land conversion: the amount, locations, reasons why, and so on.
- Improve training to DLCD staff on the requirements of Goal 9, its rule, and court decisions to reduce inconsistent and incorrect advice to local governments. Develop an oversight system to ensure that DLCD staff is providing accurate information and advice.
- Develop and provide to staff and local governments information on what economic development "capacity" is, beyond raw land, and how to inventory, protect, and grow it.

3. Farm, Forest and Other Rural Lands

It is important to underline the importance of the farmland protection program improvements. The lack of definition with commercial activities and events continues to result in significant litigation. Providing more definition in this area and providing more certainty regarding public and private parks is sorely overdue.

September 26-27,
2013
Item 13
Attachment E
Public Testimony

MEETING DATE	7-25-26-13
AGENDA ITEM #	9



July 22, 2013

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Oregon Land Conservation and Development Commission
c/o Jim Rue, Director
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

Re: Agenda Item No 9, LCDC Policy Agenda, July 25-26, 2013 LCDC Meeting

JIM CLINTON
Mayor

JODIE BARRAM
Mayor Pro Tem

VICTOR CHUDOWSKY
City Councilor

DOUG KNIGHT
City Councilor

SALLY RUSSELL
City Councilor

MARK CAPELL
City Councilor

SCOTT RAMSAY
City Councilor

ERIC KING
City Manager

Dear Chair Worrix and Members of the Commission:

The City of Bend provides this testimony for your consideration in developing the 2013-15 Policy Agenda. Thank you for the opportunity to comment.

1. HB 2253 rulemaking regarding population forecasting. The City supported this bill through staff work on the Population Forecasting Core Group and in written and oral testimony before the Legislature. We intend to participate in the rulemaking necessary to implement this program as an interested party, and willing to have staff attend work group meetings to this end.

2. HB 2254 rulemaking regarding the UGB amendment process. Like HB 2253, City staff participated with the Governor's Urban Growth Advisory Committee to provide input into the development of the legislation. City staff also provided oral and written testimony in support before the Legislature. We intend to participate in the rulemaking necessary to implement this program as an interested party, and willing to have staff attend work group meetings to this end.

3. Budget Note No. 2 for the Department's 2013-2015 Budget (SB 5530). City staff worked with the Central Oregon Cities Organization (COCO) in drafting 2013 HB 3362. The goal of this bill was to ensure the "raise it or waive it" standard in quasi-judicial land use proceedings before the Land Use Board of Appeals would also apply to LUBA's review of post-acknowledgement plan amendments. The purpose for this legislation was to ensure that any issues raised in an appeal before LUBA on a post-acknowledgement plan amendment would have to have been first raised

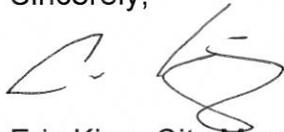
before the local government. This bill did not pass out of committee. Later in the session, COCO was successful in obtaining approval of the following budget note:

2) The Department of Land Conservation and Development shall work with interested parties to develop recommendations for improving the processes through which local governments develop post-acknowledgement plan amendments under ORS 197.610 through 197.625. The issues to be addressed shall include, but will not be limited to: public notice of post-acknowledgement plan amendments, public review of amendments and changes to these amendments, conduct of hearings on legislative land use decisions, including applicable criteria.

The goal of the budget note is to address the same issue but through a different path. Instead of applying a raise it or waive it standard to LUBA's review of legislative decisions adopted as PAPA's, this note requires the Department to work with stakeholders to identify ways through which local governments, both cities and counties, can better conduct local processes in making legislative land use decisions. The intent is to improve local legislative land use decision-making processes so citizens can more effectively participate and raise issues that can be addressed before a final decision is made. The City would appreciate the opportunity to participate in this work group. You will find enclosed testimony from city staff to the Housing Land Use Committee that provides more background on the purpose of HB 3362 and the budget note.

Thank you for your time and consideration of our testimony.

Sincerely,



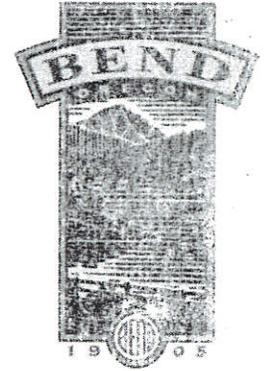
Eric King, City Manager

EK/ds

cc: Bob Rindy, Department of Land Conservation and Development
Bend City Council
Bend Planning Commission

September 26-27,
2013
Item 13
Attachment E
Public Testimony

7.26.13
Item 9



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VIA EMAIL
LYNN.BEATON@STATE.OR.US and
HAND DELIVERY

March 12, 2013

Rep. Brian Clem, Chair
Rep. Kevin Cammeron, Vice-Chair
Rep. Lew Frederick, Vice-Chair
Members of the House Committee on Land use

JIM CLINTON
Mayor

JODIE BARRAM
Mayor Pro Tem

VICTOR CHUDOWSKY
City Councilor

DOUG KNIGHT
City Councilor

SALLY RUSSELL
City Councilor

MARK CAPELL
City Councilor

SCOTT RAMSAY
City Councilor

ERIC KING
City Manager

Re: House Bill 3362, regarding the "raise it or waive it" standard and post-acknowledgement plan amendments

This letter provides testimony from the planning staff at the City of Bend in support of HB 3362.

At the outset, I want the members of the Committee to understand that HB 3362 addresses how issues are raised before the Oregon Land Use Board of Appeals (LUBA) in its review of certain types of land use decisions. HB 3362 does not impact the concept of "standing" and will not affect a citizen's ability to petition LUBA to review a local government land use decision. I understand that you will receive testimony in opposition of the bill as written, and want to offer that the City is open to considering amendments that further preserve citizen rights to participate effectively in local land use matters.

Specifically, HB 3362 is intended to address situations where certain post-acknowledgement plan amendments (PAPA) are appealed to the LUBA for review. PAPAs can include such actions as zoning code text amendments, plan text amendments, zone and plan map changes, or adoption of new elements for comprehensive plans such as public facility plans. A local government's legislative decision on a PAPA is submitted to the Department of Land Conservation and Development for review under ORS 197.610-197.625. Following submittal to DLCD, if a PAPA is not appealed to LUBA, it is deemed acknowledged according to the statute.

LUBA reviews all types of land use decisions. However, their review of PAPAs that are legislative decisions differs from other land use decisions, such as quasi-judicial land use decisions in one important respect. LUBA's statute at ORS 197.835 limits review of quasi-judicial land use decisions and limited land use decisions to those issues raised before the local government, also known as the "raise it or waive it" standard. For example, if a citizen appeals a city's decision approving a tentative plat for a subdivision, the issues this citizen can raise before LUBA are limited to those they also raised before the local government.

The "raise it or waive it" standard does not apply to LUBA's review of local legislative land use decisions that are PAPAs, which is the reason the planning staff supports this bill. In 2003, the City and Deschutes County learned the hard way that this standard does not apply to PAPAs. The County's adoption of a coordinated population forecast was appealed to LUBA in the spring of that year. After the county received the petitioners brief, we learned that the petitioners had raised issues before LUBA that they had not raised before either the county planning commission or the Board of Commissioners. The County rescinded the adopting ordinance to address the issues raised in the petitioner's brief (See LUBA 2003-058 - <http://www.oregon.gov/LUBA/docs/opinions/2003/09-03/03058.pdf>). The County worked with the cities of Bend, Redmond, and Sisters to address these issues, and adopted a coordinated population forecast in 2004. The petitioners appealed this decision to LUBA, which affirmed the County's decision in March in 2005 (See LUBA 2004-160 - <http://www.oregon.gov/LUBA/docs/opinions/2005/03-05/04160.pdf>).

The County and three cities spent an additional year re-working the forecast and preparing findings to address the issues raised in the petitioner's brief. The issues were legitimate to address; but the four local governments would rather have addressed them before the Board of Commissioners made a final decision in 2003. Similarly, City staff wants to be able to address issues before the City Council makes a final decision on a legislative decision. The result would then limit LUBA's review to those issues that were debated and discussed at the local level. Local policy decisions need to be considered by the local decision makers rather than having LUBA in a position to set that policy without appropriate local consideration.

Most recently, the City faced this situation again with a recent appeal to LUBA of the City's Water Public Facility Plan (See LUBA 2012-043 - available on-line through this link. <http://www.oregon.gov/LUBA/docs/Opinions/2012/11-12/12043.pdf>). The petitioners raised eight assignments of error, two of which were not raised below during local hearing process. The two issues that were remanded could have been easily addressed by the City prior to LUBA's remand if we had the chance to address the issue at the local level.

Testimony on HB 3362
House Committee on Land Use
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Page 3 of 2

The governing bodies of cities and counties in Oregon would rather have the opportunity to address, respond to, and hopefully resolve issues raised at a local hearing, than hear about them for the first time in a petitioner's brief before LUBA. Our intent with this legislation is to have issues raised before a planning commission and/or a governing body, so these issues can be addressed before a final land use decision is made. If an appeal to LUBA follows, our intention then is to know that LUBA will hear arguments from the petitioners and from the local government on an issue that has already been raised and responded to at the local level. If LUBA remands the decision on a specific issue that was addressed by the local government, it's because there are items that still need to be resolved and the remand is the appropriate forum for such resolution.

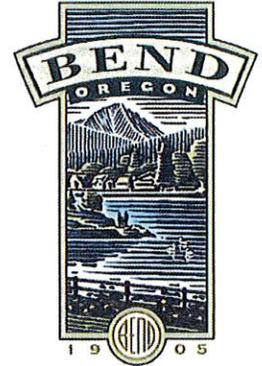
Thank you for the opportunity to provide testimony on HB 3362. Again, we understand that there will be testimony in opposition to the bill, and would offer the opportunity to consider amendments that would bring all parties involved to a position where we have a bill we can support.

