



# Oregon

Theodore R. Kulongoski, Governor

## Department of Land Conservation and Development

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TO: Land Conservation and Development Commission

FROM: Michael Morrissey and Bob Rindy, Policy Analysts,  
Department of Land Conservation and Development

SUBJECT: **Agenda Item 9, June 4-5, 2009, LCDC Meeting**

### **DISCUSSION OF LCDC'S 2009-11 POLICY AND RULEMAKING AGENDA**

This item is the second of three Land Conservation and Development Commission (LCDC) discussions of the 2009-11 Policy and Rulemaking Agenda. The commission first heard this item at its April meeting; the final approval is scheduled to occur at the commission's July meeting. The commission historically approves its biennial policy agenda in the late summer or early fall, although sometimes the commission has approved its agenda even later. The department has proposed that LCDC begin the policy agenda discussion earlier than in the past, to gain additional time to work on the agenda during the 2009-11 biennium.

The current (2007-09) policy agenda has been successfully completed. The commission's current policy agenda is included as Attachment A to this report, and is also available online at [http://www.lcd.state.or.us/LCD/lcdc.shtml#2007\\_09\\_Policy\\_Agenda](http://www.lcd.state.or.us/LCD/lcdc.shtml#2007_09_Policy_Agenda).

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#### **A. OVERVIEW OF LCDC'S POLICY AND RULEMAKING AGENDA**

As part of its overall statutory charge (see ORS 197.040), LCDC is tasked with reviewing the statewide land use planning goals and local comprehensive plans, and updating the former as it deems necessary. As part of this charge, the commission is also required to "*adopt, amend, or revise goals consistent with regional, county and city concerns.*"

Beginning in 2003, the commission began adopting policy agendas in order to prioritize and schedule policy and rulemaking projects throughout the biennium. While past commission policy agendas have tended to focus on rulemaking projects, many other types of non-regulatory initiatives may be included, as part of the commission's direction of the department. The commission also considers its Citizen Involvement Guidelines for Policy Development (Attachment B) when considering the policy agenda, and when working on projects listed in the agenda.

The commission should consider a number of factors as it evaluates this agenda, including available agency resources (staff and funds), existing and ongoing agency responsibilities (implementation of Measure 49, periodic review, review of UGB and urban reserve decisions, etc.), and (of course) community needs from around the state. While we expect to have some information on the likely agency budget for 2009-11 by the time of this meeting, at the time of preparation of this report, the budget is still in flux. Measure 49 implementation is a key, short-term, responsibility. However, we are still monitoring our rate of production very closely to assure that we can meet legislative commitments, and the production rate will need to improve further if we are to avoid reallocating some staff on a temporary basis to meet deadlines. Another key variable for the commission to consider is the number of jurisdictions entering periodic review, and the number of urban reserve and UGB decisions that appear to be coming the agency's way over the next couple of years. We will be hand-carrying some additional materials to the commission meeting concerning these variables to help the commission evaluate what assumptions can reasonably be made about available resources.

## **B. IDEAS FOR POLICY AND RULEMAKING PROJECTS FOR 2009-11 BIENNIUM**

The compilation below includes possible policy projects in the 2009-11 biennium, including ideas listed in previous LCDC and DLCD policy agenda reports that were not pursued, and ideas that have more recently surfaced from legislation, DLCD staff, local governments, and other sources. This second meeting is intended as a public hearing to gather input on this effort, and it is anticipated that additional ideas will be presented at the hearing. A brief summary of each proposed policy idea is provided, although for legislative concepts updates may be necessary after the legislative session concludes. Some ideas have expanded explanations in subsection 2, beginning on page 11 at the end of subsection 1 (the summary tables).

The ideas below are not listed in a particular priority order at this time, although they are grouped together, such as ideas that relate to pending legislation or to existing mandates. The commission has requested, and we will provide, recommendations about priorities, but later in this process after we have had time for additional public input. The first section below (Subsection 1) provides a brief summary of all suggested ideas. The second section (Subsection 2), provides a more detailed explanation of certain ideas. Many of the ideas in subsection 1 do not currently include an expanded description in subsection 2 at this time.

