Oregon
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January 13, 2010

TO: Land Conservation and Development Commission (LCDC)

FROM: Richard Whitman, Director

SUBJECT: **Agenda Item 13, January 20-22, 2010, LCDC Meeting**

DIRECTOR'S REPORT

I. INFORMATION UPDATES

A. PARTICIPATION IN APPEALS, AND RECENT LUBA AND APPELLATE COURT OPINIONS

ORS 197.090(2) requires the director to report to the commission on each appellate case in which the department participates, and on the position taken in each such case.

ORS 197.040(1)(c)(C) requires the Land Conservation and Development Commission to determine whether recent Land Use Board of Appeals (LUBA) and appellate court decisions require goal or rule amendments.

1. Department participation in appeals

Between October 14, 2009, and December 18, 2009 the department received notice of 10 appeals filed with LUBA. The department filed none of these notices.

- *DLCD v. Jefferson County*, LUBA No 2009-106 (filed September 21), the county has requested and the department has agreed to a voluntary remand. The county's request was not made until after the department's brief was prepared and filed with LUBA. This case involved an amendment to the Jefferson County zoning map for approximately 39 acres from Rural Residential RR-10 to Rural Residential RR-2 and an exception to Statewide Planning Goal 14.

- *Joyce Morgan v. Douglas County*, LUBA No. 2009-014, filed November 3: LUBA dismissed this appeal at the request of the parties.

2. LUBA opinions

Between October 14, 2009, and December 18, 2009, the department received copies of 22 recently issued LUBA opinions. Of these, LUBA dismissed nine, remanded nine, reversed none, affirmed four, invalidated no local decisions, and transferred no petitions to circuit court.

Two decisions concern the application or interpretation of a statewide planning goal or LCDC administrative rule:

- **Goal 4, OAR 660-006-0010 & OAR 660-006-0005(2)**; **Goal 3 & OAR 660-033-0021(1)(a)(B)** – *James Just v. Linn County*, LUBA No. 2009-068, filed on November 9: Appeal of county approval of comprehensive plan and zoning map amendments for a 15-acre parcel from Rural Residential Reserve-Farm/Forest parcel to Non-Resource – 5-acre minimum (NR-5). LUBA found that, based on the seven factors in OAR 660-033-002(1)(a)(B), it would be reasonable to conclude that the subject parcel is not suitable for farm use, notwithstanding the minimal suitability of the soils for grazing. However, LUBA remanded because the County's findings did not consider data concerning the soil capability (cubic feet per acre per year) required by OAR 660-006-0010 and 660-006-0005(2).

- **Goal 16 --** *Richard Sommer and Janice Tetreault v. Douglas County*, LUBA No. 2009-067, filed on October 22: LUBA affirmed the county's approval of a comprehensive plan text amendment and zoning map amendment to remove a Dredge Materials Disposal (DMD) overlay on industrially-zoned land in order to facilitate development of a wood pellet mill. LUBA found that Goal 16 does not apply to the proposed plan amendment because the property it is not part of the estuary.

3. Appellate court opinions

Between October 14, 2009, and December 18, 2009, the department received seven copies of recently issued opinions from the Court of Appeals. The Court dismissed one, reversed and remanded one, reversed one, and affirmed four of LUBA's decisions. These decisions include:

- **Goal 12 & OAR 660-012-0060** – *Willamette Oaks, LLC, v. City of Eugene and Goodpasture Partners, LLC*, LUBA No.2008-173, Court of Appeals No. A142351, filed on November 18: The Court of Appeals reversed and remanded city approval of a zone change from Medium Density Residential to Limited High Density Residential. LUBA improperly allowed the city to defer determination of whether the zone change would significantly affect a transportation facility under OAR 660-012-0060, to a subsequent review and approval process. (The implications of this decision are discussed more fully in section II.E of this report.)

4. Decisions of interest

- **Measure 37/49**: *William Hoffman and Darlene Hoffman v. Jefferson County*, LUBA No. 2008-090, filed November 18: LUBA affirmed the county's decision that petitioners do not have a vested right to develop the 60-lot subdivision granted in state and county M 37 waivers because (1) Measure 49 supersedes both Measure 37 and ORS 215.427(3)(a), the "goal-post statute," and (2) the Measure 37 waivers were not revocable licenses that became irrevocable when the applicants applied for tentative subdivision plan approval.

- **Standard of review on appeal:** *Siporen, et al v. City of Medford, et al*, LUBA No. 2008-185, Court of Appeals No. A142541, filed November 4: LUBA had rejected the city's interpretation that its code does not require more than a "limited traffic impact analysis" in order to approve site plan and architectural review applications for a Wal-Mart store. The Court of Appeals reversed LUBA because the standard of review in ORS 197.829(1)(9a) required LUBA to affirm the city's interpretation of its code, unless that interpretation was "inconsistent with the express language" of the code. The Court found that the city's interpretation was "not inconsistent" with its code.

- **Newberg-Dundee Bypass:** *Columbia Empire Farms, Inc. v. Yamhill County and City of Dundee*, LUBA Nos. 2004-177, 2004-183, 2004-184, and 2004-188, filed October 29: LUBA dismissed these appeals at petitioner's request.

5. Appeal notices of interest

Measure 37/49: None.
Others: None.

B. GRANTS, INTERGOVERNMENTAL AGREEMENTS AND CONTRACTS

The deadline for all 2009-2011 general fund grant applications was November 1, 2009. By November 1, the department grants program received over 100 applications for technical assistance in the 2009-2011 funding cycle.

The total demand for grants was $5.5 million; available funds totaled just over $1.9 million. The department is pleased with both the quantity and the quality of applications from local governments. Regional representatives and program specialists look forward to working with Oregon communities on as many as forty high quality planning projects across the state. Unfortunately, the department is unable to fund nearly sixty qualified projects due to funding limitations in the 2009-2011 biennium. That said, however, staff conducted a careful review of work scopes and contract agreements in order to extend available resources to as many communities as possible. DLCD staff will also be asked to take an active role in grant management and to provide technical assistance as communities work to make the best use of grant funds.

On December 31 the department sent award letters to 28 local governments notifying those communities of their successful applications. Additional letters were released in the first week of January. DLCD and the Governor's office also released a summary of the grant awards to the media in early January.

The community services division expects substantial progress to be made on grant contracts prior to the commission meeting in Salem. Staff will present an update on the grants program to the commission at that time.

SPECIAL NOTE: Wilsonville planning director and long-time grants advisory committee member Sandi Young retired from her position with the City of Wilsonville and resigned from the committee on December 1, 2009. The director and staff wish Sandi the very best in her retirement. We will miss her tireless efforts to assist the commission and the department and her valiant support for Oregon communities across the state. Staff will offer the names of individuals to replace Sandi's seat on the Grants Advisory Committee at the commission meeting.

C. PERIODIC REVIEW WORK TASKS/PROGRAMS

The department approved all remaining scheduled periodic review work programs under the new (2007) periodic review. Cities in periodic review submitted grant requests to assist with individual work tasks during the current biennium. The department was able to fund nearly all requests for periodic review grant assistance. Grant awards will be under contract and funds will be available beginning in January 2010, neatly coinciding with the commencement of cities' three-year work programs. Department staff anticipates that these cities will have the best possible opportunity to successfully complete approved work programs within the three year window. The timing of work program approvals and grant requests may also permit cities to take advantage of grant funding during two funding cycles.

There has been an objection to the periodic review work program for the City of The Dalles. The department is reviewing the objection.

Staff and the commission will likely be asked to review and approve an increasing number of periodic review work tasks during 2010 and 2011.

II. <u>DEPARTMENT PROGRAM ACTIVITIES AND INITIATIVES</u>

A. COASTAL MANAGEMENT PROGRAM

The Coastal Program policy team, led by Jay Charland and Dale Blanton, has been working with staff from the NOAA Office of Ocean and Coastal Resources Management to develop procedures for addressing a serious backlog of changes in various elements of the coastal program to be submitted to NOAA for approval as part of the state's coastal management program. Items that would be submitted include changes in such "enforceable policies" as state statutes that are part of the approved coastal program, administrative rules, and local government comprehensive plans and implementing ordinances. The backlog has accumulated due to

shortage of staff time within NOAA and an insistence that Oregon submit all changes, no matter how major or minor, with detailed information about the change. Current discussions aim to simplify the list of items to be submitted based on what enforceable policies Oregon would actually use in the case of a review of a federal agency action or project.

Andy Lanier, Coastal Resources Specialist and Tanya Haddad, Coastal On-Line Services Coordinator, are working with staff from several other agencies to develop a website to serve a variety of ocean planning activities in which the department is engaged. The website will be a portal for information about the Ocean Policy Advisory Council, the ocean wave energy planning process, the Nearshore Research Task Force (see below), Marine Reserves planning and implementation, seafloor mapping, and other ocean activities at the state and national level.

Laren Woolley, Coastal Shorelands Specialist, is assisting the Tillamook County Board of Commissioners to set up a planning process to address the concerns of residents of the community of Neskowin over on-going shorefront erosion and potential impacts of elevated sea level due to climate change. The Coastal Division is using federal coastal management funds to provide a grant to Tillamook County for technical assistance in assessing the severity of the problem and working with residents to scope solutions.

Jeff Weber, Coastal Conservation Coordinator, has been working with NOAA staff and staff at Oregon Parks and Recreation Department (OPRD) to develop proposals to the national Coastal and Estuarine Lands Conservation Program for grant funds to assist OPRD in purchase of a site at Big Creek between Yachats and Florence. The proposal ranks well but the funding level appropriated by Congress for FY10 may not be adequate to enable that project to be funded. In November, Jeff arranged a field trip to the site with officials from NOAA headquarters.