Sincerely,

Damian Syrnyk, AICP
Senior Planner

September 26-27,
2013
Item 13
Attachment E
Public Testimony

MEETING	
DATE	7-25-26-13
AGENDA	
ITEM #	9



July 22, 2013

710 NW WALL
STREET
PO Box 431
BEND, OR 97701
[541] 388-5505 TEL
[541] 385-6676 FAX
BENDOREGON.GOV

Oregon Land Conservation and Development Commission
c/o Jim Rue, Director
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

Re: Agenda Item No 9, LCDC Policy Agenda, July 25-26, 2013 LCDC Meeting

JIM CLINTON
Mayor

JODIE BARRAM
Mayor Pro Tem

VICTOR CHUDOWSKY
City Councilor

DOUG KNIGHT
City Councilor

SALLY RUSSELL
City Councilor

MARK CAPELL
City Councilor

SCOTT RAMSAY
City Councilor

ERIC KING
City Manager

Dear Chair Worrix and Members of the Commission:

The City of Bend provides this testimony for your consideration in developing the 2013-15 Policy Agenda. Thank you for the opportunity to comment.

1. HB 2253 rulemaking regarding population forecasting. The City supported this bill through staff work on the Population Forecasting Core Group and in written and oral testimony before the Legislature. We intend to participate in the rulemaking necessary to implement this program as an interested party, and willing to have staff attend work group meetings to this end.

2. HB 2254 rulemaking regarding the UGB amendment process. Like HB 2253, City staff participated with the Governor's Urban Growth Advisory Committee to provide input into the development of the legislation. City staff also provided oral and written testimony in support before the Legislature. We intend to participate in the rulemaking necessary to implement this program as an interested party, and willing to have staff attend work group meetings to this end.

3. Budget Note No. 2 for the Department's 2013-2015 Budget (SB 5530). City staff worked with the Central Oregon Cities Organization (COCO) in drafting 2013 HB 3362. The goal of this bill was to ensure the "raise it or waive it" standard in quasi-judicial land use proceedings before the Land Use Board of Appeals would also apply to LUBA's review of post-acknowledgement plan amendments. The purpose for this legislation was to ensure that any issues raised in an appeal before LUBA on a post-acknowledgement plan amendment would have to have been first raised

LUBA reviews all types of land use decisions. However, their review of PAPAs that are legislative decisions differs from other land use decisions, such as quasi-judicial land use decisions in one important respect. LUBA's statute at ORS 197.835 limits review of quasi-judicial land use decisions and limited land use decisions to those issues raised before the local government, also known as the "raise it or waive it" standard. For example, if a citizen appeals a city's decision approving a tentative plat for a subdivision, the issues this citizen can raise before LUBA are limited to those they also raised before the local government.

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Testimony on HB 3362
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Thank you for the opportunity to provide testimony on HB 3362. Again, we understand that there will be testimony in opposition to the bill, and would offer the opportunity to consider amendments that would bring all parties involved to a position where we have a bill we can support.

Sincerely,

Damian Syrnyk, AICP
Senior Planner



CITY OF CORNELIUS

September 26-27,
2013
Item 13
Attachment E
Public Testimony

July 23, 2013

Marilynn Worrix, Chair
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

MEETING	
DATE	7.26.13
AGENDA	9
ITEM #	

RE: Metro Urban Growth Boundary Rural Land Partitioning Issue (Policy Agenda V.C.8)

Dear Marilynn Worrix,

Thank you for this opportunity to provide testimony on the above mentioned agenda item, which is an issue that has prevented the annexation and development of lands brought into the City of Cornelius Urban Growth Boundary in 2005. It also appears to be an issue that will manifest itself when the City of Cornelius Urban Reserves are brought into the Urban Growth Boundary (UGB). The problem there is no legal way to partition the land bisected by the UGB to create a parcel inside the UGB for annexation into the City and to create a parcel in the County to maintain rural use.

In 2005 Metro approved an expansion of the Cornelius UGB using Council Creek as the boundary and not following property/parcel lines. This resulted in four (4) parcels in the North Holladay Area bisected by the UGB line, see the attached map. The problem this creates is that there is no legal land use tool that can be used to partition the land inside the UGB from the rural land to create new parcels. County and State law prohibit the division of the rural parcels from becoming smaller in size. Washington County Development Code does permit a property line adjustment to be used to adjust a common property line between two parcels resulting in a parcel inside the UGB and a parcel outside the UGB. The problem with this tool is that you need to have two (2) willing, abutting property owners to process the line adjustment. This is not likely to happen, even if the property is in common ownership. There is no incentive or advantage for a rural land owner to combine his rural property with his/her neighbor through a property line adjustment. In some cases it may not even meet the criteria for approval of a property line adjustment and create nonconformities.

The property owners that have parcels bisected by the 2005 UGB have no legal way to separate the land approved for urbanization from their rural farm uses. They cannot annex the UGB property into the City and they cannot sell it to an urban developer because it cannot be split/separated from the rural parcel. The land that is located inside the UGB has been rezoned to Future Development, FD-20 by the County. This designation is to acknowledge that the land is to be treated and looked at for future urban development. These parcels that are bisected by the UGB have a split tax code, with land inside the UGB taxed at slightly higher rate. With changes to zoning and taxing of land inside the UGB it seems inappropriate that there is not a process to partition this land to move forward with the intended urbanized uses.

As I mentioned earlier this issue will also arise when the City of Cornelius Urban Reserves are brought into the Urban Growth Boundary because the Urban Reserve boundary follows the Tualatin River and Dairy Creek floodplain lines and does not follow parcels lines compounding the problem for Cornelius and Washington County.

Lands that are brought into the UGB have addressed the criteria for urbanization and the rural lands have met the factors for rural use. These lands have not only met public and staff review, but also legal scrutiny to permit an expansion of the Urban Growth Boundary. It would appear they have met the entire State, Regional and Local test for permitting their land to be urbanized, but we cannot provide them with an adequate and legal way to move forward.

The solution to this problem is to adopt legislation at the State and County level that would permit partitioning of these rural parcels after a Metro Urban Growth Boundary has been approved and the appeal system has been exhausted. This would provide a process for property owners to legally create new parcels inside the UGB that could be annexed into the City and urbanized as intended.

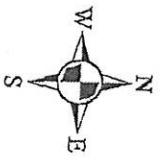
Thank you for your time and consideration of this extremely important issue.

Sincerely,

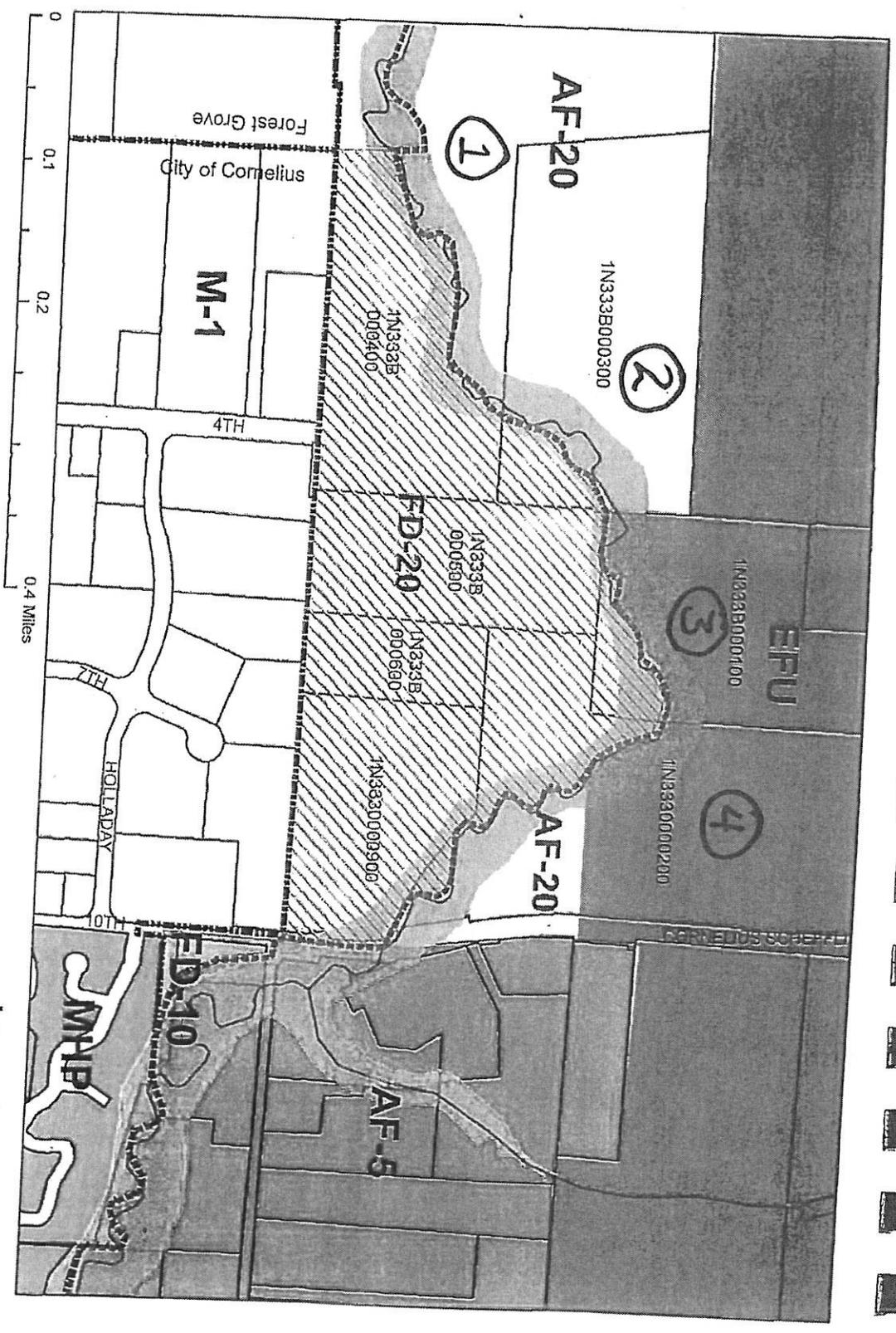


Dick Reynolds
Community Development Director
City of Cornelius

Cc: Rob Drake, City Manager
File



City of Cornelius North Holladay Area Nearby Zoning



Legend

- North Holladay area, FD-20 Zone
- Floodplain
- Taxlots
- City Limits
- Urban Growth Boundary

September 26-27,
2013
Item 13
Attachment E
Public Testimony

From: Mark J. Greenfield [<mailto:markgreenfield@involved.com>]
Sent: Friday, August 16, 2013 8:59 AM
To: Rindy, Bob
Cc: Daniels, Katherine
Subject: Re: Please help with LCDC's Policy Agenda

Bob, thank you for the opportunity to comment. Please include these comments in the Commission packet.