### **1. Tables Summarizing and Grouping Suggested Policy Issues**

#### **Key:**

*Estimated work load – L, M, H= low, medium, high*

*\* means an expanded description is provided in Subsection 2*

**a. LEGISLATIVE OR COURT MANDATES**

Issue	Summary	Status/Next Steps
RLUIPA (Religious Land Use and Institutionalized Persons Act ) and Specified Uses	A recent LUBA decision has invalidated the LCDC rule that prohibits churches in EFU zones within 3 miles of a UGB. The opinion states that the rule treats churches on less than equal terms with other secular places of assembly. The rule needs to be revised to be consistent with the court opinion and federal law.	There are a few different ways in which the rule could be amended, including: 1) deleting the 3-mile limit, 2) subjecting ALL uses involving assemblies to the 3-mile limit, or 3) requiring that ALL assemblies serving within 3 miles of a UGB serve a rural community. Staff recommends appointment of a workgroup to do rulemaking. <b>(M to H)</b>
Territorial Sea Plan and Related Issues	DLCD has been tasked by the governor (via Executive Order No. 08-07) with preparing a plan for wave energy in the territorial sea, and to provide it to the commission by Dec. 1, 2009 for adoption as part of the Territorial Sea Plan.	LCDC approved a rules advisory committee and coastal staff is working with a subcommittee of the Ocean Policy Advisory Council on initial policy elements of the plan. Coastal federal funds have NOAA approval to support work (with local fishing groups) to map nearshore fisheries. The dept. has contracted with OCZMA to work through Ecotrust to carry out the mapping over the next 6 months or so. Text amendments to the plan will be ready for commission approval in the fall of 2009. Map amendments need to be done in phases, and likely will not be finalized for an additional 6-12 months. <b>(M to H)</b>

**b. POTENTIAL LEGISLATIVE PRIORITIES**

Issue	Summary	Status/Next Steps
Destination Resorts	As requested by the commission in April 2008, the department drafted legislation to provide more flexibility to the commission in setting standards for siting destination resorts through amendments to Goal 8 or by rules interpreting that goal. The current version of HB 2227 does not mandate Goal 8 amendments, and the commission may wish to defer this work until a thorough program review and evaluation has been completed.	Pending legislation (HB 2227). Before undertaking Goal amendments, additional research and documentation of the benefits and costs of resorts in different areas of the state is needed, along with evaluation of what financial models are likely to be feasible. <b>(H)</b>