Paul Klarin, Marine Affairs Coordinator, continued work with the Oregon Coastal Zone Management Association, various coastal community fisheries groups, and key individuals to continue the fisheries mapping efforts with Ecotrust to support the ocean wave energy planning process. An intergovernmental agreement is being developed with the Oregon Department of Fish and Wildlife (ODFW) to provide federal coastal funds to support work by ODFW marine region staff to prepare an assessment of existing data about the locale, extent, and importance of various marine habitat in relation to Goal 19 requirements that will need to be considered along with fisheries information in identifying areas where ocean wave energy may be appropriate.

Bob Bailey, Coastal Program Manager, participated in early November in a briefing and workshop in Washington, DC, and in subsequent phone calls by staff from the Council on Environmental Quality on a draft national framework for marine spatial planning. He participated in a two-day meeting in early December of the initial meeting of the Nearshore Research Task Force created by 2009 House Bill 3106. The Task Force is charged with providing recommendations to the legislature by next August on needed mechanisms to better deliver science information to support management of ocean resources and uses.

Laura Mattison, NOAA Coastal Fellow, has been meeting with coastal watershed councils, coastal soil water conservation districts, and others to gather information and discuss issues related to her project to map all dikes and levees in coastal estuaries and to provide ownership and jurisdiction data for each. Her Fellowship runs through August, 2011.

Randy Dana, Coastal GIS Specialist, has been working with technical staff from the Department of Geology and Mineral Industries to obtain LiDAR data for the southern Oregon coast, which the department helped to purchase with federal coastal management funds, and to then provide data products to coastal local governments in the region.

B. COMMUNITY SERVICES

During the summer and fall of 2009, the community services division (CSD) worked closely with local governments to solicit and develop comprehensive planning projects and competitive planning grant applications. Now that applications are in and grant funds are awarded, regional representatives and other staff will begin work helping communities to implement the projects that were funded.

CSD staff also continues to provide technical assistance and on the ground help to cities, counties and citizens from offices around the state. CSD staff members are currently working on a number of projects, including notable efforts:

- implementing Bear Creek Valley regional problem solving;
- attending Local Reuse Authority meetings in Umatilla and Morrow Counties evaluating potential uses for the Umatilla Army Depot;
- working with Eugene/Springfield/Lane County to implement HB 3337 (2007);
- assisting Junction City with its customized periodic review dealing with siting state corrections and hospital facilities;
- providing outstanding customer service to Oregon’s cities and counties.

C. DIRECTOR’S OFFICE

1. Update of the Agency's Strategic Plan

The department has taken initial (internal) steps to begin updating the agency's strategic plan. While some components of the agency’s long-term (six-year) strategic plan have been updated biennially, primarily for budget preparation, these updates have received little attention and no input from DLCD staff. Last summer, staff was asked for suggestions on how to improve communication and trust within the department. Creating a clearly articulated agency strategic plan was a recurring theme. In addition, the current mission statement and goals for the program date from 2001, and there is a widespread belief among agency managers that the current performance measures for the department do not align well with what Oregonian's expect or should expect from the state's land use program.

To begin gathering internal input on this subject, about 30 staff and managers held an informal workshop in September to review trends that affect the land use planning environment and the

department; discuss past, current and future issues for land use and planning in Oregon; and share ideas regarding "where are we going?" and "how do we get there?" A summary of the process and outcome of this workshop is included in Attachment A.

With the outcome of the September workshop in hand, the management team met later in September to refine and supplement the work from staff. The results of this meeting are also reported in Attachment A. The managers met again on the topic in early December, and the outcome of this discussion was direction to develop a first draft of a revised agency mission statement. The first draft of the mission statement and long-range goals for the program are included in Attachment B. As resources are limited, and there is a desire to have at least some of this work done heading into the next budget cycle, the department envisions this as a relatively lean process.

The department is seeking input from the commission about this effort, including: (a) how high a priority to put on this work; (b) what level of involvement the commission wants to provide; and (c) thoughts about what type of process to use to assure public involvement and input into a revised strategic plan.

It should be noted that the effort is not simply to update the strategic plan *document*, but also to strategically align several agency efforts. These include efforts of the commission such as the biennial policy agenda and legislative concept development, the agency budget, and high-level performance management (including Key Performance Measures). The management team believes articulating a clear direction will aid the commission and the department as we move forward in helping communities across Oregon plan for their future.

2. Other Activities

Other activities in the director's office during November and December include:

- Director's recurring meetings with state agency heads, natural resources cabinet, Metro Policy Advisory Committee (MPAC), MPAC Employment Subcommittee, climate change workgroup, Measure 49 implementation group, destination resorts work group, Bend UGB review team, senior staff from the Oregon Department of Transportation (ODOT) and the Oregon Business Development Department (OBDD), and chairs and directors from ODOT and OBDD.
- CETAS directors meeting (Nov 3).
- RLUIPA work group (Nov 9).
- STIP Stakeholder Committee meeting (Nov 10).
- MPOGHG Task Force meeting (Nov 12).
- Met with Metro staff regarding the urban growth report (Nov 13).
- Met with Klamath County staff regarding their request for consideration of a pilot TDR program in Klamath County (Nov 16).
- Met with Metro and Core 4 county staff to discuss the joint agency letter on Metro urban and rural reserves (Nov 17).
- Attended the Tribal Summit (Nov 18).

- Participated in the Association of Oregon Counties annual conference (Nov 18).
- Met with executives from the Our Ocean group regarding the Territorial Sea Plan (Nov 20).
- Met with ODFW Director Roy Elicker regarding climate change adaptation planning (Nov 24).
- Met with the Oregon Department of Forestry and timberland owners regarding TDRs (Dec 1).
- Served as the Hearings Officer for the Metolius ACSC Management Plan hearing in Camp Sherman (Dec 3).
- Participated in a conference call on the NOAA relocation project (Newport) (Dec 10).
- Met with Ann Beier, City of Portland regarding planning for the lower Willamette (Dec 11).
- Made a presentation at the annual Land Use Law Conference on forest land conversion, urban reserves and periodic review (Dec 11).
- Participated in phone interviews of two CIAC candidates (Dec 11).
- Participated in OPB's Think Out Loud program (Dec 14).
- Met with Governor's ERT staff to provide information on urban and rural reserves and UGB work (Dec 15).
- Attended the Marine Cabinet meeting (Dec 18).

D. OPERATIONS SERVICES

The Operations Services Division fiscal team continues its efforts in ensuring appropriate procurement and fiscal activities meet federal and state guidelines. One of its recent accomplishments pertains to procurement. All department State Purchase Order Transaction System (SPOTS) cardholders received recent training on SPOTS card use from the Department of Administrative Services' Deputy State Controller.

The payroll staff, Operations Services Manager, and Human Resources Manager continue working with department staff in the implementation of the Mandatory Unpaid Furlough Time Off processes.

The Budget Officer continues working with division managers and their financial models. Division managers continue their critical roles in ensuring timely expenditure projections. Revisions to the LCDC BAM Subcommittee report have been implemented to ensure better comparisons of actual expenditures against budgetary amounts. 2011-13 Agency Request Budget Development planning and preparation are anticipated in the next six months.

The Information Technology unit and reception is finalizing its efforts in working with department management in the evaluation and determination of office equipment needs for the department, including purchase of a fax machine for the Salem office and establishing updated copier leases for two regional field offices.

The Operations Services Manager prepared and submitted to the Department of Administrative Services' Enterprise Security Office a required Information Security Plan. The department anticipates certification of the plan from the Enterprise Security Office in the coming month. The Operations Services Manager (Business Continuity Plan Coordinator) and department management has also met initial test deadlines set by the Department of Administrative Services pertaining to business continuity. The department anticipates a desktop test of its Business Continuity Plan within the next few months.

E. TRANSPORTATION AND GROWTH MANAGEMENT PROGRAM

On November 18, 2009, the Court of Appeals issued its decision in *Willamette Oaks v. City of Eugene*. The Court ruled that the city's decision to defer an analysis of the adequacy of transportation facilities to a subsequent review and approval process did not meet requirements of the Transportation Planning Rule (TPR) rule (OAR 660-012-0060, or "0060").

In short, the Court of Appeals appears to have said deferring transportation analysis required by the TPR as part of plan amendments and zone changes (i.e., "TPR deferral") is not allowed. This is significant because it would appear to reverse a string of LUBA decisions dating back to 2004 that have effectively allowed local governments to comply with 0060 by adopting limitations or conditions that restrict development as part of the plan or zone change and put in place a TPR-like standard and process for review of subsequent development. For example, a local government might approve a comprehensive plan and zone change from residential to commercial use, but the approval would restrict commercial development (through a mechanism such as a trip cap) until a traffic study and mitigation measures – just like those required by 0060 – are completed.

Here are the key portions of the Court's opinion (the complete opinion is included as Attachment C):

> The key language in the rule for purposes of the issue framed above is the phrase "the local government shall put in place measures" and the word "would." The words used in the text of the rule demonstrate that an evaluation of significant effect is intended to be performed prior to a contemplated amendment. * * *
>
> As we observed in *Jaqua v. City of Springfield*, 193 Or App 573, 593, 91 P3d 817 (2004), "OAR 660-012-0060 serves to prevent local governments from engaging in land use decision-making without considering whether transportation systems can accommodate the proposed use."(Emphasis in original) Thus, based on the plain text of the rule, the local government was required to make a determination regarding whether the zone change would significantly affect transportation facilities before approving the amendment.
>
> * * * although other rules may provide for deferral of certain land use decisions by local governments, OAR 660-012-0060(1) makes no provision for a deferral of the decision required by its provisions.

> In light of the foregoing, we conclude that LUBA erred in holding that the city could permissibly grant the zone change in this case without first evaluating, pursuant to OAR 660-012-0060(1), whether the change would significantly affect transportation facilities.