As you are aware, I brought a case addressing events at farm stands before LUBA (Greenfield v. Multnomah County, LUBA 2012-102), which LUBA decided earlier this summer. The case is now before the Oregon Court of Appeals and a decision should be forthcoming before Christmas. The case seeks clarification as to the nature and scale of events that are permitted outright at farm stands. My position, which I believe is firmly backed by the legislative history of the 2001 amendments to the farm stand statute (ORS 215.283(1)(o)), is that only low intensity uses of occasional duration are allowed under the "promotions clause" of that statute, which authorizes fee-based activities to promote the sale of farm crops and livestock at farm stands. In developing my legal arguments I coordinated closely with Ron Eber, former DLCDC Agricultural Lands Specialist, as well as Katherine Daniels, Jim Johnson (Department of Agriculture) and 1000 Friends of Oregon.

Activities I challenged include al fresco "farm-to-plate" dinners at farm stands, food carts at farm stands, smaller events (whatever "small" might be) like birthdays and picnics, and the use of 3rd party concessionaires selling food at farm stands. All of this was in response to a farm stand modification approval by the county that allowed over 22 farm to plate dinners a year in addition to 60 days of corn mazes, 24 days of harvest festivals, and unlimited smaller events at the subject farm stand. In short, there could be events, and indeed multiple events, every single day of the year that the farm stand is open. These modifications were opposed by over 40 Sauvie Island residents, including some commercial farmers. A particular concern raised by the adjoining owners of the commercial Pumpkin Patch farm was that more of the area of the 97-acre farm was devoted to events and parking than any other use, including farming. The site plan appears to bear that out. This certainly does not preserve agricultural land for farm use, and we all know events are more profitable than farm use. Opponents also raised significant concern that this particular property owner was more interested in events than in farming. The property owner bought the property less than 10 years ago and is probably better known as a developer or property manager than a farmer. He tried elsewhere to hold weddings and events on the island (on marina land zoned mixed use agriculture).

Some of the activities this farmer seeks to do are similar to activities already occurring at the Kruger Farm. I am concerned as well about what is happening at Kruger, as Don is a smart businessman who, I think, also pushes the envelope as to activities at the farm stand. There, events like motocross racing are occurring, and there are four or five food carts present each weekend selling burgers and hot dogs, beer, pizza, and corn on the cob. At one time there was a "food cart" (more like a large mobile trailer) selling fresh and frozen fish. I believe these food carts are mobile restaurants that do not belong at farm stands under the farm stand statute. It has long been LCDC's position that restaurants are not permitted at farm stands or in EFU zones (see, e.g., Blueberry Cafe). I think it may make sense, particularly during harvest festivals and

perhaps even on weekends, to allow one of two food carts to feed folks attending the festivals, but not five, and to allow them as conditional uses, not outright permitted uses. But this is a policy issue for the Commission. The effect of five food carts is to create a food court (restaurant) in an EFU zone. The impact exceeds that of the Blueberry Cafe.

There is also the question of concessionaires. May a third party (not the farmer) establish an independent business on a farm property? That is what is happening at farm stands. Or must a person selling food at a food cart be an employee of the farmer. This is important because the sale of prepared food items (which I believe is currently prohibited at farm stands), if allowed, should count towards the 25% of farm stand income that is not from the sale of farm crops or livestock. I believe, instead, some farmers are simply "renting" space to the food cart owner for a couple hundred dollars a month or so, and then including only that amount in calculating compliance with the 25 percent rule. In short, they are allowing far greater sale of items that are not "food crops or livestock" as defined in OAR 660-033-0130(23) than the law allows by simply not counting a great number of the sales. Based on my own personal experience, I suspect the food carts can easily pull in over \$1000 on a sunny weekend day or in an evening when there are concerts.

There are other issues as well, some of which were raised in a companion case (*Bella Organic v. Multnomah County*, LUBA 2012-103). For instance, under what circumstances are tents or other structures permitted outside the farm stand building? Bella has used huge tents for its harvest festivals, which the county says is illegal under the law (I agree). Bella also wants to use tents or other shelter in the event it rains during a dinner. I believe these tents take up valuable agricultural land that the law intended to be used for farming, not events.

LUBA ruled substantially in my favor on my appeal, but not entirely. I have appealed issues I lost on to the court of appeals. But for rulemaking purposes, I think the Commission would do well to read even just the first page of LUBA's decision, where LUBA says that if one thinks (based on language in the statute) that this is a simple case, think again - it is anything but simple. At oral argument before LUBA, if I recall correctly, LUBA noted that this really is a matter for rulemaking given how ambiguously written the statute is.

I urge rulemaking on this issue, and the sooner the better. Already, more and more commercial activities and events are being authorized at wineries. If these spread to all farmlands, or even just farm stands, the number of events and commercial activities on farm lands will multiply substantially. If allowed under the farm stand law, they would not be subject to ORS 215.296 or local standards addressing scale and frequency. Things like weddings and concerts might happen and might continue well into the night. I have heard farmers complain that they need to get up early and the noise makes falling asleep difficult. This issue needs attention, now.

A big issue in my appeal concerns what the county approved as small gatherings such as birthdays, picnics and similar events. The county, in effect, delegated to Bella the decision-making on what is "small" and what is "similar," with no opportunity for public comment. These issues should be determined by LCDC, not a private owner of farm land who may profit more from events than farming. I have brought this issue before the Court of Appeals. It may be that the Commission wants to allow some of these activities, but I think they should come under the

agri-tourism statute, which limits how many of these activities can occur annually and allows local governments to impose their own conditions on events. With the farm stand statute already allowing harvest festivals, corn mazes, cow trains, animal petting areas and hayrides, which together can bring in substantial amounts of money to the farm stand (as Bob Rindy noted in testimony before the House Committee in 2001), I think other types of activities need to be limited in number and thus come under agri-tourism. Certainly that should be so for activities like family celebrations if allowed at all. And I think the number of attendees needs to be limited and restrictions placed on hours of operation. I am also very concerned about concerts in EFU zones, as they can be a significant and unpleasant distraction to all who live and work in the area. People living on the island are not accustomed to such noise pollution, all to benefit one property owner. the legislature has allowed these at wineries, but I am not certain they should expand to all farming areas where farm stands are permitted.

One last comment. There is a big difference between events at farm stands in places like Klamath or Harney Counties, where populations are small, and places like Sauvie Island, which is 3 miles outside an urban growth boundary containing nearly 2 million people. Sauvie Island also is a rural reserve with some of the best agricultural land in the state. I think rulemaking needs to recognize these differences. One size may not fit all.

There are other issues identified in LUBA's opinion that also warrant consideration for policy making. I urge the Commission to take up this issue before counties issue more farm stand permits allowing these questionable uses.

Mark J. Greenfield
14745 NW Gillihan Road
Portland, Oregon 97231
(503) 227-2979
markgreenfield@involved.com

Bob – on the general topic of Goal 10 and housing issues, I see it mentioned but in the longer rather than shorter term context. A couple of observations:

- implementation of 2254 will, of necessity, involve some sort of housing need analysis, which should be highlighted in the short term work. Not sure what it will involve, of course, but residential land supply will obviously be critical which means that Goal 10 compliance should be also.
- as we derailed last session's legislation on inclusionary zoning, the Speaker indicated her intention to convene a workgroup on the topic of housing during the interim. I haven't heard anything yet, and I'm perfectly content if she forgets, but if she doesn't and if she actually gets a group together, DLCD should be involved since it will implicate issues well within the agency's purview. Some recognition of this in terms of staff participation should be on the short-term list as well.

Jon Chandler
Oregon Home Builders Association
375 Taylor Street NE
Salem, OR 97301
503-378-9066 office
503-602-8945 cell



September 26-27,
2013
Item 13
Attachment E
Public Testimony

From: Jeff Rasmussen [mailto:jeff.rasmussen@co.jefferson.or.us]
Sent: Friday, August 02, 2013 3:33 PM
To: Rindy, Bob
Subject: FW: [LCDC_Agenda] Please help with LCDC's Policy Agenda

Bob,

More of a “housekeeping” suggestion.

On page 12 – Item #3 (Rulemaking to Authorize Youth Camps on Farmland (HB 3098)), should the last sentence include Wasco County? Suggestion: This bill was in response to a request for expansion of Young Life facilities in Jefferson and Wasco County.