Issue	Summary	Status/Next Steps
Non-Resource Lands (proposed in August 2007 and March 2008 LCDC Policy Agenda, and in earlier proposed agendas)	Currently no formal statewide rules or other standards exist to guide local governments in planning and zoning “non-resource land” – land outside of UGBs and unincorporated communities that do not qualify as farm or forest land under Goal 3 or 4. Several counties have adopted non-resource lands.	A process for reanalyzing resource lands at the county level, and standards for possible designation of non-resource lands are currently being considered in HB 2229, resulting from Big Look Task Force recommendations. If HB 2229 is enacted, the commission may also want to review the definition of and criteria for forest lands. <b>(M)</b>
Review of ORS Chapter 215 and Rural Lands	This is a major task, and is identified in the current (07-09) LCDC policy agenda. The objective would be to do a comprehensive review and audit of the portion of ORS 215 relating to farm lands. These statutes have been modified by multiple legislative amendments over the years, as well as OAR division 33. This reform could take several different forms, including: 1) reorganize the text to address plain language issues; 2) EFU non-farm uses could be moved from statute to rule, as is true for forest uses; and/or 3) provide a complete overhaul by establishing performance standards for counties for farm and/or forest zones, along with monitoring systems to assure resources lands are preserved over time.	HB 3099 proposes a very modest cleanup of uses allowed in EFU zones. LCDC could implement a policy neutral streamlining/cleanup of ORS 215 as authorized by HB 2229. This effort likely should be undertaken as a multi-year project, as follows: step 1) (year 1) appoint a workgroup to undertake a policy-neutral reorganization of the statute; and step 2) (year 3) recommend legislative statutory changes as needed. <b>(H)</b>
Transfer of Development Rights/Credits	The Oregon land use system lacks options for resource land protection other than resource zoning. The exclusive reliance on zoning makes the program vulnerable and raises issues of fairness to landowners. TDR/C creates a market mechanism for permanent land preservation.	TDR’s are the subject of DLCD’s bill HB 2228, which provides for five pilot projects on forest-zoned land. SB763 also provides general enabling legislation for local TDR/C programs and applies to farm and forest and other natural resource lands. Both bills have passed out of committee, and SB 763 has passed the Senate. Only simple rulemaking is required to get these programs started. <b>(L)</b>
State Agency Coordination (SAC), Coordination & Update	The department last updated rules and state agency agreements in 1990. LUBA decisions since then have created issues with Land Use Compatibility Statements (LUCS) used by agencies to ensure conformance of state agency decisions and local plans.	HB 2230, DLCD’s bill on this topic, has passed the House and awaits final action in the Senate. The bill authorizes, but does not require, the agency to update the SAC process and revise related rules (OAR 660, divisions 30, 31). <b>(M)</b>

Issue	Summary	Status/Next Steps
Areas of Critical Concern	<p>LCDC approved a recommendation to the legislature for a Metolius Basin Area of Critical Concern and Management Plan. HB 3100 and SB 741 are the vehicles by which the legislature is considering this item.</p> <p>Commission adoption of the plan by rule is a new revision to SB 741.</p> <p>The commission may wish to review how it would entertain subsequent requests for ACSC adoption.</p>	<p>Legislation relative to Metolius Basin only is pending. If the legislation is enacted, LCDC would be directed to adopt the management plan by rule, with very limited, and specified, changes. <b>(L)</b></p>
Jobs and Transportation Act	<p>HB 2001 – the Jobs and Transportation Act or JTA – includes provisions that would direct the commission to adopt rules to guide development and adoption of land use and transportation scenarios for GHG emission reduction by the state’s three largest metropolitan areas – Portland, Salem-Keizer and Eugene Springfield. The bill, if adopted, would require the commission to adopt rules in June 2010 that set targets for VMT reduction in each metropolitan area; and in April 2012 for adopting regional scenarios and subsequent implementation of those scenarios to changes to local land use and transportation plans.</p>	<p>HB 2001 would require adoption of new rules by June 2010 and in April 2012 (these dates appear to have been pushed back by the final amendments to the bill). Given the complexity of the rulemaking and need to coordinate with other agencies (ODOT, DEQ, and DOE) the department should anticipate rulemaking notice in Fall 2009. Rulemaking work would likely be facilitated by an interagency work group. <b>(M)</b></p>
Energy Facilities and Utility Facilities in Rural and/or Resource Zoned Areas (In amended 2007-09 LCDC Policy Agenda)	<p>The siting of powerlines, pipelines and transmission corridors is increasingly a subject of concern, especially due to increased wind energy generation. HB 3153 would require utility providers to make a reasonable effort to locate facilities in EFU zones to have minimal impact on farming.</p>	<p>This issue has been controversial in the past, and continues to be so in response to the siting of new facilities.</p>
Measure 49	<p>SB 945 and HB 3225 allow some M49 claimants (in the range of 400) to be eligible for processing who are not now eligible. The department is required to study situations under which M37 claimants filed only with a county but not the state.</p>	<p>These bills require simple rulemaking to establish procedures for review of claims that are revived by the legislation. If the bills pass, that rulemaking will need to be completed by the end of 2009. <b>(M)</b></p>