The Court remanded the case to LUBA for further review. A final LUBA opinion may provide more guidance about the full implications of this case – i.e., whether deferral in any form may be allowed consistent with the TPR. The full text of the court's decision is attached and is also available on the web: http://www.publications.ojd.state.or.us/A142351.htm

The department believes that the Court's decision is generally consistent with the intent of this portion of the TPR. The basic thrust of 0060 is that local governments should understand and address the potential transportation impacts of a plan amendment or zone change *before* a change is approved. Deferring traffic analysis and decisions about necessary mitigation measures to a subsequent process undermines the certainty that zoning should provide to land owners, prospective developers and the public. For this reason, the department has generally discouraged deferring traffic analysis and mitigation.

Department staff is advising local governments of this decision as we conduct review of post-acknowledgement plan amendments. We expect the case may be relevant to ODOT's rulemaking to implement HB 3379. (HB 3379 directs ODOT to adopt rules allowing the transportation commission to grant exemptions or extensions to the TPR requirement that funding be provided for improvements to state highways when those improvements are required as mitigation to comply with 0060.)

III. DEPARTMENT ORGANIZATIONAL AND MANAGEMENT INFORMATION

A. NEW STAFF AND PROMOTIONS

Valya Rizzo was hired on October 26 as a Neighbor Notice Specialist (OS-1) in the M49 Division.

B. DEPARTING EMPLOYEES

Sandra Hascall (Completeness Specialist in M49) resigned effective November 13 and returned to her previous position at the Judicial Department.

Beth Folkerts' limited duration assignment as a M49 Completeness Specialist ended on November 30.

Debbie Lathrop (Program Analyst 2 in M49) resigned effective December 11th and returned to the private sector.

C. RECRUITMENTS

The Community Services Division has delayed the hiring decision on a Metro Regional Representative position pending further information about the department's budget. Current staff covers the Metro region in the interim.

IV. LCDC POLICY, RULEMAKING AND LEGISLATIVE UPDATES

A. RULEMAKING

The LCDC Policy and Rulemaking Agenda was the subject of the budget report in attachment D of this report. That report provides a summary of DLCD's policy agenda and the status of each of the items in the Policy Agenda, including projects already completed. Three of those items concern rulemaking on the commission January meeting agenda (see agenda items 10, 11, and 12), and additional items include climate change, summarized in Section B, below. A fourth rulemaking is underway involving RLUIPA (see below), and the department has begun to structure the Urban Policy Forum, also summarized below.

Current Rulemaking

Measure 49 Permanent Rulemaking: The department is proposing permanent rules implementing additional review of approximately 400 M37 claims under HB 3225. The proposed rules make permanent temporary rules adopted in July 2009, with minimal changes (see agenda item # 7).

Metolius ACSC Management Plan: A public hearing was conducted December 3, 2009, in Camp Sherman regarding proposed rules to adopt the Metolius Area of Critical State Concern (ACSC) management plan, as directed by the Oregon legislature in House Bill 3298. Richard Whitman conducted the meeting as the designated Hearing's Officer, accompanied by LCDC Chair VanLandingham, and Michael Morrissey, staff. There were about 30 attendees, with one public comment and four written comments. LCDC is considering adoption of this rule at its January meeting (see agenda item 10).

RLUIPA rulemaking workgroup: LCDC has appointed a workgroup to consider amendments to LCDC farmland rules (OAR 660, division 33) regarding uses that involve the assembly of people within 3 miles of an urban growth boundary. This rulemaking is in response to recent court decisions regarding these rules with respect to the federal Religious Land Use and Institutionalized Persons Act (RLUIPA). The workgroup has met twice with an additional meeting scheduled for January 14.

DLCD Transfer of Development Rights (TDR) Pilot Program: LCDC initiated this rulemaking at its November 5-6 meeting. The department is proposing rules for commission adoption at the January 20-22, 2010 meeting (see agenda item 11). These rules are required by HB 2228 and will provide a process for LCDC selection of up to three TDR pilot projects.

Initiation of Rulemaking Regarding Federal Consistency in Coastal Zones: The department is proposing that LCDC initiate this rulemaking (see agenda item 12). The purpose is to revise

existing commission rules to conform to revised federal requirements. These rules contain the state's procedures and requirements for federal consistency review under Section 307(c) of the federal Coastal Zone Management Act (CZMA).

B. OTHER POLICY ACTIVITIES

1. Response to Budget Note on LCDC Policy Agenda

In approving the department's 2009-11 budget, a subcommittee of the Joint Ways and Means Committee noted that the agency's practice has been to approve a policy and rulemaking agenda at the beginning of each biennium. To address legislative concerns about agency workload, the subcommittee approved a budget note requiring a report to a legislative committee no later than March 1, 2010. The department submitted this report on December 14, 2009, and will ask the Interim Joint Committee on Ways and Means to accept the report at its meeting in mid-January (see Attachment D).

2. Guest Ranches Report

Oregon Laws 2005, chapter 258, section 2 required the department, the Oregon Department of Agriculture and the Oregon Business Development Department to jointly submit a written report on guest ranches in eastern Oregon to the 75th Legislative Assembly. Instead, the department will be submitting the report on guest ranches to the interim 2010 Legislative Assembly. The statutory allowance for siting new guest ranches ended on January 2, 2010.

3. Yamhill County Response Regarding Previous Go-Below Request

Yamhill County Commissioners adopted Ordinance 850 approving a zone change to EF-40 for Laurent Montalieu on December 21, 2009.

4. Update on Urban Development Forum

In adopting its 2009-2011 Policy Agenda, LCDC directed the department to organize an urban growth management policy forum involving stakeholders and (perhaps) legislators, to consider the following general topics and make recommendations for urbanization policy improvements, updates and streamlining in order to better achieve the intended goals and outcomes:

- Public facility finance and planning issues facing local governments, including those concerns raised by many local governments and examined in part by the Big Look Task Force, and recommend land use strategies and policies that may help in addressing these concerns.
- Urban growth management policies, procedures and requirements, including overall goals and effectiveness. This topic should include an examination of UGB and urban reserve requirements, population forecasting laws, the "priority of lands" statutes, housing and economic development planning requirements under Goals 9 and 10, governance issues (annexation and related topics), and climate change implications.

LCDC also indicated the forum should address at least the following topics:

1) Urban Public Facility Finance
2) UGB and Urban Reserve policy and procedures, and
3) Population Forecasts

Excerpts from the department's 2009 Policy Agenda Report suggesting potential policy "issues" associated with these topics and needing resolution were as follows:

Public Facility Planning and Finance: Local governments struggle to plan and finance and operate public facilities to support planned growth on land intended for urban development inside UGBs. This concern has increased to the point that it is frequently mentioned by local governments as a leading consideration in evaluating future growth in a community. Finding solutions that meet both state and local government objectives is daunting. The Big Look Task Force suggested some ideas to address this, but focused on this topic too late in its process to develop consensus proposals for successful legislative reform. In addition to basic finance issues, the statewide land use planning system must ensure that public facility planning and land use planning are well-integrated, and that levels, types and locations of public facilities are properly considered as part of any UGB expansion.

Urban Growth Management: Efforts begun in previous biennia to improve, clarify and streamline statewide policy regarding urban growth management, especially regarding the urban reserve rules and the "priority statutes" for urban growth boundary amendments, have made some progress, but have not fundamentally evaluated whether the current system is working as intended and is sustainable over the long term. The department anticipates a number of significant UGB amendments and urban reserves decisions this biennium. Given the importance of these decisions to both local and state government, and to the private sector, and with the increasingly higher costs of UGB planning by local governments, it is important that the agency continue its efforts to improve and streamline statewide urban growth management policy.

Population Forecasting: Although LCDC has provided rules and safe harbors, many cities and counties continue to struggle with coordinated forecasts for UGB amendments and other land use planning purposes. Additional means of ensuring timely, coordinated forecasts may be necessary. It is not clear that there are administrative rule solutions to this issue, since core requirements are in statute, but the problem is a significant one because UGBs cannot be amended without coordinated county forecasts. Many stakeholders complain that this issue continues to get worse as fewer and fewer counties are maintaining coordinated forecasts necessary for cities to perform UGB updates and other critical planning.

The commission's choice of a forum process was based on the recognition that both statutory and rule changes should be on the table for discussion, and that several years may be required to properly consider these issues and engage the public in how they should be addressed. Other points that led LCDC to prioritize these issues for this biennium include: (1) a large and growing

number of cities (possibly up to 20) likely to consider amending their UGBs; (2) UGB amendments consume significant state and local staff resources as well as funds for consultants; (3) these decisions are frequently litigated, leading to long delays in decisions, and more state, local and private costs; and (4) the interplay between land use and transportation planning with regard to climate change.

It is not likely that this process would result in legislative recommendations in time for the 2011 session given the complexity of these issues and the need to gain additional experience with the existing statutes and rules. We would hope to lay the groundwork for legislation in 2013 by beginning to introduce major issues to the legislature in the 2011 session.

The forum process would include a series of broad stakeholder discussions, as well as some form(s) of broader public engagement. The department is planning to hold a series of meetings in February and March with small groups of stakeholders to help design the forum and resolve these initial questions. The department will also seek input from CIAC and LOAC on both process and substance.

It should be noted that this would not be the first forum to discuss and recommend urban planning issues. The department held a forum in 1998 – '99, and the Governor's office sponsored a state urban development policy review in 1995. Recommendations deriving from the 1998-'99 forum resulted in numerous and major subsequent policy changes: statewide transportation planning rules (the TPR), LCDC's urban reserve rules, rural communities rules, successful legislation mandating public facilities agreements and special annexation planning laws (later rescinded), limits to rural sewer lines (Goal 11 amendments and new rules) and LCDC's 1999 restrictions on rural residential lot sizes for exception areas. The governor's urban development forum circa 1995 was guided by a work group chaired by Gail Ackerman and involved research and other technical assistance from ECONorthwest (Terry Moore).