Jeff



September 26-27,
2013
Item 13
Attachment E
Public Testimony

OFFICE OF
THE CITY MAYOR & CITY COUNCIL
www.ci.medford.or.us

CITY OF MEDFORD
411 WEST 8TH STREET
MEDFORD, OREGON 97501

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September 9, 2013

Chair Marilyn Worrix & Commissioners
Land Conservation and Development Commission
635 Capitol Street NE, Suite 150
Salem, OR 97301

RE: LOAC Comments on Policy Agenda for the Land Conservation and
Development Commission

Dear Chair Worrix & Commissioners:

The Local Officials Advisory Committee (LOAC) was developed as a group of local officials that "advise and assist the commission on its policies and programs" pursuant to ORS 197.165. The LOAC is aware that the Land Conservation and Development Commission (LCDC) is currently examining a policy agenda for the Commission for the next biennium and over the long-term. Therefore, the LOAC provides the following comments regarding the proposed policy agenda with thought regarding how local administrators will implement state-wide policies at the local level. In reviewing the proposed policy agenda, there are a number of items that are likely to have an effect on local governments if adopted. In addition, there are a number of areas where local governments have a significant interest in finding new solutions to ongoing problems.

In general, many of the new policies put forward both by the legislature and in the proposed agenda have a cost to local governments who have to implement changes to local plans, rules, and ordinances as a result. However, there is often little financial support for such changes. Therefore, efforts where policies can relieve burdens on local governments by streamlining decision making or reducing appeals, thereby reducing the costs to cities and counties, are a better investment of state and LCDC resources.

Ongoing Projects for 2011-2013 Biennium

The ongoing projects should be concluded as efficiently as possible. Each of the projects listed has an impact on the communities in which they are being undertaken. The LCDC should continue to invest resources to complete these projects.

New Policy Projects Required by the 2013 Legislature

The LCDC needs to prioritize completing the new policy projects required by the 2013 legislature. LOAC believes it is vital to include local government representatives on rulemaking committees when the rules will directly affect local decision making authority.

First, the LOAC has discussed at length the urban growth boundary (UGB) streamlining rulemaking. There is significant concern that a new program will fail to streamline the process in practice. Therefore it is important that local level planners and decision makers be included in the process to insure that the rules that stem from the detailed legislative requirements of HB 2254 will provide the intended relief to the UGB process and help facilitate the local governments in meeting the state goals. Both cities and counties have a stake in finding ways to address urbanization issues, both to allow cities to grow in the way intended by the statewide regulations and to prevent counties from having to address increasing the number of unincorporated growth areas that require counties to work not just as a county but as a city as well.

In addition, both counties and cities are very invested in the rulemaking that will accompany the changes related to the population forecasting program. Counties and cities want to insure that they remain very involved and aware of the forecasting process moving forward. In addition, there were concepts that were discussed while drafting the legislation which would address county concerns and city concerns that need to be included in any rulemaking process. While we recognize that the bulk of the rulemaking related to this system will be completed by Portland State University, the areas of the Department of Land Conservation and Development's (DLCD's) responsibility are equally important to local jurisdictions and therefore it is vital to include their representatives in the rulemaking process.

The budget note related to the "raise it or waive it" doctrine also reflects a concern of both cities and counties to avoid appeals by addressing concerns at the local level. Citizen participation early in the process can lead to a reduction of the number of appeals of these difficult, lengthy legislative processes.

During the session, concerns were raised regarding the notice issues for legislative decisions which need to be addressed and the LCDC and DLCD are in the position to facilitate these discussions. Including this as a priority will result in a better local process for both citizens and local governments which may open the door to fewer appeals and stronger local decisions.

New Policy Projects Recommended by the Department

The policies outlined in this section reflect a number of very different issues that have arisen in the last session of the state legislature. However, the concern that local governments have is how these issues are prioritized to best leverage the remaining resources of the LCDC and DLCD. The LOAC believes the top priority should focus on economic development and insuring that the land use system in Oregon is not so burdensome that it limits the growth of all types of industries within the state. Therefore, LOAC recommends of the eleven recommended policy issues, items 10 (Industrial Lands) and 11 (Farmland Protection Improvements) should be given the highest priority.

Economic Development and Land Use

Prioritizing the industrial lands policies will continue one of the policy projects undertaken in the 2013 legislative session and reflects an area of legislative priority as well. A number of bills were introduced in 2013 state legislature which sought to address increasing concerns about the restrictions that our cities and counties face in encouraging industrial development throughout the state. To ensure a comprehensive solution that works with the statewide system, LCDC

needs to lead the discussion of the policies that are examined and enacted. In addition, local officials must be involved in the process of developing policy changes in order to insure that the new policies allow local land use regulation and creates systems better able to respond to economic opportunities.

Similarly, the issue of conflicting uses on resource lands was a heavily discussed issue in the legislature during the 2013 session. Many of these bills were directed at singular farm or forest issues but, in total, the bills spoke to an underlying concern about conflicts between agricultural and non-agricultural uses on designated resource land. HB 3040, which did not pass the legislature, sought to set up a work group that would require the DLCDC and the Oregon Department of Agriculture to work with stakeholders to address these conflicts issues. The definition of "farm use" generates confusion regarding the issue of farm stands and wineries. This has plagued both the LCDC and the state legislature. Local governments, especially counties, are caught between the use of farmland for traditional agricultural production and the wishes of property owners who want to develop their land for business which expand from the traditional farm. A clearer policy direction based local considerations is necessary to creating comprehensive policies that address these complex issues.

Therefore, these issues must be a priority for LCDC and DLCDC because without your leadership, we will continue to face piecemeal legislation that removes local discretion and further complicates statewide land use regulations.

Finally, the LOAC believes that an additional system for slow growing communities to review local plans with a focus on investment and long-term growth strategies is required. The problem for these areas is that current development strategies start with population forecasting, but many areas that have been deemed to not be growing need to amend their land use plans to allow for creative avenues for redevelopment. A non-population growth based system should be developed to assist communities with long-term growth opportunities and a flexible land use systems that accounts for communities that are in a transition from one economic model to another.

Streamlining the System

Like economic development, another priority of local governments is finding ways to streamline land use decision. This includes reducing appeals and finding clearer guidelines as to how state regulations should be enacted at the local level. Projects directed at streamlining the land use process could include improving the citizen involvement process, thereby reducing appeals based on early participate and inclusion in the process, or reducing the findings needed, thereby reducing the technical errors that are grounds for appeals that merely delay a project or plan without actually amending the end product. Finding projects in which the LCDC can clarify or simplify the rules is a long-term benefit for both the LCDC and for local officials.

Periodic Review

There is significant discussion in the recommended policy agenda about periodic review and how to replace this system. The issue of periodic review speaks to a number of underlying issues related to resources, efficiency, and growth. If the LCDC wishes to evaluate periodic review and determine a new way to ensure that cities and counties are keeping plans up-to-date, all three areas need to be addressed. As LCDC starts the discussion on how, or if, periodic review should be replaced, there needs to be a frank discussion of the intention of the process and the best means for insuring local governments update their plans. Every county and city

has a different perspective on areas of potential growth and redevelopment. Therefore, there must be consideration of the variety of regions needs and controls.

The LOAC believes that a work group that consists of local and state representatives is necessary to determine how to best address the state's concerns about outdated plans and local resources and capacities. Such a work group can create a consensus based decision to determine how periodic review should be changed or if it should be discontinued all together. Replacing periodic

review is a long-term discussion where local governments need to be a partner to the LCDC in determining the best policies moving forward.

Agency Coordination

Many local jurisdictions have to coordinate between the competing agencies that have jurisdiction over land uses throughout the state. Areas of intersection include siting energy facilities, transportation planning, and economic development programs. If the LCDC can find ways to facilitate coordination between these agencies, local government will be able to streamline processes for getting projects or resources for completing resources. If updating the state agency coordination agreements fosters this level of conversation, it will assist local governments who are working toward one goal but dealing with multiple agencies. The LOAC has seen the DLCD's long-term plan for working to update state agency coordination and is concerned that there is little discussion on how to prioritize which agencies the DLCD will work with after the 2013-2015 biennium. The LCDC should better outline the specific progression of agencies the DLCD should work with in updating these agreements.

Also, regional solutions teams can provide the platform for these inter-agency and local government conversations. Finding ways to leverage this resource to assist local government projects is vital to streamlining the process of land use planning.

Regional Issues

In both of the above issues, there is also the underlying issue of different needs and expectations in different regions of the state. While the state-wide land use system has worked during the last 40 years to help limit the rate of sprawl and low-density development, it is starting to show its limitations as well. This is particularly true where counties and cities have determined that the restrictions do not make sense in their area. For example, using large amounts of area for a solar energy facility makes more sense in Harney or Malheur County than in Multnomah. Or, high density areas in a buildable land inventory make more sense for Beaverton or Gresham than for Pendleton or Cave Junction. These regionalized differences should be taken into account, and a discussion must be started to address these issues. The southern counties have started this regionalized discussion for purposes of agricultural and forest lands, but there needs to be some consideration of other areas where studies, work groups, or policy choices can be made. The UGB work group added a regionalized element to the new system, and it should be explored to see if there are other areas where this approach might work.

The Metro region also has a significant issues related to UGBs that split properties so that the land within the UGB cannot be easily annexed because the remainder of the property does not meet minimum resource land parcel size. Cities and counties in the Metro area have expressed a strong concern related to that particular issue, and it needs to be addressed.