Issue	Summary	Status/Next Steps
School Sitting and UGB Amendments (March 2008 LCDC Policy Agenda)	There is continuing pressure to expand UGBs to accommodate school sites, purchased or optioned by districts, outside UGBs. Issues include standards to ensure: sufficient land for school sites inside UGBs, location and size of proposed sites when UGBs expand, and encouraging retention of existing neighborhood school sites.	Two related bills in the 2009 legislature did not get out of committee. Goal 14 rulemaking has been discussed in the past and remains a possibility. <b>(M)*</b>

**c. OTHER POLICY/RULEMAKING ISSUES AND OPPORTUNITIES**

Issue	Summary	Status/Next Steps
Public Facility Planning and Finance	Cities continue to struggle with financing public facilities for planned growth inside UGBs. This concern is increasing, although finding solutions that meet both state and local government objectives would be daunting and complex. According to DLCD's key performance measure on this subject, only 43% of cities with a population over 2,500 have updated their comprehensive plans to include reasonable cost estimates and funding plans for sewer and water systems.	The Big Look Task Force suggested some methods to address public facility finance, but those ideas are not likely to go forward due to statewide fiscal constraints. The commission and department may want to work closely with cities (and counties with jurisdiction in urban areas) to develop proposals for both planning and financing of public facilities and other infrastructure that is key to urban development. <b>(H)</b>
Climate Change (discussed April & Nov. 2008 - Two Divisions, Director's Action Plan)	Initially identified as work with Global Warming Commission and ODOT to reduce VMT and develop tools related to adaptation. DLCD Policy Package 103: Climate Change Adaption and Mitigation requesting funds for staff and grants was not approved as part of the governor's recommended budget. More recently, the department (in response to the request of LCDC) has begun development of a climate change strategy, with associated policy options.	LCDC had briefings in April 2008 and January 2009 on climate change issues and links to land use planning. The January 2009 commission meeting addressed a petition for a new statewide planning Goal 20 on Sea Level Rise. DLCD's climate change work group will brief the commission at the June 2009 meeting on a proposed climate change strategy and an associated set of policy options ranging from no new resources to some reallocation of existing resources. <b>(H)</b>

Issue	Summary	Status/Next Steps
Urban Reserves and the Hierarchy of Lands Added to UGBs	The current interplay of urban reserves and the hierarchy of lands for UGB expansions is seen by many as creating obstacles to efficient urbanization, while being of limited effect in protecting resource lands. The current system was put in place in 1993, and many jurisdictions are now working on significant urban growth management decisions. The department believes it may be time, once we have a bit more experience with the next wave of decisions, including the Portland Metro urban and rural reserves effort, to undertake a broad evaluation of how the state program manages urban growth decisions.	The department has discussed addressing this in the 2009-11 biennium, through proposed legislation, amendments to Goal 14 and/or Goals 9 and 10, and related rules. The department could also/instead address this issue through further study or work groups to evaluate the degree of the problem and potential courses of action. <b>(Very H)</b>
Goal 10 Housing Policy Review (August 2007 LCDC Policy Agenda) Sites for Affordable Housing (March 2008 LCDC Policy Agenda)	Affordable housing advocates and other interests have pressed for updating, strengthening, and better enforcing affordable housing provisions under Goal 10. The commission appointed a work group last biennium to study this. This group did not reach consensus, but did generate a number of ideas to strengthen Goal 10 and related rules regarding the provision of affordable housing.	The commission's Affordable Housing Work Group studied several ideas, including proposed legislation that did not pass. The group did not finish its work on a number of ideas that could be implemented through rulemaking or, in some cases, with special studies. <b>(M)*</b>
Alternative Energy Facilities on Resource Lands	The commission did rulemaking in December 2008 to create new review standards for wind generating facilities on EFU lands. Additional associated issues, including impacts on Goal 5 resources, were not resolved	If this is pursued as rulemaking, a workgroup would be necessary to discuss new rule standards for wind generating facilities, both (1) on forest land, and (2) to address Goal 5 issues on farm and forest lands. <b>(M)</b>
Wine Sales at Farm Stands and Vineyards	Oregon wine growers are concerned about unexpected outcomes from DLCD changes to farm stand rules several years ago. Oregon wine growers, who must meet minimum acreage requirements for a vineyard in order to have a winery, are concerned that smaller growers who don't meet these requirements are using statutory "farm stand" provisions to obtain county approvals for wine sales and tasting rooms, and, in some cases, wineries through statutory standards that allow processing facilities or activities in conjunction with farm use.	2009 legislation was submitted but did not pass. Many parties feel the best way to revisit these issues is through rulemaking. <b>(L)</b>

