



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

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**TO:** Land Conservation and Development Commission

**FROM:** Bob Rindy, Policy Analyst

**SUBJECT:** Agenda Item 13; March 21, LCDC Meeting

### **Initiation of Rulemaking and Appointment of Advisory Workgroup Regarding Sites Dedicated to Affordable Housing and Manufactured Dwelling Parks**

In its 2007-2009 Policy Agenda, the Land Conservation and Development Commission (LCDC) directed the department to pursue a policy concept to encourage cities to provide sites dedicated to affordable housing and manufactured housing parks. This policy concept would include draft rules that may be based on elements proposed in the department's 2007 legislative concept, Senate Bill 187, which did not pass but did generate interest from legislators and affordable housing interests, as reflected in related 2007 legislation that did pass – HB 2096. That bill, codified as Chapter 602 Oregon Laws 2007, requires the department to report to the 2009 legislature regarding “LCDC measures, if any, adopted to streamline land use requirements relating to the expansion of urban growth boundaries so as to provide affordable housing, manufactured dwelling parks and mobile home parks.”

In response to HB 2096, the department should evaluate land available for affordable housing and possibly pursue ideas such as those in SB 187, or other ideas, as a 2008 rulemaking project. However, the department has recommended this be designed as a “pilot project” limited to a few cities. As indicated in LCDC's Policy Agenda, this matter should be considered as an exercise to develop draft rules to be considered by LCDC, based on input and recommendations from a rulemaking workgroup that includes a balance of interests, including affordable housing advocates and others concerned about this topic, as well as interests who weighed in on SB 187 and HB 2096. By limiting new rules to a small number of cities, possibly including a “sunset” on the applicability of the rules and refining or modifying the ideas in SB 187, this rulemaking could be described as a “test” of the core concepts outlined in that legislation, and of any alternative ideas to achieve its intent. Depending on the implementation of possible new rules, this “test” may help inform a broader rule project in the future on this subject, and would also assist the department in developing a response to the legislative recommendations in HB 2096.

Under this agenda item, the Commission will hold a public hearing to “initiate” a rulemaking exercise to pursue the “affordable housing” conceptual policy ideas described in this report. The Commission will also consider any public testimony on this topic provided at the hearing. Furthermore, this item is intended for the Commission to appoint a rule advisory work group to pursue these policy ideas, and testimony is invited regarding the appointment of work group members and the makeup, expertise and “balance” of the proposed workgroup. The work group will be charged with (1) evaluating and refining the ideas described in this report, and other ideas at its discretion, intended to encourage cities to designate land for affordable housing through statewide land use program measures, and (2) to propose rules for LCDC’s consideration and possible adoption by approximately November of 2008.

For additional information on this item, please contact Bob Rindy at 503-373-0050 ext. 229, or by email [bob.rindy@state.or.us](mailto:bob.rindy@state.or.us).

## **OVERVIEW**

Land use planning Goal 10 requires local governments to “encourage needed housing at price ranges and rent levels commensurate with the financial capabilities of Oregon households ... Plans should be developed in a manner that ensures the provision of appropriate types and amounts of land within urban growth boundaries . . . necessary and suitable for housing that meets the housing needs of households of all income levels.”

Despite this goal, and LCDC’s acknowledgement of land use plans throughout the state as “in compliance with” that goal, housing advocates maintain that a growing number of Oregonians cannot afford adequate housing in their community. Affordable housing builders indicate that part of this problem is due to the cost and/or scarcity of land suitable and available for the development of low to moderately priced housing in urban areas. The department does not yet have sufficient data to verify this conclusion; however, HB 2096 requires DLCD to report to the 2009 legislature regarding “the provision of sites for affordable housing development, including sites for manufactured dwelling parks or mobile home parks; in other words, the department will be conducting an inventory statewide.” Upon completion, this inventory may further inform the Commission, the department and the workgroup as to the availability of affordable housing sites. If there is indeed a scarcity of land for affordable housing, including manufactured home parks, this would suggest that LCDC should continue to explore this and possibly other near- and long-term solutions to issues regarding affordable housing. This rulemaking concerns at least one idea that may address the land availability concerns of affordable housing builders and advocates, but other ideas may be pursued at the discretion of the workgroup.

As indicated above, the genesis of this rulemaking idea is the department’s 2007 legislative proposal, SB 187, which would have required LCDC to adopt rules intended to encourage local governments to provide “land dedicated to affordable housing, including land for manufactured housing parks.” SB 187 suggested relaxing certain

LCDC rules regarding UGB expansion in order to encourage cities to provide sites dedicated and “restricted” to the development of affordable housing. During the 2007 session, many interest groups perceived this bill as unnecessarily opening up the UGB process with unintended and potentially detrimental consequences to farm or forest land protection and to other core growth management principles in the land use program.