Finally, local government's decision-making authority related to land use decisions within a community must be considered. The statewide planning agenda cannot overwhelm or reduce the choices that local leadership can make in planning the community as it is envisioned locally.

Often, the goals of one community are not the aspirations of another, and there must be flexibility to create regional and local solutions to land use problems. Allowing local leadership to define a region and its priorities should be paramount for the LCDC in setting its agenda.

Conclusion

The members of the LOAC appreciate this opportunity to provide written comments to the LCDC as it considers its policy agenda. We are happy to further discuss these issues and concerns with the Commission as you move forward with your policy process.

Sincerely,

A handwritten signature in black ink, appearing to read "Dick Gordon", is written over a light gray rectangular background.

Dick Gordon, Medford City Council President
Chair, Local Officials Advisory Committee



LEAGUE OF WOMEN VOTERS®
OF OREGON

September 26-27,
2013
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Attachment E
Public Testimony

August 15, 2013

To: Land Conservation and Development Commission
c/o Bob Rindy, Senior Policy Analyst
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540
Email: bob.rindy@state.or.us

Re: LCDC Policy Agenda—Both Long Term and Short Term (2013-15)

The League of Women Voters is a nonpartisan, grassroots political organization that encourages informed and active participation in government. The League supports our statewide land use planning program with local implementation. We also have positions in support of many of the policies listed in the five priorities included in the Governor's 10-year budget plan. We believe that these five priorities are interlinked as are parts of our land use planning program. Land use planning is about where people live, work, play, are educated, shop and how they get there. This planning also includes the need to address water and wildlife. The goals related to Education, Jobs and Innovation, Healthy People, Safety and Healthy Environment need to be considered together in the context of our land use planning program. The program is one of the most important tools used to meet those five goals.

We are both encouraged by the attempt to link the goals with our planning program and overwhelmed by the project. But we are concerned by the selective nature of the strategies listed in the July 17th staff document to be considered by the Commission. We encourage the Commission to take a look at all the strategies under each goal:

<http://www.oregon.gov/COO/Ten/Pages/education.aspx>

The strategies under the education goal don't specifically link to the land use program, except that there is a need for facilities to educate. Also providing those facilities close to where people live help parents stay engaged in their students' education. A plan that provides complete communities everywhere in Oregon would assist in meeting the broader goal.

http://www.oregon.gov/COO/Ten/Pages/jobs_innovation.aspx

The strategies for jobs and innovation include not only those listed in the staff document, but also driving down the cost drivers of health care by planning for walkable communities.

Not listed in the Governor's Plan is staff's "Maintain a balance of sustainable timber supply and environmental protection on private and state forest lands". But "Improving access to...land...for agriculture" is. The League provides a constant voice on behalf of our 2nd most important traded sector industry. Land is its most important asset. We all need to

remember that the cattle sector is the most economically successful—and much of the land needed for that sector is in Eastern Oregon.

http://www.oregon.gov/COO/Ten/Pages/healthy_people.aspx

Under the healthy people goal, our land use system, properly implemented, can help assure easy access to nutritious food and housing for low income Oregonians. Again, planning for complete communities throughout Oregon should be an overarching goal of the land use program.

<http://www.oregon.gov/COO/Ten/Pages/safety.aspx>

In order to address the safety goal and the strategy of increased community supervision, land use planning should include the siting of a variety of community housing needs. We know this is a challenge: how to site housing for parolees of all types, special needs or the mentally ill and others who should be a part of those complete communities from which they came.

http://www.oregon.gov/COO/Ten/Pages/healthy_environment.aspx

We believe there are several items missing on staff's list under healthy environment: helping local landowners protect drinking water sources, improving water quality monitoring as part of strategic investments in better land management and increasing availability to transit, rail, bicycle and pedestrian travel are but a few.

The League would suggest that a broad conversation about the definition of a complete community would be a way to address these interlinked goals. This conversation actually occurs today in communities that do visioning and that dreaded "periodic review". Discovering what the barriers are to implementing complete communities is exactly the exercise needed before the Commission develops its own "Long Term Outlook".

To move from the broad to the narrow 2013-15 Policy Agenda, the League would like to propose a focus on the two most important pieces of legislation from the 2013 legislature: HB 2253 and 2254. During rulemaking on HB 2253, the League wants to be sure that citizens receive the promise of the ability to engage in the new impartial, more scientific system of population forecasting.

HB 2254 is a HUGE project that will need to include a broad spectrum of interests. It will take more "testing" of proposed processes and it will need to meet the end goal of complete communities, both large and small. As you move away from periodic review, the League has consistently raised the issue of the items required to be addressed by local governments "during periodic review". Citizens and policymakers assumed these items were important, but also recognized that it would be burdensome to require local governments to address them individually. Wrapping them into the rules for HB 2254 seems reasonable.

Should the Southern Oregon Pilot Project actually provide a petition for rulemaking under the agreed upon work plan signed by the parties, the League will want to be a part of any such conversation. Our current monitoring of this project leaves little hope that all three counties

can agree on how the agriculture and forest lands in these counties differ enough to require a change in definition of these lands. It was never the intent of this project to create a new set of zones for expansion of rural residential homes, as it seems Douglas County is suggesting. One intriguing part of the project for the League has been the required exercise of defining the carrying capacity in these counties. We have yet to see any information on that requirement from these counties.

The League has strong positions on addressing climate change. We see the work of ODOT on greenhouse gas reduction goals as critical. It may be that the work of HB 2254 can address this issue as it develops the more global goal of “complete communities”.

We believe that it is important to both the environment and the economy to address the potential sage grouse listing as it relates to a number of land uses, including solar and other renewable energy projects, targeted industries and even youth camps. However, we believe that the Department of Fish and Wildlife should take the lead, with this department’s staff and broad interests participating in any Work Group on this issue.

The League has recently adopted new positions related to coastal issues. Certainly estuary planning is important, as well as assuring the Territorial Sea Plan is implemented. We are very concerned that the risks to our coast with climate change needs to be a priority. Are there new rules that are needed to help our coastal communities with this serious challenge?

Besides HB 2253 and 2254, the Legislature has required rulemaking on HB 3098. Seemingly simple, the League believes the Commission needs help from the Department of Agriculture to learn exactly where in Eastern Oregon these youth camps might potentially be sited. Counties need clear guidance as well. Of course, citizen involvement is a critical part of the content of these rules.

The League agreed to be part of the conversation around citizen participation in legislative amendments. We are very concerned that changes suggested under HB 3362 would reduce the ability of our local elected officials to consider broad policy issues. Often these policies change during the public process, so requiring citizens to know exactly what they should raise during this process is also a burden. As stated in the staff report, any changes would require **significant** adjustments to notice for these amendments. The Commission should understand this challenge, since policies are often amended the same day new Commission policies are adopted. Under the Bend scenario, any change would require new notice to citizens so they could have the opportunity to “raise it or waive it”. And broader notice than is currently provided for legislative amendments would be very important.

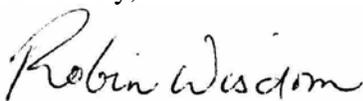
This legislative session we heard a great deal about the need for industrial land—or more accurately for funding the infrastructure for these lands. It would seem to be appropriate to convene a work group to seek the facts about what lands are available, what funding sources exist, and what barriers exist to the use of those lands by businesses. There were overinflated statistics provided by proponents of state funding and understated lists of lands available during the legislative session. Seeking the truth will allow for development of good proposals to assure we have enough industrial land to provide family wage jobs for Oregonians while not over zoning our precious land.

Each session, there are bills to increase nonfarm uses on our most important industrial lands: our agricultural lands. It seemed that legislators and the Legislative Fiscal Office believed that any substantive discussion around this myriad of uses would overburden the department in the near term. We agree. But it should certainly be a part of any long term list of projects.

Lastly, the League has consistently asked that the Commission address Goal 1. All of the projects listed above, and most certainly the Governor's 10-year Plan, need the engagement and buy in of all of Oregon's citizens. The League has promoted the Governor's "kitchen table" project (oregonkitchentable.org). But it is not enough. We fought for citizen engagement during work on HB 2620 related to better coordination between economic and community development groups. Perhaps it would be worthwhile to discuss with Greg Wolf of the Governor's Office and Michael Jordan, Chief Operating Officer, on how that engagement might intersect with an expanded view of our land use planning program as pointed out at the beginning of this letter: Our land use planning system is about where people live, work, play, are educated, shop and how they get there.

We apologize for this lengthy letter, but the proposal by staff was also lengthy. And we believe the many issues presented deserve a thoughtful response. Thank you for considering our comments.

Sincerely,

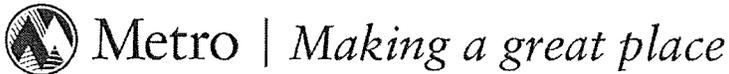


Robin Wisdom
President



Peggy Lynch
Natural Resources Coordinator

cc: Richard Whitman, Natural Resources Policy Advisor
Greg Wolf, Intergovernmental Relations and Regional Solutions Team
Michael Jordan, Chief Operating Officer
Nathan Rix, Strategic Initiatives Project Manager



September 26-27,
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September 10, 2013

Land Conservation & Development Commission
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

Dear Chair Worrix & Commissioners:

This letter provides Metro's preliminary comments regarding your potential policy agenda for the 2013-15 biennium and beyond. Metro has an interest in a number of the policy areas identified in the July 17 staff report, including the connection between the Statewide Transportation Strategy for reducing Greenhouse Gas Emissions and the Statewide Planning Program, the Transportation Planning Rule, housing policy, and economic development. We look forward to working with you and other stakeholders on these issues should you decide to move forward. There are two areas that we believe are important to move forward on, specifically "new policy projects" number 8 (Metro Area Boundary Issues) and 11 (Goal 9).