Issue	Summary	Status/Next Steps
OAR Division 6 (Forest Lands) Clean up	There is a need for additional clarity and consistency regarding LCDC’s forest lands rules, including: 1) an allowance for biosolids application (for consistency with a LUBA decision), and 2) an updated reference to Land Use Notes, and 3) more clarity on template review standards.	A work group could be appointed to study this issue, and propose either housekeeping or minor rule amendments on this topic. <b>(L)</b>
Dune Grading (Goal 18)	Dune grading is generally not allowed, except for two circumstances. One of those circumstances relates to possible environmental protection activity. There is very little guidance from DLCD as to how this should take place.	This issue has been recognized for several years, but has not been addressed. This is a particular problem as Snowy Plover habitat issues are addressed. <b>(L)</b>
Update of Goal 5 Natural Resources, Rules, Especially Regarding Riparian Areas (proposed for August 2007 LCDC Policy Agenda but not adopted)	Division 23 rules implementing Goal 5 were adopted in 1995, concerning about 15 categories of natural or cultural resources. Some of these provisions may be out-of date, especially rules regarding riparian resources. Application of the rules in urban settings is clearer than in rural settings. However, the 1995 rules are all “triggered” by periodic review: counties and many cities are no longer required to initiate periodic review, so many will not implement these rules.	Recommendations for resource land inventories, such as those required by Goal 5, are part of the Big Look recommendation and included in HB 2229, for those counties that choose to rezone rural lands.  Also, the efficacy of certain provisions currently in Goal 5 and the related rules is questionable due to Measure 49. <b>(H)*</b>
Goal 9 Economic Development Rulemaking Phase II	Earlier policy agendas have recommended a “Goal 9 Phase II” rulemaking effort to clarify the relationship among Metro and Metro jurisdictions regarding Goal 9 planning inventories, need estimates, and the “concept plans.” Study is also needed regarding: methods to encourage regional EOA’s for large industrial sites; preservation of industrial land from conversion to other uses; rules for retail use on land for other employment uses; EOA guidebook revision.	Provisions for regional economic opportunity analyses were considered but not adopted as part of the Goal 14 Phase II rulemaking in 2008. <b>(H)*</b>
Goal 11 Exception Process for Lands that are “Almost but not Quite” a Health Hazard	Some “housekeeping” clean up of Goal 11 rural sewer system rules may be desirable to address concerns generated by Deschutes and Jackson counties applying these rules.	The department is working closely with DEQ and local governments regarding this issue. <b>(M)</b>
Land Use Appeal Fees	Ongoing concern about local governments charging extremely high appeal fees, especially for an appeal from the planning commission to the board or council.	A DLCD legislative concept was drafted but did not go forward. It is not clear whether LCDC can address this issue without changing state law, but in the meantime, the issue could be studied.