As indicated above, DLCD staff believes the requirements directed at LCDC in HB 2096 regarding affordable housing inventories and (possibly) new rules were in response, in part, to the legislature’s broader discussion and concern regarding affordable housing, especially manufactured housing park closures, and in response to the failure of SB 187. Again, HB 2096 requires DLCD to report to the 2009 legislature regarding “the provision of sites for affordable housing development, including sites for manufactured dwelling parks or mobile home parks, and regarding any LCDC measures, if any, adopted to streamline land use requirements relating to the expansion of urban growth boundaries so as to provide affordable housing, manufactured dwelling parks and mobile home parks.” This legislation does not require LCDC to adopt any changes to rules regarding affordable housing or manufactured housing parks, nor does it require LCDC to change UGB requirements to provide for affordable housing or manufactured housing. However, the statute may arguably imply that, depending on the inventory, the Commission should consider rules or other measures to address this issue during the biennium.

In approving its Policy Agenda for the 2007-2009 Biennium in October 2007, the Commission directed the department to conduct the inventory and consider amendments to rules (or applicable goals) in order to encourage affordable housing and manufactured housing parks, either as a specific rule and/or goal amendment project, or combined with “Phase II” of LCDC’s UGB amendment rule project. In either case, this project would entail establishment of a workgroup that includes a range of interests to advise the department and attempt to reach consensus on proposed rules. In discussions with OHCS, interest groups and others, the department is recommending that this project have a work group that is focused on this issue only, rather than combined with the UGB streamlining “phase 2” workgroup.

We note that, although the inventory of sites statewide may not be concluded for several months (the department is exploring hiring an intern to conduct the inventory), the discussion of possible rules should begin in the very near future so as to provide sufficient time to explore rulemaking options and, if possible reach consensus. In meeting several times with the Department of Housing and Community Services (OHCS) to discuss ideas for rulemaking, the department has also discussed ideas for 2009 legislation on this topic, possibly sponsored jointly by DLCD and OHCS (see DLCD’s report on proposed legislative concepts, Item 8 on the March 20 LCDC agenda). OHCS strongly supports this rulemaking exercise, and encourages the department to consider related legislation, jointly sponsored by DLCD and OHCS, if necessary to support concepts proposed by the rulemaking workgroup.

We also note that, regardless of whether LCDC ultimately adopts any new rules or changes to goals or rules on this topic in order to respond to HB 2096, it must issue a report to the legislature on the provision of sites for affordable housing development, including sites for manufactured dwelling parks or mobile home parks, the department must at a minimum conduct an inventory of such sites throughout the state prior to November of 2008.

### **Description of proposed rulemaking**

The department is suggesting the appointment of a workgroup to consider and recommend ideas for rulemaking intended to encourage local governments to provide “sites dedicated to affordable housing, manufactured dwelling parks and mobile home parks.” SB 187 suggested some “relaxing” of certain UGB amendment rules to achieve this purpose, and the proposed rulemaking project described below may examine and include some of those ideas. However, the department emphasizes that these ideas are by no means the only ideas that should be examined by the workgroup, and other methods should also be considered.

While the rulemaking study proposed in this report should explore the ideas such as those in SB 187, unlike that legislation, the department suggests that proposed rules be crafted as a “pilot project” involving approximately three to five cities (this number of cities is a suggestion that should be further discussed by the workgroup). The department does not have suggestions at this point as to which cities should be included in the pilot project – although many cities have expressed an interest. The workgroup should carefully select “pilot” cities that are committed to trying out this idea in the near-term, and are willing and able to follow through with a local effort to provide one or more sites “dedicated to affordable housing” under these new rules and work toward successful development of affordable housing on the site or sites.

Since some of the ideas that may be considered may include changing certain restrictions pertaining to urban growth boundaries (UGBs) under Goal 14, and to the extent state law codifies UGB requirements and there are other related statutory requirements (such as requirement restricting local government’s authority to maintain the “affordability” of certain housing), the workgroup should also recommend whether to propose changes to statute or else suggest other ways to achieve this concept without changes to statutes.