First, we agree with the proposal to address issues resulting from parcels being split by the UGB. In the past, Metro has implemented a policy direction to use streams, rivers and other natural features as edges to separate urban and rural areas. This policy has been used for urban growth boundary decisions as well as defining urban reserves. As a result, some single parcels are split by the UGB or the urban reserve boundary. While this policy direction provides benefits in separating conflicting uses and protecting natural resources, it can also have an unintended consequence of leaving the portion of the parcel outside the UGB, or in the case of urban reserves, a future UGB location too small to meet applicable partition requirements. Leadership from the Commission is needed to explore suitable tools, including possible legislation, to address this problem and help ensure that land inside the UGB can be urbanized in a timely fashion. Developing a process to allow property owners to legally create new parcels inside the UGB while preserving farm, forest and natural areas outside the UGB will provide a win-win situation for the Statewide Planning Program as well as the local governments in the Metro region.

Next, Metro is very interested in being part of the conversation regarding potential refinements to the Goal 9 rules, particularly the applicability of the inventory requirements in the context of UGB decisions in the Metro region. As demonstrated by Metro's recent UGB expansion decision and the Commission's related order, it would be beneficial to clarify the appropriate role of Metro in order to avoid unnecessary duplication of the detailed work undertaken by local governments in their inventories of employment land within their jurisdictions.

Thank you and please contact me if you have any questions.

Sincerely,

Steve Wheeler
Interim Director
Planning & Development

cc: Bob Rindy, DLCD Martha Bennett, Metro
Metro Council Roger Alfred, Metro



American Planning Association
Oregon Chapter

PO Box 3674 Wilsonville, OR 97070
 8699 Sun Place Wilsonville, OR 97070
 PHONE: (503) 657-6087 • FAX: (503) 210-0860
oapa@oregonapa.org • <http://www.oregonapa.org>

Making Great Communities Happen

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PRESIDENT

Brian Campbell, FAICP

September 18, 2012

VICE PRESIDENT

Damian Szyrnyck, AICP

SECRETARY

Read Stapleton, AICP

Bob Rindy

TREASURER

John R. Russell, AICP

Senior Policy Analyst and Legislative Coordinator

PAST PRESIDENT

Greg Winterowd

Department of Land Conservation and Development

635 Capitol St. NE, Suite 150

Salem 97301-2540

AT-LARGE DIRECTORS

Alwin Turiel, AICP

Terri Harding, AICP

Nicholas Snead

David Reesor, AICP

Re: 2013 LCDC Work Program

Dear Mr. Rindy:

PLANNING

COMMISSIONER REPS

City: Ric Stephens

County: David Sykes

We request that you include this letter on behalf of the Oregon Chapter of the American Planning Association with your report to the Commission at its October, 2012 meeting.

PROFESSIONAL

DEVELOPMENT OFFICER

Clay Moorhead, AICP

Oregon APA represents nearly one thousand professional and citizen planners in Oregon. The organization supports state policies and legislation that fosters good community planning. We understand that the Land Conservation and Development Commission (LCDC) will be considering updates to its policy agenda at its September meeting. For the reasons outlined below, we request that LCDC consider adding rulemaking to address private parks (in addition to public parks) in EFU lands to this agenda.

EDUCATION &

OUTREACH

Angela Lazarean

LEGISLATIVE & POLICY

AFFAIRS

Jeannine Rustad, JD, Chair

STAFF

Executive Director

Patricia A. Zepp

Legislative Liaison

Stephen Kafoury

As you know, public and private parks are allowed in EFU zones under ORS 215.213(2)(e)¹ and 215.283(2)(c).² While there have been land use disputes over

¹ ORS 215.213(2)(e) provides:

In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition), the following uses may be established in any area zoned for exclusive farm use subject to ORS 215.296:

* * *

(e) Community centers owned by a governmental agency or a nonprofit community organization and operated primarily by and for residents of the local rural community, hunting and fishing preserves, public and private parks, playgrounds and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). A public park or campground may be established as provided under ORS 195.120. As used in this paragraph, "yurt" means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

² ORS 215.283(2)(c) provides:

state and local public parks, there is now concern over what type of “private parks” may be allowed in EFU zones and how intensive the activities permitted can be. DLCDC has a longstanding position that private parks should be primarily for passive recreational uses and not intensive amusement type parks.

At least some of this concern has arisen over the extent to which wineries undertake nonfarm uses on farmland. That concern arises from two sources – the loss of farmland to nonfarm uses and conflicts from intensive commercial activities urbanizing the EFU zoned land. We expect at least some of these issues to be addressed by the 2013 Oregon legislature.

However, private parks are not defined and there are situations in which the term has been stretched to include commercial paintball parks, amusement facilities, and motocross racing tracks.³ Under *Brentmar v. Jackson County*, 321 Or 481, 900 P2d 1030 (1995), the Commission has the power to adopt rules to define the various terms used in ORS 215.213 and 215.283 and to limit their impacts on agriculture. LCDC has not chosen to do so as of this date.

The Oregon Chapter of the American Planning Association is concerned over the potential proliferation of private parks and believes that LCDC should add rules to deal with this problem to its 2013 work program. The Chapter would assure that it would be represented on any work group the Commission formed to assist it in the adoption of those rules.

Thank you for your consideration.

Sincerely,



Jeannine Rustad, JD

The following nonfarm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

* * *

(c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the approval of the county governing body or its designee, a private campground may provide yurts for overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation. Upon request of a county governing body, the Land Conservation and Development Commission may provide by rule for an increase in the number of yurts allowed on all or a portion of the campgrounds in a county if the commission determines that the increase will comply with the standards described in ORS 215.296 (1). As used in this paragraph, “yurt” means a round, domed shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appliance.

* * *

In addition, subsection (d) allows for public parks consistent with ORS 195.120. This category of parks is not of concern to us. Similarly, public parks under OAR 660-033-0130(31) are of no concern.

³ The motocross racing track issue was raised, but not decided in *Utsey v. Coos County*, 176 Or App 524, 32 P3d 933 (2001). See the dissenting opinion of Chief Judge Diets at 32 P3d 960. DLCDC was the chief petitioner in this case.

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OREGON SHORES
CONSERVATION COALITION

September 9, 2013

Via Email to bob.rindy@state.or.us

Land Conservation and Development Commission
c/o Bob Rindy
Senior Policy Analyst
Oregon Dept. of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

Re: LCDC's 2013-2015 Policy Agenda

Dear Mr. Rindy and Commissioners,

Thank you for the opportunity to provide comments on the Land Conservation and Development Commission's policy agenda for the coming biennium. The Oregon Shores Conservation Coalition played an active role in advocating for the creation of Oregon's land use planning system 40 years ago, and since then has participated actively in the system, and assisted members and other citizens in participating in the land use planning process. Oregon Shores and its members strongly support our land use system and its fundamental principles of citizen involvement, long-range planning, and sound principles of judicial review. Oregon Shores agrees with the assessment by DLCD policy staff in the July 17, 2013, Agenda Item 9 Memorandum, that there are significant challenges to the land use system and current policies, both as to program improvement and as to an increasing need for thoughtful advance planning in the face of climate change impacts to our communities. Oregon Shores believes there is a significant amount of overlap between these two concepts that could be further addressed and acknowledged by the proposed policy agenda.

Most fundamentally, Oregon Shores believes that our communities, especially those along the Oregon coast, must begin to plan for climate change impacts immediately. Advance planning is critically important given two opposing forces likely to result from climate change. On the one hand, increased storm frequency and intensity, along with sea level rise and decreased summertime precipitation, will put coastal properties, infrastructure, natural areas, and

water sources at risk. On the other hand, Oregon's coastal climate is likely to remain mild, with longer, warmer summers and more temperate winters. As a result, Oregon's coastal communities may attract "climate refugees" and experience greater in-migration and associated pressures on land use and water resources. At the convergence of these two forces, Oregon's coastal communities will likely see property disappearing, as beaches migrate inland, while human population growth increases the demand for land and resources.

Oregon Shores believes that a key to successful planning for climate change is adaptive planning—building into the planning process the ability to review new information and adapt plans accordingly on a continuous basis. When first adopted, Oregon's land use system envisioned the Periodic Review process to allow for similar ongoing adaptation over time, albeit at intervals rather than continuously. DLCD staff acknowledge that periodic review has been significantly inhibited and reduced, and currently remains a requirement for only a handful of jurisdictions. In terms of Oregon's ability to plan for and adapt to climate change, this moves us in the wrong direction. In the absence of periodic review, it is critical that LCDC and DLCD develop an alternative format for adaptive management of land resources in the face of increasing climate change impacts over time.

Long-Term Outlook

Oregon Shores is pleased to see that the recommended long-term outlook for the LCDC policy agenda includes "Coastal and Natural Resources (including hazards and climate change initiatives)". Given the state's prior acknowledgement of the importance of local government planning for climate change, Oregon Shores believes continued policy development to support climate change planning will be critical to achieving a measure of foresight in land use development over the coming years.

The potential impacts of climate change in the Pacific Northwest, including Oregon's coastal region, vary widely because of its location in the Cascadia Subduction Zone (given that a major earthquake could drastically affect land elevation and thus its relationship to sea level) and the different long-term weather patterns that affect it. Global sea level rise (with estimates of about a meter expected by 2100 appearing increasingly conservative) is likely to cause very significant erosion.¹ Added to the predicted future sea level rise, large storm waves, some up to 26 meters (85 feet) at sea, are occurring more frequently on the Oregon coast; the overall "wave climate" is increasing, with a continuing trend of greater wave impacts on the shoreline. Climate change is also predicted to result in more intense winter storms, and thus greater flooding from the landward side. It may also lead to longer summer droughts, creating a different set of impacts to both human and natural communities.