Issue	Summary	Status/Next Steps
Local Plans and Land Use Requirements only Triggered under Periodic Review (August 2007 and March 2008 LCDC Policy Agenda)	Certain LCDC rules divisions (8, 12, 13 and 23) and some statutory provisions, including airport planning requirements, are only “triggered” by periodic review. Since periodic review has been narrowed to exclude counties and cities under 10,000, these pre-existing rules and statutes apply to very few local governments. In addition, many counties and smaller cities have completely out-of-date comprehensive plans that are in excess of 25 years old.	Resolving this by providing new triggers (such as date-certain requirements) is controversial and may have fiscal implications due to the “unfunded mandates” restriction in the constitution. The commission could determine whether there are non-regulatory methods to achieve the purposes of these requirements. <b>(H)</b>
Population Forecasts	Although LCDC has provided rules and safe harbors, the department continues to receive complaints that counties are not providing coordinated forecasts necessary for city UGB amendments. Additional tools to ensure timely coordinated forecasts may be necessary.	It is not clear that there are rule solutions to this issue, but the problem is a significant one since UGB’s cannot be amended without coordinated forecasts. There may be some methods to improve compliance by rule, but much of this is regulated by statute. As such, a legislative concept may be considered. <b>(M)</b>
Bridges and Goal 15 (Willamette River Greenway)	Goal 15 is unclear as to whether bridges, bridge support structures, or on-ramps are allowed in the Willamette Greenway without a Goal 15 exception (e.g. as provided in Goal 16). The exceptions process is not the best tool to deal with these structures.	Goal 15 amendment could be considered to resolve this, or perhaps interpretive rules could resolve the issue. It is unclear whether resolution in the near future is necessary, but this issue should be addressed at some point. <b>(L)</b>
Federal Consistency Rules (OAR 660, Division 35)	Existing rules are outdated and in conflict with federal (NOAA) rules regarding coastal management programs.	A revised draft of division 35 rules exists and the coastal division is ready to move forward with public hearings. <b>(M)</b>
Segmented Adoption of UGB Issue, affecting Goals 2, 9, 10 and 14.	Cities increasingly are adopting individual elements of a UGB amendment through the PAPA process rather than all at once, as in the past. In many cases, this means a city will identify a need for housing but will not address the need through UGB amendment, at least in the near term, in violation of Goals 10 and 2.	The Court of Appeals authorized this practice for cities smaller than 25,000. The UGB rulemaking group tried to resolve this issue but could not achieve consensus. One possible solution is to address this through amendment to the Goal 10 rule to reflect the 2001 McMinnville LUBA case in cities less than 25,000. <b>(M)</b>
TPR Review (August 2007 and March 2008 LCDC Policy Agenda)	<p>Three items continue from 2007: goal exceptions, Metro RTP, and plan amendments and goal changes.</p> <p>Some recent issues have surfaced, including TPR requirements relation to economic development, and requests for extension of TPR compliance based on lack of \$\$.</p> <p>Also consider HB 2001 JTA</p>	<p>Meetings with Joint Oregon Transportation Commission and LCDC’s Transportation Subcommittee have been inactive for the past year. Implementation of portions of the TPR that apply to plan amendments and zone changes still needs attention. Also TPR is identified for a role in climate change policy development.</p> <p><b>(TGM team will refine issue)</b></p>

Issue	Summary	Status/Next Steps
Urban Area Expansion in Columbia Gorge	The Columbia River Gorge Commission is considering revisions to its handbook on urban area expansion that may affect the ability of cities in the gorge to expand. Hood River and The Dalles UGB expansion applications are expected, and the Gorge commission action may mean those cities expand onto high quality farm or forest land outside the Gorge.	Anticipated Gorge commission decisions could make Goal 14 amendments desirable, or other LCDC action to resolve issues regarding UGB expansions in the gorge.