The proposed rule concept at this point may include the following ideas, at least for the initial workgroup discussions. The purpose of the rulemaking would be to encourage “pilot cities” to identify and designate new sites “dedicated to affordable housing,” and employ zoning and/or other tools to maintain these sites for that purpose over the long term. The new or revised rules should:

- As one potential method to achieve this concept, consider whether to amend UGB requirements (for pilot cities only) in a manner that may encourage local governments to add affordable housing sites to a UGB, possibly land that would

- not otherwise be available for addition to a UGB, or possibly in circumstances where other UGB requirements (such as 20-year land supply) would otherwise prevent the local government from adding such land;
- Consider alternative methods to encourage the designation of sites dedicated to affordable housing that do not involve relaxing UGB requirements;
  - Require that any new sites designated for this purpose must be capable of being served by transportation facilities, sewer and water service and other public facilities that are necessary for the development of affordable housing, in the near-term;
  - Be crafted in a manner that does not conflict with current statutes, including ORS 197.296 (20 year land supply for cities over 25,000), ORS 197.298 (hierarchy for land added to UGBs) and/or ORS 197.309(2) (restricts local government's ability to impose requirements that have the effect of establishing the sales price for a housing unit). If the workgroup finds that recommended rule concepts cannot be adopted in a manner that is consistent with the statutes described above, it should propose a legislative concept to obtain the minimum change necessary to these statutes so as to authorize this pilot project to proceed (the department will be submitting a "placeholder legislative concept" for approval by the Governor's office, so that such legislation can be submitted later if the workgroup deems it necessary).
  - Define the term "sites dedicated to affordable housing" taking into consideration regional factors, ownership and rental housing needs, government assisted housing, and the need to accommodate those displaced by mobile home park closures;
  - With regard to any proposed rule provisions that amend UGB or other related rules, also propose safeguards to eliminate or minimize adverse impacts on farm and forest land protection and other key components of the statewide land use program;
  - Establishing criteria for determining appropriateness of land to be dedicated for affordable housing;
  - Establish remedies to address possible non-compliance with these rules after a city initiates a pilot project;
  - Potentially allow for a mix of affordable housing and market rate housing on a site dedicated to affordable housing, in recognition that this may be necessary for affordable housing builders to develop such housing. The groups should determine an appropriate percentage mix of affordable housing and other housing options for lands dedicated to affordable housing, but should ensure that the primary use of the site is for affordable housing;
  - Provide for rezoning of land already in the UGB in order to provide one or more new sites "dedicated to affordable housing, manufactured dwelling parks and mobile home parks;"
  - Provide other measures as necessary to assure the development of affordable housing on land dedicated to affordable housing, and to prevent conversion of these sites to other uses before or after the development of affordable housing.

- “Pilot” local governments shall ensure that lands dedicated for affordable housing will be continuously used for this purpose through a combination of:
  - Comprehensive plan and zoning restrictions;
  - Guaranteed rental rates;
  - Sales and equity-recapture provisions, and similar restrictions;
  - Development approval conditions;
  - Covenants and restrictions;
  - Regulations, provisions or conditions such as those described in ORS 197.309 (2); and/or;
  - Other legally binding agreements and contracts, regulations, provisions or conditions determined by the local government to be effective in maintaining the affordability of housing on land dedicated to that purpose pursuant to this section;
- Nothing in this concept would relieve a local government from fully complying with the requirements of Goal 10 or ORS 197 regarding needed housing, including the requirements to plan for a full range of housing options within each urban growth boundary. The provisions of the proposed rules would be intended as an additional tool to encourage the development of affordable housing where market forces and standard regulatory measures are not effectively providing an adequate supply of affordable housing;
- These rules would not allow a local government to convert other land in an urban growth boundary currently planned and zoned for housing, to other land uses, due to the inclusion of new sites included in an urban growth boundary for affordable housing;
- If UGB amendments are one of the recommended tools for this concept, the workgroup should consider whether local governments may exchange a site added to a UGB under the proposed rules for a site already in a UGB but better located to serve those in need of affordable housing;
- The workgroup should select three to five “pilot cities” and ensure that the proposed new rules, possibly of limited duration, apply only to these cities.

### **Proposed Workgroup**

The department has consulted with OHCD and other housing advocates in order to propose a balanced workgroup that includes the expertise needed to consider these rules, and also includes other interests that would be affected by these rules, including local governments, land use planning and farmland protection groups, housing development groups, and citizens. DLCD recommends the following workgroup members:

John VanLandingham, LCDC (Chair)  
Lane County Legal Aid & Advocacy Center

Janet Byrd  
Executive Director Housing Alliance and  
Executive Director, Neighborhood Partnership Fund

Larry Medinger  
Oregon Housing Council (Ashland area Homebuilder)

Jon Chandler  
Oregon Building Industry Association

Mary Kyle McCurdy, Staff Attorney  
One Thousand Friends of Oregon

Gregory Winterowd, Land Use Planning Consultant  
Winterbrook Planning

John Miller  
Executive Director  
HOST Development, Inc.