Both those efforts were funded and included considerable help from private consultants. Given DLCD budget constraints, the proposed 2010 Forum faces funding challenges at this point. One option the department is exploring is co-sponsorship by one or more partners, such as OAPA and/or LOC. The department will also consult with Oregon Solutions in studying ideas for partnerships, facilitation and funding sources.

Status: In summary, we have not settled on the structure of the forum. Given other pressing matters, it is likely that this effort would begin in the late Spring of 2010.

At the time of this report, DLCD has had initial discussions with many stakeholders, including the following: LOC (Linda Ludwig); OAPA (Greg Winterowd); 1000 Friends of Oregon (Mary Kyle McCurdy); OHBA (Jon Chandler); Metro (Dick Benner); Oregon Policy Consensus Initiative (Greg Wolf); and OSDA (Kelly Ross). Additional discussion with these and other stakeholders are being planned, and a more detailed set of proposals for the structure, timing and participants in the Forum will be emerging in the near future. The department is especially interested in working closely with the Oregon Consensus program, the OAPA, and LOC to

determine whether a partnership can be formed to design and conduct the forum. The OAPA board has expressed a strong interest in partnering with DLCD on this. The department is prepared to provide additional information to LCDC for discussion at the January commission meeting.

5. Climate Change

Adaptation

On October 6, Governor Kulongoski convened a meeting of agency directors and university program leaders to begin the process of developing a statewide Climate Change Adaptation Framework. Governor Kulongoski recognized both the lack of agency resources for new initiatives, and the need for interagency collaboration and coordination in addressing the effects of a changing climate. In particular, the governor was clear that he wanted state agencies to create the framework for coordination and the development of a state strategy to help identify priorities for adaptation to climate change.

The department has held follow-up meetings with a smaller group of agencies and university programs to design the scope and broad objectives of the adaptation framework; and the mechanism to be established for agency coordination and collaboration. On January 11, 2010 a large group of agency and university program directors attended a meeting to review the recommendations for this effort. The directors agreed on the organization of the effort and a series of next steps. A working first draft of the framework is expected to be partially completed in February, with additional work in March and April leading into coordinated budget and legislative proposals in the Spring of this year.

Mitigation

See agenda item #8 in (this) the January 20-22 agenda for discussion of the department's progress relative to Metropolitan Area Planning Organizations, Greenhouse Gas Reduction Task Force (HB 2186) and Greenhouse Gas emission reduction targets for the Portland Metro area (HB 2001).

C. LEGISLATIVE

The department has worked with several legislators concerning land use legislation likely to be considered in the February supplemental session. State legislators convened in Salem on September 29 – October 1 for three "legislative days," including interim committee meetings, and again on November 17 – 19. Three legislative days are also scheduled for January 12-14. Interim committees are discussing possible legislation for the coming one-month February session, including the following interim committees that generally consider land use legislation:

- Senate Committee on Environment and Water
- House Committee on Agriculture, Natural Resources & Rural Communities
- House Environment and Water Committee

- House Sustainability and Economic Development Committee

Interim committee discussions so far concerning potential legislation for the 2010 session include the following topics of interest to the department:

- Measure 49 refinements
- Metro reserves – a requirement that at least 50% of urban reserves be added to the regional UGB before additional urban reserves would be allowed.
- Process for determining agricultural soil capability
- Destination resorts
- An extension/renewal of the oil and gas development moratorium in the Territorial Sea

In addition, one interim committee has requested a briefing on alternative energy development in the Territorial Sea.

V. ATTACHMENTS

A. Synopsis of input into strategic plan, Sept 2009

B. First internal working draft of new mission statement and strategic goals

C. Willamette Oaks COA opinion

D. Budget note report

Oregon
Theodore R. Kulongoski, Governor

Department of Land Conservation and Development
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DATE: December 24, 2009

TO: DLCD staff

FROM: Rob Hallyburton, Planning Services Division Manager

SUBJECT: DLCD Mission-Vision-Goals — Synopsis of Input

The author intends this memo to recap: (A) the response to a solicitation for input from a self-selected group of staff and managers on September 10, 2009, and (B) the outcome of a management team meeting on September 28, 2009. The question posed at the September 10 meeting was "where are we going?" for the next six years, more or less, at DLCD. The management team was asked to express ideas for "strategic opportunities" for the next five to ten years. (The September 10 session also included the question, "how do we get there?" The results of this portion of the meeting will be reported separately.)

The September 10 staff meeting included five small groups that each proposed three priority areas for department effort. The management team meeting was conducted in a round-robin, so all ideas were given equal weight. The lists of comments from these meetings are attached.

Summary

Generally, both groups' discussions resulted in suggestions that addressed *what* the department should focus on (*i.e.*, policy considerations) and *how* the department should accomplish its mission (practices, procedures, and budget priorities). Some topics and suggestions bridge between the what and how, and between multiple policy areas, making summarization difficult. The description of the results contained in this memo highlight major themes while devoting some attention to the details.

The policy issues reflect traditional program emphases, sometimes with updated jargon: protect farm and forest land and natural resources; promote livability and sustainability; address climate change. There is widespread support for more involvement by the department in educational and other outreach opportunities, and improving relationships with established partners while reaching out to new groups. Building department capacity, especially to collect and share data electronically, is also a commonly cited objective.

Outreach and Education

A variety of considerations from both the staff and manager sessions fit into to the broad category of "outreach and education." The input covers a range of ideas regarding who to educate. All five staff groups forwarded a priority related to some aspect of outreach or education, two of which had it as their top proposal. Over half of the "strategic opportunities" identified by the management team have a similar focus.

There seems to be no disagreement that the *purpose* of outreach and education is to: (1) improve understanding of the purposes and benefits of the program among the general public; (2) assist and improve local government implementation of the program; and (3) provide up-to-date, complete land use and comprehensive plan data.

There is considerable overlap between this category of issues and others described below, most notably areas of policy focus (what is communicated) and department capacity (how information gets delivered). At the same time, staff and managers see a wide variety of benefits of increasing the department's efforts in providing information to the spectrum of interests in the state and beyond.

Public Education and Outreach
Input relating to educating and informing the public addressed issues such as the need to reach out to all age groups, "tell our story," connect with higher education, and publish more guidebooks and general information to increase awareness of the program and the many benefits it provides.

The axiom that a majority of the state's population was not in Oregon when Senate Bill 100 passed is frequently cited. Many feel that general information and outreach regarding what the program accomplishes and why is needed. Some wish to promote the benefits of the program to increase "buy-in," while others present public understanding of land use planning as being the end benefit.

Another common thread relates to public engagement or involvement. This implies two-way communication; not just the department educating or reaching out to citizens, but the department promoting feedback. New tools and bolstered effort in this arena received significant support.

Local Government Assistance
Issues relating to local government assistance include providing adequate resources for technical assistance, developing planning and decision-making guidance and tools, and targeting planners and decision-makers. The primary motive in this arena appears to be efficient and effective implementation of local comprehensive plans (which in turn implement statewide land use policy).

Staff and manager input reflects an emphasis on building local government capacity. Ideas on how this can be accomplished include providing staff and decision-makers with relevant training, making information and data easily available, and providing tools for planning and decision-making.

Data Stewardship
The ideas raised concerning data sharing apply to education for both the general public and the planning field: create a data clearinghouse, publicize success stories, connect with higher education, and make data easily available (*i.e.*, internet-based). Each of these received multiple mentions and would benefit myriad interests. This topic is addressed more under "build department capacity," below.

Areas of Policy Focus

A significant number of responses from both sessions addressed considerations relating to land use planning policy and practice. Recurring topics included climate change, energy resilience, urban growth management, natural resource protection, and farm and forest land preservation. Other topics of policy focus arising from these discussions included sustainability (usually in conjunction with another theme), open space protection, protection of recreational resources, and planning for new towns and settlements.

Climate Change
Three of the five group at the staff meeting listed some aspect of climate change as a priority focus area for the department. One group's top priority was "make GHG emission targets a prerequisite to UGB expansion." Simply "climate change" was a priority for one group, and it was a subset of energy conservation on another group's priority list. Climate change was mentioned multiple times by management team members, as was the more-specific suggestion to "assist each community to prepare a climate-ready plan."

There are various aspects to what the department could do to address climate change considerations, some of which have already begun. This issue has been around for a long time, but it is still emerging as a major planning policy issue and the science that informs potential solutions is still developing. However, it is clear that there is significant interest from both inside and outside the department to keep this a front-burner issue.

Energy Resilience
The feedback received from staff and managers regarding energy issues overlapped somewhat with climate change, but not entirely. Energy, like climate change, is a multi-faceted issue, with alternative energy development and conservation as broad categories having planning program significance. The issues around "alternative energy development" are as varied as the potential alternative sources of power.

One staff group listed "energy planning/conservation" as a priority consideration. One staff member posited, "Energy is going to be biggest issue," while others suggested formation of an "Energy/Climate ERT" and development of a state Energy and Climate Plan. Management team members listed "wave energy," "focus on energy in broad sense (climate change, alternative sources)," and "energy resilience" (as a subset of "sustainability") in their round-robin.

Urban Growth Management
Issues raised by staff related to managing growth ran the gamut from high-level goals like "develop livable communities" to pragmatic issues such as clear density standards, reforming infrastructure financing, and improving intra-departmental coordination. One group advanced "urban development/UGB," with the subset "efficient development, infrastructure," as a priority. The bullet points from this group suggest the proposal encompasses a variety of these pragmatic issues.

The management team also highlighted this issue somewhat, with several mentions: "[Need] (c)oherent, relevant policy regarding urban growth management," "Apply lessons from Metro," and "Transportation planning rule invigoration and link it to compact urban form."

Staff and managers appear to assume that significant population growth will continue in Oregon. Issues with urban growth management stem from current policies being difficult to administer consistently, the feeling those policies do not achieve urban form that will improve livability and sustainability, and the effects of poor funding mechanisms for infrastructure development.