**d. PROJECTS NOT INVOLVING RULEMAKING**

Issue	Summary	Status/Next Steps
Environmental Justice	Environmental Justice Task Force (EJTF), created by SB420 (2007) is proposing developing environmental justice competency requirement for all state agency staff and future hiring. Additionally, EJTF wants to develop land use specific policies, though none are yet proposed – most likely issue to be addressed is citizen participation. EJTF has started meeting quarterly. Carmel Bender Charland is the department’s representative.	Integrate HR policy once it is adopted at state level; research and report on land use specific policies once proposed. Continue to work with bill requirements in last report.
Goal 3 and Goal 4 Lands Conversion of Use or Zone to Less Restrictive Use or Zone	Conversion of commercial forest lands to other uses is a concern to DLCD and the Department of Forestry. The specific issue listed here appears to be a problem, but needs additional research and analysis to confirm.	DLCD and ODF should coordinate efforts to ensure compatible tracking of forest land conversion to accurately identify trends. DLCD should update and computerize PAPA reporting forms to obtain clear and accurate rezoning data.*
Urban Farming	Creating meaningful urban farm sites with cooperating cities.	Integrate with other initiatives such as climate change, food security and energy efficiency.
Develop and Update Guidebooks	Goals 5, 9, 10, 12, 13, 14. LCDC policy with respect to these goals may be complex or for other reasons would benefit from new or updated guidebooks.	The department has worked on some guidebooks as staff and funding allows, but the department has not prioritized these or suggested a schedule for such work.
Update Grants Process and Performance Measures	Initial discussion of some aspects of this has occurred with the Grants Advisory Committee.	Certain performance measures regarding grants have not been achieved recently. To some extent, this may reflect deadlines that are unrealistic, or else the need for changes to the grants process or its implementation.

Issue	Summary	Status/Next Steps
Linkage to/Coordination with Oregon's Universities	Strengthen land use program's linkage to Oregon universities. Some opportunities (e.g., the web portal for M49 with OSU, OSU work with the Coastal Div. UO and intern programs) have occurred on a mostly ad-hoc or project specific basis.	Some talks with PSU have taken place regarding a more active effort to coordinate the land use program and universities. Also, a University of Oregon internship linkage has been ongoing. This issue could be advanced through an "idea forum" or event with U of O, OSU, PSU and other universities in a group setting.

**2. Expanded Issue Description for Some Items Listed Above**

**a. Goal 5 Rule Revisions**

Rules implementing Goal 5 (OAR 660, division 23) were adopted in 1995. The amended rules provide local jurisdictions the opportunity to undertake various actions to address the fifteen categories of natural or cultural resources described under Goal 5, but some of these are mandatory. The rules include specific inventory and implementation requirements for riparian areas, wetlands, and wildlife habitat, and specific requirements for aggregate resources that are directly applicable unless local governments amend local regulations to be consistent with the rule. The "trigger" for the mandatory portions of the 1995 rules is periodic review. While some local governments began this work subsequent to 1995 (primarily with DLCD grant assistance), many jurisdictions did not complete the work, in part due to passage of Ballot Measures 7, 37 and 49. Also, many cities and counties have not entered periodic review since 1995, and many will no longer need to do so, especially counties and smaller cities, since periodic review only applies to cities over 10,000 due to statute amendments in 2003 and 2005. As such, many local governments have not yet inventoried and protected these important resources, either prior or subsequent to the 1995 rule amendments. The Big Look Task Force identified the weakness of Goal 5 resource identification and protection as an issue for counties. This weakness also exists for many cities, and results in urban development that continues to degrade or eliminate riparian, wetland and habitat resources.

Although new local protection strategies developed under Goal 5 could have Measure 49 consequences, where riparian and wetland protection is closely linked with water quality protection to meet state and federal water quality standards, Measure 49 may not apply. Also, measures to condition, rather than prohibit development, are commonly employed to protect riparian, wetland and wildlife habitat and preserve their function in the landscape while still authorizing development. It is important to note that natural areas within an urban environment have been shown to increase property values. The need to remedy the loss of a trigger for compliance with Goal 5 is not limited to Goal 5. Most importantly, it is also related to Goal 6 compliance where riparian and wetland protections serve to maintain or restore surface waters to state and federal water quality standards. Local inventories and compliance with riparian and wetland requirements are also vital with respect to Goals 9, 10 and 14 inventories of land buildable and available for development. Interest groups frequently raise this concern, since buildable land may be overestimated in jurisdictions with a substantial amount of uninventoried wetlands or riparian areas.