Climate change will affect various areas of the coast in different ways depending on tectonic subsidence, sand loss from beaches, and the amount of tidal marsh diking in estuaries. While specific impacts are expected to differ depending on local factors, sea level rise and other climate-related impacts are a certainty for the Oregon coast. Many of these changes will

¹ The so-called Bruun rule predicts, as rough general estimate, a 1:100 ratio of sea level rise to tide heights, i.e., a one-foot rise in sea level will mean that high tides will typically reach 100 feet further inland, exposing new areas to erosion.

assuredly impact property, infrastructure, public health and safety, and coastal resources and ecosystems. Addressing these changing but uncertain conditions will require adaptation measures in order to ensure the resilience of Oregon's coastal communities and the state's ability to preserve key resources. The State and coastal communities will likely need to address the protection of both private property and public shoreline access. This will be a difficult balance to strike.

Oregon has adopted a framework for climate change adaptation, but the framework specifically acknowledges that adaptation strategies need to be developed at the regional and local level.² The framework primarily identifies the anticipated risks associated with climate change, including loss of wetland ecosystems and services, increased coastal erosion and risk of inundation from increasing sea levels and increasing wave heights and storm surges, and increased incidence of landslides.³ Equally important, the framework acknowledges several gaps in the State's ability to address identified risks. For example, regarding coastal erosion, the report notes several shortcomings, including:

- Long-term sea level rise is not a principal factor in Goals 17 and 18, although it should be for land use planning for coastal and shoreland areas;
- Oregon lacks information about the cumulative effects of beachfront and estuarine shoreline protective structures;
- Oregon lacks a policy framework to use restoration of natural habitats and features as a strategy to buffer the effects of storms, waves, and higher sea levels; and
- Oregon does not have a policy framework for managing retreat from areas subject to increased threat of climate-related hazards.⁴

In its 2009 publication, *Climate Ready Communities*, DLCD established program objectives for a Coastal Adaptation Strategy, one of which is:

"To enable coastal local governments to prepare adaptation plans by 2015 to account for the effects of climate change on property, infrastructure, habitat, and resources . . ."⁵

In order to achieve this goal, it is imperative that LCDC tackle the challenge of climate change planning policy during the next biennium. Oregon Shores believes that the current policy suggestion of "continue to monitor" responses to climate change does not go far enough to addressing this important issue. Several overarching policies may provide the necessary starting point towards developing more adaptive planning. Some coastal communities already have policies to consider coastal and shoreline impacts of development. These policies fall short because (1) boundaries are generally static; (2) buffers are likely inadequate given projected rates of change; (3) there is no explicit provision for considering climate change; and (4) in most communities planning staff are not equipped to assess risks. LCDC should explore policy

² Oregon Climate Change Adaptation Framework (Dec. 2010).

³ *Id.* Risks 9, 6, and 11.

⁴ *Id.* at 46.

⁵ www.oregon.gov/LCD/docs/publications/climate_ready_communities.pdf (last visited 12/28/12).

options for assisting local communities to take the necessary steps to incorporate considerations of climate change impacts into land use planning decisions.

Adaptive Planning

In an effort to assist coastal states in dealing with the range of physical consequences resulting from climate change coupled with the blizzard of Federal, state, and local laws, as well as expectations of public and private landowners and users, the Environmental Protection Agency in 2011 published a document entitled “Rolling Easements.”⁶ James Titus, the author, defines the term:

A rolling easement is a legally enforceable expectation that the shore or human access along the shore can migrate inland instead of being squeezed between an advancing sea and a fixed property line or physical structure. The term refers to a broad collection of legal options, many of which do not involve easements. Usually, a rolling easement would be either (a) a law that prohibits shore protection or (b) a property right to ensure that wetlands, beaches, barrier islands, or access along the shore moves inland with the natural retreat of the shore.⁷

In a rolling easement approach, “human activities are required to yield the right of way to naturally migrating shorelines.”⁸ Grounded in the public trust doctrine (i.e., shorelands held in trust) and common law principles of reliction, rolling easements can take several forms. Using a regulatory approach, statutes and regulations at the state level, local ordinances and code provisions, or even conditions on development permits could be adapted to address climate change. Using property rights tools, future interests, conservation easements, or restrictive covenants might provide a way to restrict future development of low-lying coastal areas. Other policies such as setbacks, rolling conservation easements, or transferrable development rights, or a combination of regulatory and title restrictions might also provide feasible avenues for climate change adaptation.

In addition to policies for land use planning for development, Oregon should also address the increasing trend and pressure to protect coastal private property with hardened shoreline structures, such as riprap and seawalls. These structures have the effect of shortening the width of the beach, reducing the public beach area and public access. In the long term, as sea levels and storm surge continue to rise, the beach will become ever more condensed between the ocean on one side and the man-made shoreline structures on the other. Oregon should be considering how to re-envision the use of shoreline protective structures within a larger framework of adaptive planning. LCDC can help coastal communities consider which areas should be protected, and which areas should be allowed to remain in a natural dynamic state.

The existing regulatory framework does not adequately or expressly account for climate change impacts on development. Existing planning frameworks fall short for at least two

⁶ Titus, J., *Rolling Easements*, EPA (June 2011). Available at <http://water.epa.gov/type/oceb/cre/upload/rollingeasementsprimer.pdf> (last visited 1/7/13).

⁷ *Id.* at 7.

⁸ Titus, *Rolling Easements* (2011).

reasons: (1) there are no explicit requirements that state, regional, or local planning entities address potential sea level rise in land use or infrastructure planning; and (2) statutory planning timeframes are too short to encompass sea level rise impacts.

As a starting point, Oregon communities could directly address climate change within their land use planning policies. For example, in the State of Washington, King County's 2008 Comprehensive Plan recommends that the county incorporate climate change considerations into plans, programs, and projects:

King County should consider projected impacts of climate change, including more severe winter flooding, when updating disaster preparedness, levee investment, and land use plans, as well as development regulations.⁹

Although such a broad requirement does not address specific issues related to climate change, it is possible that an overarching acknowledgement of climate change impacts may serve as a catalyst to bring climate change considerations into some of the existing relevant legal framework. Moreover, without policy directives from LCDC, local governments may be reluctant to engage in the difficult long-range planning process of climate change adaptation.

Near Term Subject: Periodic Review

Basic changes to incorporate climate change analysis into planning policies could be accomplished through a goal adoption or amendment process, except that for the Oregon coast such a requirement should be mandatory on cities and counties. However, even such a modest goal as amending local comprehensive plans to include climate change considerations in land use planning is stymied by the lack of state-level policy directives to incentivize or require such an amendment. As recognized by DLCD staff, the program for revising comprehensive plans to include new information is in fact moving the other direction, *away from* mandatory review and revision. The gutting of the Periodic Review process severely undercuts the ability of land use planning to adapt over time to consider new information and revise policies, in particular for protection of natural resources and hazard avoidance.

DLCD recognizes that many of the local comprehensive plans are becoming outdated. In order to effectively address climate change impacts on land use in communities, in particular coastal communities, LCDC must rethink the question of periodic review to assure that climate change adaptation considerations are regularly and effectively integrated into all coastal local government comprehensive plans, zoning, maps and inventories.

Near Term Subject: Estuary Planning and Development of Tools

Oregon's numerous estuaries serve as rearing areas for important runs of anadromous fish, such as Chinook and Coho salmon. These species depend on bays, marshes, and tide flats as foraging areas and nurseries for young. Many of Oregon's coastal wetlands have been diked for farming, transportation and other development uses. As sea level rises, remaining tidal marshes could be lost, as they will be unable to move upslope and instead will be pinched off against hardened human-built structures. These habitats may also be affected by beach erosion,

⁹ King County Comprehensive Plan, Policy E-212, at 4-17 (2008).

tidal inlet widening, and overtopping of dunes and barriers by storm surges, as a result of sea level rise.

“Climate Change Adaptation/Sea Level Rise data, planning and regulations” are recognized in the Oregon Coastal Zone Management Program as “Priority Needs and Information Gaps.”¹⁰ More specifically:

The state’s estuary and coastal shorelands planning framework is in need of review and update to respond to changes in habitat, coastal economies and the effects of climate change and sea level rise.¹¹

As sea levels rise, wetlands will convert from one type to another and will need to move inland in order to retain the variety of wetland types that serve important ecosystem functions. For example, an increase in sea level could transform what is now a high marsh into subtidal habitat, and while upriver floodplains become the new estuary.

The barriers to wetland migration in estuaries are the same as those for the coastal shore—*i.e.*, hardening of estuary shorelines eliminates upland areas for shallows, mudflats, and marshes as water levels rise. Humans interact heavily with estuaries through construction of dike and ditch systems to convert estuaries to agricultural lands, as well as filling and infrastructure construction for residential development. By placing barriers in estuaries we increase the risk of flooding upstream and limit the potential for dynamic estuary migration. Restoration of estuaries can help increase the resiliency of these ecosystems and help prevent more destructive flooding.

Incorporating concepts of wetland adaptation into local land use planning could take the form of increased setbacks from wetland and riparian areas, conservation easements, and other rolling easement and adaptation tools discussed above. Use of these planning tools could provide the opportunity to accomplish a number of goals, including preventing further loss of wetlands, protecting public and private property from hazards of flood and extreme storm surges, enhancing and protecting water quality and wildlife habitat, and preserving the economic value of estuaries for food production and fisheries.