Natural Resource Protection
This issue did not rise to the level of being a priority item for any of the staff groups, but it was mentioned in three. In some cases, emphasis was placed on "Goal 5" rather than natural resources directly, so the point could, and does, encompass historic and scenic resources and open space. One member of the management team listed "resource protection" as an element of "sustainability" and another advocated that the department "revitalize Goal 5," while a third said "recommit to Goal 5, specifically water."

Goal 5 and natural resource protection has come up regularly when LCDC considers its biennial policy agenda, but has not been addressed by the commission since 1996. It is an element of the program that has been noted by several outside observers as somewhat weak. The staff and management of DLCD have recognized that it is an issue, but its significance seems to be considered somewhat less than the issues described above.

Farm and Forest Land Preservation
One staff group listed "Develop and implement plan to permanently preserve farm and forest land" as a priority issue. Similar points were raised in two other groups, but did not become priority items. The only mention by a management team member was in a different vein: "Work with partners on development of local food supply" as a subset of "sustainability."

It's possible that this issue, while receiving attention, is taken for granted by some due to the ongoing success of the existing program (relative to other states). Also because of its fundamental place in the program, the policy basis and regulatory scheme are well-entrenched, and may be viewed as program constants that do not need particular attention. Those who raised the issue expressed that, without vigilance, the resource base will continue to be eroded.

Build and Improve Relationships

Relationship- and alliance-building received fewer mentions than the topics described above, but the idea was mentioned multiple times in both sessions, and two staff groups proposed related priority actions. The parties with which the department should build or improve relations includes just about everyone — local and federal government, tribes, non-governmental organizations, the legislature, universities, and the private sector all received mentions.

The purpose of relationship-building was less well articulated, but the popularity of the notion presumably results from a recognition that the "land use program" is not comprised solely of LCDC and DLCD. Successful implementation requires cooperation from this array of "partners" and "stakeholders," so building and maintaining good relationships becomes necessary. A cited objective specifically related to a relationship with the federal government is to tap that source of funding.

One staff group advanced a priority that the program move more toward a bottom-up approach and the department act more as a purveyor of information and less as a regulator. While this suggestion is not purely about "relationship building," it would have significant effects on various relationships.

Build Department Capacity

Building department capacity is a general heading for a variety of suggestions relating to staff resources and technological capability within the department. The groups in the September 10 meeting addressed this topic more frequently than the management team, but one or more of the issues grouped under this heading arose at each venue.

The most frequently cited proposal for building department capacity relates to information technology, specifically a database, including GIS, that is populated with land use and comprehensive plan data and accessible via the Web. One staff group advanced a priority that address this idea, and it came up repeatedly as a stand-alone issue or in the context of outreach and education in both work sessions.

Insofar as completing planning and policy projects relies on data and information, building this capacity touches all the other areas described in this memo, and perhaps isn't really a separate subject. Since a database is crucial for intra-departmental operations, and most of the issues discussed above have a more outward focus, it probably deserves special treatment.

Other proposals raised regarding department capacity include exploration of outside funding (this was part of a staff group's top priority to address "Budget/Investment/Funding"), preparation of more technical and procedural guidance manuals (also mentioned under "Outreach and Education," above), and devoting adequate/more staff resources to field activities and technical assistance.

Operations

Department operations received relatively little consideration in the answers to "where are we going?" and "what are our strategic opportunities?" but it did get some. No staff groups listed a priority relating to internal operations, but members of the management team listed the following as strategic opportunities: "Increase efficiency internally – set priorities, follow through, utilize staff, increased organization (electronics & paper)," "Commitment to continuous excellence at state and local level," and "Connect dots from strategic plan to other areas."

Immediate Steps

At the conclusion of the September 28 managers meeting, the group discussed what can be done now to make incremental improvements in the areas identified by the department as priority issues. The following were identified as actions that do not need to wait for conclusion of the strategic planning process;

- Coastal adaptation to effects of climate change
- Start work on putting together comprehensive database – partner with higher ed
- Accumulate existing curricula on planning for school-aged population
- Continuing to make progress on on-line training
- Coastal atlas – expand concept to other areas
- Update existing publications
- Clean up information systems, particularly I:\
- Branding

12/09 DRAFT

Mission—To build and improve Oregon's quality of life.
As stewards of Oregon's visionary land use planning program, we foster sustainable and vibrant communities, and protect our natural resource legacy in a dynamic partnership with citizens and communities.

LONG TERM STRATEGIC GOALS:

1. Secure Oregon's natural resource legacy--preserve coastal assets, working farm and forest lands and riparian and other resource areas. Protect unique and threatened places. **(Resource Protection)**

2. Promote sustainable, vibrant communities that: integrate land use, transportation and public facilities planning; provide for housing choices; and encourage economic development. **(Sustainable Development)**

3. Engage citizens and stakeholders in continued improvement of Oregon' land use planning program. Support regional perspectives and strengths. Ensure equitable application of regulatory programs. Develop strong collaborative partnerships with citizens and communities. **(Manage the statewide program, with partners)**

4. Provide timely and dynamic leadership. Develop and coordinate strategic initiatives with state agencies. Seek solutions that address immediate and long-range challenges, including climate change, with local government, community and academic partners. **(Strategic leadership)**

5. Deliver services that are efficient, outcome-based and professional. Communicate with the public in a timely and transparent manner. Focus on communications, staff training and administrative systems to ensure continued improvement of customer service. **(Professional, efficient management and service delivery)**

FILED: November 18, 2009

IN THE COURT OF APPEALS OF THE STATE OF OREGON

WILLAMETTE OAKS, LLC,

Petitioner,

v.

CITY OF EUGENE
and GOODPASTURE PARTNERS, LLC,

Respondents.

Land Use Board of Appeals
2008173
A142351

Argued and submitted on August 03, 2009.

Zack P. Mittge argued the cause for petitioner. With him on the brief were William H. Sherlock and Hutchinson, Cox, Coons, DuPriest, Orr & Sherlock, P.C.

Seth J. King argued the cause for respondent Goodpasture Partners, LLC. With him on the brief were Michael C. Robinson, Roger A. Alfred, and Perkins Coie LLP.

Emily N. Jerome waived appearance for respondent City of Eugene.

Before Edmonds, Presiding Judge, and Armstrong, Judge, and Wollheim, Judge.

EDMONDS, P. J.

Reversed and remanded.

EDMONDS, P. J.

Petitioner, Willamette Oaks, LLC, seeks review of the Land Use Board of Appeals (LUBA) decision affirming the City of Eugene's (city) approval of a zone change for certain land from medium-density residential to limited high-density residential, contending that LUBA's order is unlawful in substance. We review pursuant to ORS 197.850 and, on review, hold that LUBA improperly concluded that the city could lawfully defer consideration, pursuant to OAR 660-012-0060, of whether the zone change would significantly affect a transportation facility. Accordingly, we reverse and remand.

The relevant facts of this case are undisputed. The property at issue is approximately 23 acres in size and is located on a dead-end street. The property is designated on the city's comprehensive plan map as high-density residential. However, before the zone change at

issue, it was designated on the city's zoning map as medium-density residential with planned unit development (PUD) and water resources conservation overlays. Goodpasture Partners, LLC (Goodpasture), is the current owner of the property, and Goodpasture's predecessor-in-interest applied to have the zoning of the property changed from medium-density residential to limited high-density residential. The zone change was approved by the hearings officer and affirmed by the city planning commission.

In affirming the zone change, the city ruled that the transportation planning rule set forth in OAR 660-012-0060 applied to the zone change request. However, the city declined to consider whether, pursuant to OAR 660-012-0060, the zone change would have a significant effect on the road on which the property is located. Instead, it decided to defer consideration of that issue to a later stage in development. It imposed a condition of approval that prohibited development on the property without approval of a PUD application and a showing of compliance with the transportation planning rule as part of the PUD application and review process. That condition provides:

> "Pursuant to [Eugene Code] 9.4310, no development permit may be approved for the subject property without prior City approval of a Planned Unit Development (PUD). An application for a Tentative PUD for the subject property shall include analysis of the traffic impact. As part of the City's Type III review of the PUD, in addition to any applicable requirements of the Traffic Impact Analysis Review in the City Code, the City shall require the applicant to demonstrate consistency with the Transportation Planning Rule at OAR 660-012-0060."

Petitioner appealed to LUBA, contending that the city erred "in various ways in approving the zone change without conducting the analysis required under the [transportation planning rule] at the time it approved the zone change." Petitioner asserted that it was error for the city to fail to make a finding, at the time of the zone change, regarding whether the zone change would or would not have a significant effect on the transportation facility and to defer a finding on that issue to a later development stage. It also contended that the record contained evidence demonstrating that the zone change would, in fact, have a significant effect on transportation in the area and that the planning commission should have specified mitigation measures pursuant to OAR 660-012-0060(2). Finally, petitioner argued that the city could not lawfully impose a condition on the approval of the zone change. LUBA rejected all of petitioner's arguments and affirmed the city's decision, relying, in part, on its own precedent with respect to the city's defense of its decision under OAR 660-012-0060.

On review, petitioner makes four assignments of error. First, it contends that LUBA's order permits the city to improperly defer the evaluation required pursuant to OAR 660-012-0060 to a later stage in development. According to petitioner, the transportation planning rule must be considered at the time of the zone change. Second, petitioner argues that LUBA was required to reverse or remand the city's decision due to inadequate findings on the issues of significant effect and mitigation pursuant to OAR 660-012-0060. Third, according to petitioner, LUBA's order improperly "purports to require [the Department of Land Conservation and Development] to review permit applications that it has no statutory authority to review." (Boldface and uppercase omitted.) Fourth, and finally, petitioner asserts that LUBA erred because its order permits local governments to alter zoning codes on a case-by-case basis. We write only to address whether, pursuant to OAR 660-012-0060, prior to approving the zone change, the city was required to

evaluate whether that zone change would significantly affect transportation facilities. Petitioner's remaining assignments of error are either related to the first assignment or do not warrant discussion. We conclude that the rule requires that evaluation to be completed before the approval of the zone change and reverse on that basis.