Bob Gillespie  
Oregon Housing and Community Services

Don Minor, Executive Director  
Oregon Manufactured Housing Association

Al Johnson, Land Use Attorney  
Johnson & Sherton, P.C.

Don Schellenberg  
Oregon Farm Bureau

Jana Jarvis, Vice President, Public Policy  
Oregon Association of Realtors

Linda Navarro  
Oregon Bankers Association

Martha McLennan  
Northwest Housing Alternatives Inc.

Jim Tierney  
Columbia County Community Action Team

Ann Glaze  
Oregon Citizen Involvement Advisory Committee

Finally, the workgroup will include representatives of one or more cities, preferably those who may be interested in participating in the pilot project, and a representative of a county associated with at least one or more of those cities (at the time of this report the department is in the process of contacting local governments who have expressed an interest; DLCD will present recommendations for these additional workgroup members at the Commission meeting March 21).

DLCD staff for this project will include Bob Rindy and Gloria Gardiner.

### **Required LCDC Rulemaking Criteria and Procedures**

As part of its overall statutory authority (see ORS 197.040), the Land Conservation and Development Commission (LCDC) is required to “adopt rules and ... any statewide land use policies that it considers necessary to carry out” the statewide land use program and statutes, and to “adopt, amend, or revise goals consistent with regional, county and city concerns.”

The Commission’s procedures for rulemaking derive from ORS Chapter 183 and are specified in LCDC’s procedural rules at OAR 660-001-0000. The Commission generally appoints a rule advisory committee, or “work group” for projects such as the one described in this report. Under ORS Chapter 183, *“the public should be involved in the development of public policy by agencies and in the drafting of rules. The Legislative Assembly encourages agencies to seek public input to the maximum extent possible before giving notice of intent to adopt a rule. The agency may appoint an advisory committee that will represent the interests of persons likely to be affected by the rule, or use any other means of obtaining public views that will assist the agency in drafting the rule.”*

*(2) Any agency in its discretion may develop a list of interested parties and inform those parties of any issue that may be the subject of rulemaking and invite the parties to make comments on the issue.*

*(3) If an agency appoints an advisory committee for consideration of a rule under subsection (1) of this section, the agency shall seek the committee’s recommendations on whether the rule will have a fiscal impact, what the extent of that impact will be and whether the rule will have a significant adverse impact on small businesses.”*

The Commission is also guided by ORS 197.040, as follows:

*“...The Land Conservation and Development Commission shall...adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197, [and] shall:*

*(A) Allow for the diverse administrative and planning capabilities of local governments;*

*(B) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;*

*(C) Assess the likely degree of economic impact on identified property and economic interests; and*

*(D) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.”*

The Commission has also approved its own “Citizen Involvement Guidelines for Policy Development” (the “CIG”) in order “... *to provide and promote clear procedures for public involvement in the development of Commission policy on land use,*” which LCDC has committed to follow “*to the extent practicable in the development of new or amended statewide planning goals and related administrative rules.*” The department recommends that a member of CIAC be appointed to the workgroup. Ann Glaze has agreed to this appointment. The CIG recommends that the Commission “*consult with the CIAC on the scope of the proposed process or procedure to be followed in the development of any new or amended goal, rule or policy.*” DLCD intends to consult with CIAC on this project, but as of this report no meeting date has been set for this. The department is recommending that the Commission appoint CIAC member Ann Glaze to this workgroup. The CIG also recommends that, as part of a rulemaking process, the department “*shall, to the extent practicable:*

- *Prepare a schedule that clearly indicates opportunities for citizen involvement and comment, including tentative dates of meetings, public hearings and other time-related information;*
- *Post the schedule, and any subsequent meeting or notice announcements of public participation opportunities on the Department’s website, and provide copies via paper mail upon request; and*
- *Send notice of the website posting via an e-mail list of interested or potentially affected parties and media outlets statewide, and via paper mail upon request;*
- *Provide background information on the policy issues under discussion via posting on the Department’s website and, upon request, via paper mail. Such information may, as appropriate, include staff reports, an issue summary, statutory references, administrative rules, case law, or articles of interest relevant to the policy issue.”*

The department intends to follow these guidelines with regard to this rulemaking. The workgroup will determine its schedule at its first meeting, and the department will post and maintain a website on this workgroup.

## **Recommendation**

The department recommends the Commission receive public testimony on the proposed rulemaking described in this report, including testimony on the proposed work group. Following the public hearing, the Commission should appoint the work group and direct the department to begin this rule making and report back to LCDC as this work progresses.

**Attachments**

- A. SB 187
- B. HB 2096
- C. Goal 10