Oregon Shores recently engaged in a grass-roots process with citizens of Lincoln County and Newport to develop a proposal to incorporate adaptive planning for climate change impacts to wetlands in local plans. That effort engaged local residents in identifying priorities and developing an approach to climate change adaptation. Many Lincoln County citizens participated in this effort to develop a pioneering adaptive plan, but we encountered significant barriers to achieving changes to land use planning ordinances to incorporate climate change considerations and adaptive planning concepts. Not the least of these was a lack of resources at the local government level to address issues that had not been specifically mandated by state-level policy or legislation. An equally significant challenge was the absence of a policy directive or framework for creating adaptive planning (given the absence of Periodic Review as discussed above). LCDC should consider collaborative efforts with DSL and other agencies to determine

¹⁰ See, *e.g.*, comments on estuary plans (goals 16 and 17) in OCZMP at 59.

¹¹ *Id.*, at p. 62.

Oregon Shores Comment to LCDC
September 9, 2013

how concepts of adaptation, including setbacks or buffers that “roll” with changing wetlands boundaries, could dovetail with existing laws regarding wetland delineation and protection.

Conclusion

It is critical that local cities and counties begin immediately to account for climate change impacts in land use planning and infrastructure development decision-making. We therefore ask that LCDC add to its policy agenda for 2013-2015 the following specific near-term goals related to climate adaptation:

1. Incorporate consideration of climate change impacts to land use decision-making at the state and local level.
2. Develop a planning toolbox to assist local governments in transitioning to a more adaptive planning outlook.
3. Re-engage in Periodic Review or an alternative system to allow for adaptive planning over time.
4. Collaborate with Oregon Parks and Recreation Department to address the trend of increasing shoreline hardening and armoring along Oregon’s coast.
5. Add consideration of long-term projections of estuary movement to the current Estuary Planning and development of tools policy priority area.

Oregon Shores would welcome the opportunity to engage further with LCDC and DLCD on these important and difficult policy areas. Thank you for the opportunity to provide these comments.

Sincerely,



Courtney Johnson
On Behalf of Oregon Shores



Bureau of Planning and Sustainability
Innovation. Collaboration. Practical Solutions.

September 26-27,
2013
Item 13
Attachment E
Public Testimony

September 12, 2013

SENT VIA EMAIL

Land Conservation and Development Commission
635 Capitol Street, Suite 150
Salem, Oregon 97301-3540

RE: Meeting Item, Second Discussion of Proposed Policy Agenda

Dear Commissioners:

The Portland Bureau of Planning and Sustainability appreciates the opportunity to comment on the proposed policy agenda. The City's Government Relations office facilitated a meeting of the bureaus most engaged with the State land use program, and this letter encapsulates their consensus view.

Your Department should be commended for taking a longer than biennial perspective, and for framing policy choices around the desired outcomes of the *Governor's 10-Year Plan for Oregon*.

The City of Portland respectfully requests the Commission to include the following six items in your adopted policy agenda. All page references are to the July 17, 2013 draft of the agenda.

1. Build on the *Climate Change Adaptation Framework* and Improve Oregon's Response to the Effects of Climate Change on Communities, Infrastructure, and the Natural Environment (Page 8). This item is framed as a coastal zone only issue. While Portland strongly agrees with its inclusion, planned adaptation to climate change should be re-framed as a matter of statewide concern.
2. Improved Process for Local Legislative Land Use Decisions (Page 9). Portland would like to contribute to the proposed study of how specifically a participant should raise issues in a local legislative hearing. A "raise it" standard is certainly worth exploring, but would entail a similar exploration of how detailed public notices should be for legislative decisions.
3. Electronic Submission of Post Acknowledgement Plan Amendments (Page 10). The City agrees that this item should be pursued, but it should be broadened to include the submission of periodic review tasks.
4. Furthering Citizen Involvement while Reducing Costs for Local Governments (Page 15, #8). Portland would also like to explore state authorization to provide some local notices in electronic form for quasi-judicial land use decisions. While every affected property owner should continue to receive an initial mailed notice, community organizations and other interested persons could receive their notices electronically. The City would also like to



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explore more affordable ways to notify for projects with hundreds of potentially affected property owners.

5. Transportation Planning Rule Housekeeping (Page 15, #9). In addition to the issues raised by staff the City believes the rule would benefit from other clarifying amendments.
6. Industrial Lands and Statewide Planning Goal 9 (Page 15, #10). The City agrees that “second phase” rulemaking needs to clarify regional and local responsibilities in the application Goal 9 in the Portland metropolitan area. Particularly, the rule should address how Goal 9 and locally-adopted and acknowledged economic opportunities analyses inform employment land supply assumptions for regional urban growth boundary amendments. Portland also believes there is an equally compelling need to explain how Statewide Planning Goal 10 and locally-adopted and acknowledged housing needs analyses should inform housing land supply assumptions for regional urban growth boundary amendments.

Please include these comments in the record of the Commission’s proceedings.

Sincerely,



Susan Anderson
Director

Copies via email:

Department of Land Conservation and Development
Amie Abbott, Executive Assistant to the Commission, amie.abbott@state.or.us
Bob Rindy, Senior Policy Analyst, bob.rindy@state.or.us

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September 26-27,
2013
Item 13
Attachment E
Public Testimony

Re: LCDC Policy Agenda

After reviewing LCD Policy Agenda from Bob Rindy, Senior Policy Analyst dated July 17, 2013 I have several comments.

To start with I think anyone dealing with land use policy projects in Oregon should be required to read "Fire at Eden's Gate-Tom McCall and the Oregon Story" by Brent Walth and also "Oregon Plans-The Making of an Unquiet Land Use Revolution" by Sy Adler. I also think all decision makers involved with land use planning in Oregon should travel to Houston, Texas to realize what a lack of visionary land use planning would mean to Oregon.

After 40 some years we have learned that Senate Bill 100 does work. LCDC statewide planning goals are the result of hours of hard work and are visionary beyond measure. Compared to England and western European countries our history with Oregon land use planning issues is still in its infancy. Thoughtful small amendments to Oregon planning use goals does merit some discussion but nothing of a major nature needs to be decided.

With respect to UGB's every effort should be made to encourage infill. Long term planning for expansions of UGB's should be very conservative. Under no circumstances should expansion be encouraged that does not plan for necessary infrastructure in advance of development and improvement of existing infrastructure should be the first priority.

I don't agree with HB 2254. I think a 20-year supply of land is better planning then a 14-year period. How will the cities show that they have seven years of serviceable lands? Who will pay for the training and the people needed at state and local level to implement this function?

This may be a good time to consider joining a few other states that have banned outdoor billboards. Sign pollution hurts the landscape of Oregon and takes way certain advertised values of a gorgeous place to visit and work. Is there anything uglier than a highway billboard on 3rd Street as in Bend?

Finally, I think you good people should deal with new studies where math is targeting a city's essence. New formula relates city size to infrastructure and productivity. It would be interesting for you to visit Luis Bettencourt of the Santa Fe Institute.

As you make decisions dealing with Oregon's future with respect to land use planning, please ask yourselves "What would Tom McCall do?" I fear we will never see his likes again.


James E. Vidal

Box 4056-Sunriver,OR 97707

September 26-27,
2013
Item 13
Attachment E
Public Testimony

From: Michael Wagner [<mailto:mwagner@molalla.net>]
Sent: Monday, August 05, 2013 10:57 AM
To: Taylor, Casaria
Cc: Tammy Stevens; Norm Andreen
Subject: Re: [LCDC_Agenda] Please help with LCDC's Policy Agenda

I think that LCDC should consider the effect of permitting many heavy industrial uses in light industrial zones via a legislative amendment and circumventing the requirement for public notice to surrounding homeowners. In Clackamas County ZDO 243 changed the uses permitted, prohibited and conditionally permitted so significantly that there was a defacto rezoning of most light industrial and rural industrial lands to heavy industrial uses, and that it should have been properly noticed pursuant to Goal 1.

Michael J. Wagner
26173 S. Milk Creek Circle
Mulino, OR 97042
503-829-5124



WASHINGTON COUNTY OREGON

July 24, 2013

September 26-27,
2013
Item 13
Attachment E
Public Testimony

Marilyn Worrix, Chair
Department of Land Conservation and Development
635 Capitol Street NE, Suite 150
Salem, OR 97301-2540

RE: Policy Agenda

Dear Ms. Worrix:

I am writing to urge the Commission to make the split-UGB issue in the Metro area be a priority in your Policy Agenda for the 2013-15 biennium. New strategies are needed to make the land that Metro brings in to the UGB productive for urban use while preserving farmland, forest and natural areas. New strategies would be applicable statewide.

In many locations within Washington County, the UGB divides single parcels in a way that leaves the area outside of the UGB too small to meet legal partition requirements under ORS 92.192 as incorporated in county code. This problem is caused by the desire to use streams, wetlands and natural features to divide urban and rural areas. While this policy direction brings many benefits in separating conflicting uses and protecting resources, it has the unintended consequence of leaving some parcels unable to be partitioned under current code. Available tools, such as property line adjustments, do not address this problem, since the parcel is in single ownership.

Leadership from the Commission is needed to explore suitable tools, including possible legislation, to address this problem and I encourage you to give this topic high priority on your Policy Agenda. We need to develop a process to allow property owners to legally create new parcels inside the UGB that could be urbanized as intended and support continued farm use outside the UGB.

My staff is available to provide more detailed information about this issue. I would also like to express our interest and willingness to work with your staff on other issues of importance to the County relating to Urban and Urbanizable Land and Farm and Forest Lands on your policy agenda.

Thank you for your time and consideration.

Sincerely,

Andrew Singelakis, AICP
Director of Land Use & Transportation