LUBA's order "permits the City to avoid making any finding of 'significant [e]ffect' under the Transportation Planning Rule" before the approval of the zone change.[(1)] The parties agree that the zone change at issue in this case constitutes an amendment to a land use regulation and is within the purview of OAR 660-012-0060. *See Woodard v. City of Cottage Grove*, 225 Or App 282, 293-94, 201 P3d 210, *rev den*, 346 Or 362 (2009) (OAR 660-012-0060 regulates amendments to zoning maps). Accordingly, the resolution of petitioner's assignment of error depends on whether OAR 660-012-0060 requires that, before granting final approval of a zone change, a local government must consider and evaluate whether that change will significantly affect transportation facilities.[(2)] In other words, the issue we must consider is whether OAR 660-012-0060(1) contains a temporal requirement relating to the required analysis of a significant effect on transportation needs.

In interpreting an administrative rule, our objective is to determine the intent of the body that promulgated the rule. *State v. Papineau*, 228 Or App 308, 311, 208 P3d 500, *rev den*, 346 Or 590 (2009). To make that determination, we examine the text of the rule, in context. *Id.*; *see Abu-Adas v. Employment Dept.*, 325 Or 480, 485, 940 P2d 1219 (1997) (in interpreting administrative rules, the court uses the same methodology as it does in interpreting statutes); *see also PGE v. Bureau of Labor and Industries*, 317 Or 606, 612 n 4, 859 P2d 1142 (1993); *ODOT v. City of Klamath Falls*, 177 Or App 1, 8, 34 P3d 667 (2001). "Context includes other provisions of the same rule, other related rules, the statute pursuant to which the rule was created, and other related statutes." *Abu-Adas*, 325 Or at 485.

OAR 660-012-0060(1) provides:

> "Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation *would* significantly affect an existing or planned transportation facility, *the local government shall put in place measures* as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (*e.g.* level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:
>
> "(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);
>
> "(b) Change standards implementing a functional classification system; or
>
> "(c) As measured at the end of the planning period identified in the adopted transportation system plan [(TSP)]:
>
> "(A) Allow land uses or levels of development that would result in types or

levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

"(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

"(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan."

(Emphasis added.) OAR 660-012-0060(2) provides measures that must be taken "[w]here a local government determines that there would be a significant effect."[(3)]

The key language in the rule for purposes of the issue framed above is the phrase "the local government shall put in place measures" and the word "would." The words used in the text of the rule demonstrate that an evaluation of significant effect is intended to be performed *prior to* a contemplated amendment. The word "shall" in the phrase is mandatory as to the obligation of the local government. *See, e.g.*, *Bacote v. Johnson*, 333 Or 28, 33, 35 P2d 1019 (2001) ("The term 'shall' is a command expressing what is mandatory."). In other words, unless the provisions of OAR 660-012-0060(3) apply, the local government has no discretion to refuse to put appropriate measures in place where "an amendment to * * * a land use regulation *would* significantly affect" a transportation facility. OAR 660-012-0060(1) (emphasis added).

The word "would" refers to a contingency or possibility in the future. As used in OAR 660-012-0060(1), it directly indicates the window in time in which a local government must evaluate the effect of an amendment; that is, before the amendment is allowed. Only after the local government makes a determination of whether an amendment will have a significant effect on a transportation facility can it approve the amendment and either put in place measures to mitigate the impact pursuant to OAR 660-012-0060(2) or make a determination pursuant to OAR 660-012-0060(3) that approval is permissible regardless of that effect. Put in other terms, the use of the word "would" in the rule makes clear that, *prior* to approving an amendment, the local government must determine whether the proposed amendment, if completed, will have the impact described in the rule. *See, e.g.*, *Spathas v. City of Portland*, 133 Or App 275, 278, 891 P2d 664 (1995) (the phrase "would have allowed when established" in a local government land use code operated to impose a temporal requirement). As we observed in *Jaqua v. City of Springfield*, 193 Or App 573, 593, 91 P3d 817 (2004), "OAR 660-012-0060 serves to *prevent* local governments from engaging in land use decision-making without considering whether transportation systems can accommodate the proposed use."[(4)] (Emphasis in original.) Thus, based on the plain text of the rule, the local government was required to make a determination regarding whether the zone change would significantly affect transportation facilities *before* approving the amendment.

Nonetheless, Goodpasture contends that a local government may "defer the [transportation planning rule] analysis to a later stage of development when the zone change is properly conditioned to ensure that the purposes of the [rule] are served in the interim." In *Gould v. Deschutes County*, 227 Or App 601, 206 P3d 1106 (2009), we interpreted a provision of the Deschutes County Code to allow deferral of approval by a

local government of applicable mandatory approval criteria to a later stage depending upon preliminary conditions being satisfied. Nonetheless, OAR 660-0120-0060(1) requires that an assessment of whether a "plan or land use regulation significantly affects a transportation facility" be made at the time of the adoption of the amendment. In contrast, OAR 660-012-0025, which applies to local governments' preparation of transportation system plans, specifically provides that "[a] local government * * * may defer decisions" on certain issues if it makes findings pursuant to the terms of that rule. In other words, although other rules may provide for deferral of certain land use decisions by local governments, OAR 660-012-0060(1) makes no provision for a deferral of the decision required by its provisions.

In light of the foregoing, we conclude that LUBA erred in holding that the city could permissibly grant the zone change in this case without first evaluating, pursuant to OAR 660-012-0060(1), whether the change would significantly affect transportation facilities.

Reversed and remanded to LUBA.

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1. ORS 227.175(4) provides that permit or zone change applications "shall not be approved unless the proposed development of land would be in compliance with the comprehensive plan for the city and other application land use regulation or ordinance provisions." Furthermore, under that statute, a local government may include in its approval of a zone change application "such conditions as are authorized by ORS 227.215 or any city legislation." Here, however, in addition to imposing a condition on its approval of the zone change, the city failed to consider and evaluate, prior to its approval of the zone change application, whether that zone change would significantly affect transportation facilities.

Return to previous location.

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2. OAR 660-012-0005(30) provides that a transportation facility is "any physical facility that moves or assist[s] in the movement of people or goods including facilities identified in OAR 660-012-0020 but excluding electricity, sewage and water systems." Facilities identified in OAR 660-012-0020 include, among other things, streets, bus and passenger rail systems, and bicycle and pedestrian routes.

Return to previous location.

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3. In addition, OAR 660-012-0060(3) provides:

> "Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:

"(a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;

"(b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;

"(c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;

"(d) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and

"(e) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT a reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed in applying sections (a) through (d) of this section."

Return to previous location.

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4. The version of OAR 660-012-0060(1) discussed in *Jaqua* provided that "[a] mendments to * * * land use regulations which significantly affect a transportation facility shall assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ration, etc.) of the facility." 193 Or App at 590 (quoting *former* OAR 660-012-660(1) (1999)). The court in that case stated that "the rule requires local governments to address *whether* a temporary failure of a transportation facility will occur *if* approval is given * * *." *Id.* at 592-93 (emphasis added). The language used in the current version of the rule is even clearer that consideration of whether a transportation facility will be significantly affected is to occur before approval of the requested land use regulation amendment.

Return to previous location.

Oregon
Theodore R. Kulongoski, Governor

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December 14, 2009

The Honorable Peter Courtney, Co-Chair
The Honorable Peter Buckley, Co-Chair
Interim Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairs:

This letter provides a report to the Interim Joint Committee on Ways and Means required by a budget note adopted during the 2009 legislative session by the Joint Ways and Means Committee. The Department of Land Conservation and Development (DLCD) requests the Interim Joint Committee on Ways and Means acknowledge receipt of this report.

Nature of the Request

In approving the department's 2009-2011 budget, a subcommittee of the Joint Ways and Means committee noted that the agency's practice has been to approve a policy and rulemaking agenda at the beginning of each biennium. The Land Conservation and Development Commission (LCDC) bases the agenda on legislative direction, local government and other stakeholder input, and other commission/program priorities in light of available budget and other resources. Since those resources are finite, the process always leaves some items on a "waiting list" for future biennia. *"To address these concerns and to make sure the Legislature clearly understands what the commission plans to undertake during 2009-11,"* the subcommittee approved the following budget note:

"The Department of Land Conservation and Development shall report on the commission's policy agenda to a legislative committee no later than March 1, 2010. Depending on timing and interim activities, this report could be received by either a Joint Committee on Ways and Means or the Emergency Board." The budget note further states that *"The report should cover the status of existing programs and all agency-related legislation from the 2009 session. Status reporting should include agency work plans, resources allocated, and potential impacts on local governments."*

In addition to the information provided in this letter regarding the commission's policy agenda and related work plans, the department is prepared to answer any questions about the agency work plans, resources and impacts on local governments at the next meeting of the Interim Joint Committee on Ways and Means.

Agency Action

LCDC is required by statute (ORS 197.040) to adopt, amend and revise statewide planning goals, land use policies and administrative rules as "necessary to carry out" Oregon's statewide land use planning program under ORS chapters 195, 196 and 197. The commission's practice has been to approve a policy and rulemaking agenda at the beginning of each biennium. To develop its policy agenda, LCDC considers recent legislation and other program priorities of the commission and the department, available budget and personnel resources, and input (including public testimony) from local governments and interested citizens. The department presented the commission with an array of policy issues that need resolution through rulemaking or through other department efforts (such as work groups, grants or forums) or through legislative proposals. Because available budget and personnel resources are finite, the commission's decision on its policy agenda necessarily left many of these potential policy projects off the final agenda. However, generally, these ideas are maintained for consideration at a future biennium or funding opportunity.

DLCD began consideration of its 2009-11 policy agenda in April of 2009, and continued this consideration until its approval in August 2009. This effort included public hearings, a series of informal meetings with local governments, stakeholders and other interests, and public testimony at two commission hearings. As described above, the department's and LCDC's efforts leading up to the adoption of the agenda included consideration of a broad list of suggestions for projects that would update, streamline and improve state land use policies and rules, resolve issues, or test new ideas for land use policy. In August 2009, LCDC approved its Policy Agenda (see attachment A). LCDC also indicated its intent to revisit the policy agenda in the spring of 2010, at which time it will receive a status report and may consider additional projects if staff resources are available.

LCDC's policy agenda is grouped into three general categories: (A) Projects Required by the Legislature, the Governor or the Courts; (B) Additional High Priority Policy and Rulemaking Projects, and (C) Projects to be Pursued only if DLCD Resources are Available. The expectation is that few if any items in category (C) will be undertaken in the 2009-11 biennium. For this report, a description of each project is provided, as well as a summary of the status of the work on the task. A description of staff resources devoted to the task and potential impacts to local governments are also noted.

The department estimates that on average, projects leading to adoption of new or amended administrative rules require from one to three months staff time for "simple rulemaking" (or similar efforts) and up to six months of staff time for more complex rulemaking or other issues. 2009 Policy Agenda tasks A5, 6, 7 and 9 and B3 require(d) "simple rulemaking" and relatively few staff resources. Policy Agenda tasks A1, 2, 3, 4 and 8 and B1 and 2 require(d) either complex rulemaking or similar levels of effort (rulemaking is not always the work product involved). Additional costs include attorney general time, other supplies and services, and costs for public hearings, printing and

public notices. For the policy projects described in this report, DLCD's current budget and staffing are sufficient to cover estimated costs.

Status of Work Scheduled in LCDC's 2009-2011 Policy Agenda

A. Projects Required by the Legislature, the Governor or the Courts

1. In response to a recent court decision holding that an LCDC rule was invalid as applied to a particular land use application under the federal "Religious Land Use and Institutionalized Persons Act" (RLUIPA), consider (with an appointed work group) amendments to LCDC's farmland rules (OAR 660, division 33) regarding uses that involve the "assembly of people."

   STATUS: This project began October 1, 2009, with LCDC's appointment of a work group to assist the department and attempt to reach a consensus on new rules in response to the court. The work group has met twice (November 9 and December 3) and is currently developing and reviewing proposed amendments to rules. The next work group meeting is scheduled for January 14, 2010. The group is making progress, and at the time of this report, consideration and adoption of rule amendments is anticipated to occur at the April 22, 2010, LCDC meeting. Agency resources allocated for this effort include a percentage of a DLCD policy analyst and a percentage of DLCD's farm/forest specialist.

   Potential impacts on local governments are likely to be minimal. Counties probably will be required to revise certain local land use code requirements and apply the amended code to certain "assembly" uses, but the changes are expected to clarify requirements and reduce the number of land use appeals that would otherwise occur.

2. Revise the Oregon Territorial Sea Plan to include an element concerning alternative energy resources in the territorial sea, as ordered by a Governor's Executive Order (Order No. 08-07).

   STATUS: Recommended text amendments to the Oregon Territorial Sea Plan were adopted by LCDC October 2009. The recommended amendments resulted from a broad consensus of both the Oregon Ocean Policy Advisory Committee (OPAC) and the Territorial Sea Plan Advisory Committee (TSPAC) appointed by LCDC to assist the department in the development of the plan. Future map amendments associated with this plan are also underway and scheduled for LCDC adoption in late 2010. Agency resources allocated for this effort include a percentage of DLCD's Marine Affairs Coordinator.

   Potential impacts on local governments: Amendments to the Territorial Sea Plan are not expected to result in fiscal impact to local governments as they do not have land use jurisdiction in the Territorial Sea. Costs for state agencies should be reduced as the rules clarify siting requirements for alternative energy facilities.

3. With the Oregon Department of Transportation, staff the Metropolitan Planning Organization (MPO) Greenhouse Gas Emissions Task Force to prepare legislative recommendations as required by (2009) House Bill 2186. The Task Force report is due January 2010, and work may continue through 2010.

   STATUS: HB 2186 established the Metropolitan Planning Organization Greenhouse Gas Emissions (MPOGHG) Task Force and directs it to provide recommendations to the 2010 Legislative Session for legislation requiring the state's metropolitan areas to undertake "scenario planning" to meet state GHG emission reduction goals. The Task Force has met four times and has completed a draft report and recommendations. A final report is due to be completed by the end of the calendar year. LCDC Chair VanLandingham serves as co vice-chair of the Task Force. Other agency resources allocated for this effort include a percentage of DLCD's Transportation Planning Coordinator.

   Potential impacts on local governments: The recommendations of the task force will not themselves impact local governments; however, resulting legislation may have impacts on MPOs and cities within MPO areas. The Task Force recommends additional work by metropolitan planning organizations, including scenario planning for greenhouse gas emission reductions, which would result in recommendations for changes to local transportation and land use plans and ordinances.

4. As required by (2009) House Bill 2001, adopt greenhouse gas emission "reduction goals" for purposes of Portland Metro Area "scenario planning" for land use and transportation measures designed to meet the reduction goals.

   STATUS: HB 2001 directs the commission to adopt rules setting GHG emission reduction targets for Metro in June 2011. The commission's rulemaking is to be informed by recommendations from ODOT, DEQ and DOE submitted by March 2011. ODOT is directed to provide funding to support this work. The department has met twice with ODOT and Metro staff (at the time of this report) to develop a work plan and a schedule to complete this work, and has met once with other agencies. Further work is anticipated following completion of the MPOGHG Task Force report (under HB 2186, described above) in January. DLCD resources currently allocated for this effort include a percentage of DLCD's Transportation Planning Coordinator. Additional resources likely will be needed as the rulemaking process gets underway.

   Potential impacts on local governments: Metro will be required to develop at least two land use and transportation scenarios that demonstrate how the region can meet the 2035 greenhouse gas reduction target set by LCDC rule. In addition, HB 2001 directs that LCDC, adopt rules and a schedule for local governments to amend plans and ordinances to carry out the scenario selected by Metro, and additional local impacts will result from this phase of work.

5. As required by (2009) House Bill 3286, adopt the Metolius Area of Critical State Concern Management Plan by administrative rule, including minor amendments to the plan that had been proposed to the 2009 legislature by LCDC.

   STATUS: A public hearing regarding the management plan rules was held in Camp Sherman on December 3, 2009. LCDC has scheduled an additional public hearing to consider testimony and to adopt the management plan, by rule, at its January 21, 2010, meeting. The proposed rules are specified in the legislation itself. Resources allocated for this effort include a percentage of a DLCD policy analyst.

   Potential impacts on local governments: The new rules will not have impacts on local governments that are in addition to the local impacts that resulted from the 2009 legislation that approved the management plan. These impacts were described in fiscal statements presented to the legislature at the time that legislation was adopted.

6. Adopt procedural amendments to LCDC's Measure 49 Implementing Rules in order to carry out adjustments to the Measure 49 claims process enacted by 2009 House Bill 3225.

   STATUS: Temporary rules were adopted by LCDC on July 17, 2009. LCDC has scheduled adoption of permanent rules at its January 21, 2010 meeting. Agency resources allocated for this effort include a percentage of a DLCD policy analyst and a percentage of the agency's Measure 49 Division Manager.

   Potential impacts on local governments: There will be no impacts to local government as a result of these rules.

7. Adopt "housekeeping" amendments to LCDC's farmland rules to make the rules consistent with recently amended statutory provisions in (2009) House Bill 3099 regarding farm uses.

   STATUS: This task is complete – LCDC adopted these rules on November 5, 2009. Agency resources allocated for this effort included a percentage of a DLCD policy analyst and a percentage of DLCD's Farm/Forest specialist.

   Potential impacts on local governments: The new rules will not have any affects on local governments that are different than or in addition to the impacts from the 2009 legislation that promulgated the rules. The changes to statewide regulations resulting from this legislation are minor, and the legislation provided a streamlined method for counties to change local codes in response to this law.

8. Update LCDC rules (OAR 660, division 35) that implement the "consistency requirements" of the Federal Coastal Zone Management Act, to address changes

to the National Oceanic and Atmospheric Administration's (NOAA's) federal consistency rules and other changes since the last update (1988) of division 35.

STATUS: LCDC will initiate this project at its January 2010 meeting. The project is projected to be complete by September 2010. Agency resources allocated for this effort include a percentage of DLCD's Marine Affairs Coordinator.

Potential impacts on local governments: It is anticipated that this will cause no fiscal or other impacts on local governments.

9. Adopt procedural rules for DLCD's Transfer of Development Rights Pilot Project authorized under (2009) House Bill 2228.

STATUS: LCDC has scheduled adoption of these procedural rules at its January 21, 2010 meeting. The department has begun working with stakeholder groups, including county planning directors and forest land owners, to identify candidate areas for the three pilot projects authorized by this legislation. The agency will begin receiving applications for pilot projects about February, 2010. Agency resources allocated for this effort include a percentage of a DLCD policy analyst and a percentage of DLCD's Farm/Forest Specialist.

Potential impacts on local governments: Up to three local governments will incur costs associated with initiating a pilot project and adopting plan and zone amendments to implement the project. Monitoring and reporting will also result in some costs to local governments. which cannot be determined at this point. Since participation in this program is voluntary, those local government costs will be incurred voluntarily, and generally local governments and land owners would participate with the expectation that they can absorb the costs and that there will be positive gains to landowners and/or the local governments as a result of this effort.

B. Additional High Priority Policy and Rulemaking Projects for this Biennium

Scheduling for these projects is dependent on staff and other department resources. The commission's expectation is these projects will begin this biennium and that some, but not all, will be completed during the 2009-2011 biennium.

1. Begin to assist communities in preparing for the effects of climate change, in coordination with other state agencies and organizations. This project will include work toward a state-level Climate Change Adaptation Framework Plan, in coordination with state agencies and other organizations, through a high-level work group consisting of directors and/or key staff of several state agencies administering program areas that concern people, communities or resources vulnerable to long-term climate change impacts. This policy agenda work task also includes work toward statewide climate change mitigation planning,

described under items A3 and 4 of this report (above) and required by (2009) legislation – HB 2001 and HB 2186.

STATUS: The governor held an initial coordination meeting with state agencies on October 6, 2009. A follow-up meeting of state agencies was held in November, and additional meetings are scheduled for December and January, and thereafter on a regular basis to coordinate work. Agency resources allocated for this effort include a percentage of the DLCD deputy director, a percentage of a DLCD policy analyst, and a percentage of a DLCD coastal policy specialist.

Potential impacts on local governments: Since this work is intended to provide recommendations for funding and policy next biennium, it is not expected to impact local governments during the current biennium. This project would not affect local governments until and unless specific climate adaptation policies and actions are adopted by the legislature or agencies.

2. Conduct a public "policy forum" (or a series of meetings), which would include a broad group of stakeholders and possibly legislators, to consider the following topics and determine consensus and future direction:
   - Consider public facility finance and planning issues facing local governments, including those raised by the Big Look Task Force and the Revenue Restructuring Task Force, as well as by local governments, and consider potential land use strategies, policy amendments and legislative proposals to address these concerns.
   - Explore changes to streamline and update statewide policy regarding urban growth management, including the "priority of lands" statutes, urban reserve requirements, population forecasting requirements, housing and economic development land use goals, governance and related topics.

STATUS: The department anticipates this project will begin in the spring of 2010. The department has begun consulting key stakeholders and is considering various methods for conducting the "policy forum." Once underway, it is anticipated that recommendations emerging from the forum will include legislative proposals as well as LCDC rulemaking. At this time, it is not known whether any recommendations will be ready in time for the 2011 legislative session. Agency resources allocated for this effort include a percentage of a DLCD policy analyst. Additional DLCD staff resources may be required once the forum is scheduled and underway.

Potential impacts on local governments: This project will not result in any rules or laws that affect local governments this biennium. The agency will seek some time commitment from local governments that choose to participate in the policy forum. To the extent that this forum generates ideas and proposals to improve or streamline local planning, the project is expected to have positive impacts on local governments over the long term.

3. Work with ODOT and the OTC to review implementation of the Transportation Planning Rule (TPR), including OTC work on alternative mobility standards, STIP criteria and the requirements of (2009) House Bill 3379.

   STATUS: HB 3379 directs ODOT to adopt rules that allow local governments to request exemptions or extensions to meet funding obligations resulting from application of Section 0060 of LCDC's Transportation Planning Rule (TPR). The commission has directed the department to monitor ODOT's rulemaking to assess whether changes to LCDC's TPR might also be appropriate (at this point, it is too soon to determine whether TPR changes are suggested). Department staff has met once with ODOT staff to discuss this rulemaking, which ODOT has not yet initiated. It is likely that ODOT will convene an advisory committee to assist in its rulemaking. Agency resources allocated for this effort include a percentage of DLCD's Transportation Planning Coordinator.

   Potential impacts on local governments: Until ODOT rulemaking is underway, possible effects on local governments cannot be predicted.

C. Projects to be Pursued Only if Resources are Available

It is expected that few, if any, of these items will be undertaken in the 2009-11 biennium.

1. Continue consideration of potential policy actions suggested by LCDC's 2008 Affordable Housing Work Group, including possible rulemaking and/or legislative proposals.

2. Consider and, if necessary, adopt rules regarding "nonresource land," especially as may be necessary to guide implementation of farm and forest resource land rezoning authorized for individual counties under (2009) House Bill 2229. Study and, if necessary, clarify the "forest lands" definition in Goal 4, and address possible rule inconsistencies (in OAR 660, division 6) related to that definition.

3. As authorized by (2009) House Bill 2230, amend rules under OAR 660, divisions 30 and 31, and take other actions necessary to update and streamline State Agency Coordination requirements and procedures.

4. Reconvene a "farm stands work group" to consider concerns about farm stand sales of wine products.

5. Analyze criteria for zoning of farmland and, if necessary, recommend changes to those criteria.

6. Revise agency procedures, as necessary, to implement the Environmental Justice Task Force requirements enacted in 2007 Senate Bill 420.

STATUS: Except for Item 6, none of the projects above have been initiated and at the time of this report it is not clear which, if any, will be initiated this biennium. Participation in ongoing activities under Item 6 (Environmental Justice Task Force) is occurring, but it is not yet clear whether additional activities or policy changes will be recommended for this biennium. LCDC will meet in March 2010 to review its policy agenda and the status of projects underway. Based on this review, including a review of staff resources, and with consideration of time remaining in the biennium, the commission may direct staff to work on additional projects on the list above.

Action Requested

The department requests acknowledgment of the report and attachments.

Legislation Affected

It is not expected that legislation under consideration will be affected by this report.

Thank you for your consideration of this report. If there are any additional questions concerning the agency's work plan, we will be happy to respond.

Sincerely,

Richard Whitman,
Director

Attachment: Summary of LCDC's 2009 Policy Agenda

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LCDC Policy Agenda for 2009-2011

In August 2009 the Land Conservation and Development Commission (LCDC) approved a list of policy projects it intends to pursue in the 2009-11 biennium. LCDC also indicated its intent to revisit its Policy Agenda in the spring of 2010. LCDC's policy agenda is a list of projects to improve and update statewide land use policies and rules, including changes necessary to respond to recent legislation, executive orders, and litigation. State law (ORS 197.040) requires LCDC to adopt, amend and revise statewide planning goals, land use policies and administrative rules as "necessary to carry out Oregon's statewide land use planning program." The commission's 2009-2011 Policy Agenda includes:

A. Projects Required by the Legislature, the Governor or the Courts

1. In response to recent court decisions applying the federal Religious Land Use and Institutionalized Persons Act (RLUIPA), work with an appointed workgroup to consider amendments to LCDC farmland rules (OAR 660, division 33) regarding uses that involve the assembly of people. (Scheduled for fall/winter of 2009).

2. Revise the Oregon Territorial Sea Plan to include an element concerning alternative energy resources in the territorial sea, as ordered by a Governor's Executive Order (Text amendments scheduled for October 2009; map amendments will be scheduled about July 2010).

3. With the Oregon Department of Transportation, staff the Metropolitan Area Planning Organization (MPO) Greenhouse Gas Task Force to prepare legislative recommendations as required by House Bill 2186. (Task Force report due Jan 2010).

4. Adopt state greenhouse gas reduction "goals" for purposes of the Portland Metro Area "scenario planning" land use patterns to meet the reduction goals, as required by House Bill 2001 (rules by June 2011; other work 2011-2014).

5. Adopt the Metolius Area of Critical State Concern Management Plan by administrative rule, including minor amendments, as required by House Bill 3286 (hearing Dec. 2009).

6. Adopt procedural amendments to LCDC's Measure 49 implementing rules to carry out adjustments to the claims process enacted by House Bill 3225 (scheduled October 2009).

7. Adopt "housekeeping" amendments to LCDC's farmland rules to make the rules consistent with recently amended statutory provisions in House Bill 3099 regarding farm uses.

8. Update LCDC rules (OAR 660, division 35) that implement the "consistency requirements" of the Federal Coastal Zone Management Act to address changes to NOAA federal consistency rules and other changes since the last (1988) update of division 35.

9. Adopt procedural rules for the DLCD Transfer of Development Pilot Project authorized under House Bill 2228.

B. High Priority Policy and Rulemaking Projects

1. Begin to assist communities in preparing for the effects of climate change, in coordination with state agencies and other stakeholders. This will include work on a statewide *adaptation* plan in coordination with state agencies and may include "pilot communities." Statewide climate change *mitigation* planning described above re HB 2001 and HB 2186.

2. Conduct a public "policy forum" (or a series), including stakeholders and legislators, to consider the following topics and determine consensus and future direction:
   - Consider public facility finance and planning issues facing local governments, including those raised by the Big Look Task Force and local governments, and consider land use strategies and policy amendments to address these concerns.
   - Explore changes to streamline and update statewide policy regarding urban growth management, including the priority of lands statutes, urban reserve requirements, population forecasting, Goals 9 and 10, governance and related topics (biennium).

3. Work with ODOT and the OTC to review implementation of the Transportation Planning Rule (TPR), including alternative mobility standards and STIP criteria and the requirements of House Bill 3379. (beginning Oct 2009)

4. Study and (as necessary) clarify the "forest lands" definition in Goal 4, and address possible rule inconsistencies (in OAR 660, division 6) related to that definition.

5. Revise agency procedures, as necessary, to implement Environmental Justice requirements in 2007 Senate Bill 420.

C. Projects to be Pursued if DLCD Resources are Available

1. Continue consideration of potential policy actions suggested by LCDC's 2008 Affordable Housing Work Group, including possible rulemaking and/or legislation.

2. Consider and, if necessary, adopt rules regarding "nonresource land," especially as may be necessary to guide implementation of farm and forest resource land rezoning authorized for individual counties under House Bill 2229.

3. As authorized by HB 2230, amend rules under OAR 660 divisions 30 and 31 and take other actions necessary to update and streamline state agency coordination.

4. Reconvene a "farm stands work group" to consider concerns about farm stand sales of wine products.

For questions or additional information about LCDC's 2007-09 Policy Agenda, contact Bob Rindy at 503-373-0050, Ext 229, or email at: bob.rindy@state.or.us or Michael Morrissey at 503-373-0050 Ext 320 or email Michael.morrissey@state.or.us