Proposal: Adopt a “date certain” for compliance with the Goal 5 rule regarding wetlands, habitat and riparian areas, or determine other measures that will encourage compliance. In addition, or alternatively, LCDC could address rules and definitions regarding buildable land inventories to better ensure estimated land supply is indeed buildable or suitable for planned development with respect to areas constrained by natural resources.

**b. Jobs and Transportation Act (JTA) Implementation:** Metropolitan Area Land Use and Transportation Scenario Planning for Greenhouse Gas Emission Reduction

Issue: HB 2001 – the Jobs and Transportation Act (JTA) – currently under consideration by the legislature includes (at the time of this report) provisions that would direct the commission to adopt rules to guide development and adoption of land use and transportation scenarios for greenhouse gas (GHG) emission reduction by the state’s three largest metropolitan areas – Portland, Salem-Keizer and Eugene Springfield. The bill, if adopted, would require the commission to adopt rules in June 2010 that set targets for VMT reduction in each metropolitan area; and in April 2012 adopt regional scenarios with subsequent implementation of those scenarios to changes to local land use and transportation plans.

Context: Oregon, like other states, has adopted aggressive goals to reduce greenhouse gas emissions over the next 40 years. Land use and transportation planning have an important role to play in achieving these goals. While expected changes to vehicles and fuels will significantly reduce emissions, reductions in the amount of vehicle travel will also be necessary to meet the state’s goals. The direction in HB 2001 reflects recommendations from the Global Warming Commission, the Big Look Task Force and the Governor’s Transportation Vision Committee, each of which recommends that the land use program and local plans be retooled to better promote compact development and transportation options in order to reduce the growth in vehicle miles traveled (VMT).

Efforts to meet this new target would likely build on existing requirements and efforts in the Transportation Planning Rule (TPR) which directs local governments to plan for compact land use and transportation options. The extent of VMT reduction required to meet GHG emission targets suggests substantial additional changes to land use and transportation plans will be needed.

Links to Similar Issues: The department and commission have separately identified climate change as a significant policy issue for the coming biennium.

Significant changes to land use and transportation plans are likely to be needed to meet VMT / GHG emission reduction targets. Available information suggests that metropolitan areas will need to achieve much higher rates of infill and redevelopment and higher employment and residential densities, and do more extensive planning for transportation options, including transit. Consequently, work on this issue will affect other policy or rule work related to urban planning or UGB expansion – including work related to Goals 9, 10, 12 and 14.

Possible Department and Commission Action: HB 2001 would require adoption of new rules by June 2010 and in April 2012. Given the complexity of the rulemaking and need to coordinate

with other agencies (ODOT, DEQ, and DOE) the department would anticipate rulemaking notice in fall 2009. Rulemaking work would likely be facilitated by an interagency work group.

**c. Transportation Planning Rule (TPR) Policy**

Issue: Section 0060 of the TPR requires that local governments evaluate and address the transportation impacts of proposed plan amendments and zone changes. Local governments and others have expressed continuing concerns that this rule – in combination with ODOT's mobility standards for state highways – makes it difficult to rezone property for needed economic development and interferes with implementation of the 2040 concept plan in the Metro area.

Context: In 2005, the commission adopted amendments to Section 0060 modifying the process and requirements for determining transportation facility adequacy. In adopting those amendments, the commission committed to monitor and evaluate implementation of the rule to assure it did not have unintended consequences, particularly on efforts in the Metro area to adopt plan amendments or zone changes implementing the Metro region's 2040 concept plan.

Because transportation adequacy is judged based on complying with the Oregon Highway Plan, concerns about Section 0060 are also directed at ODOT's mobility standards for state highways. Local governments and DLCD have expressed concern that ODOT's current standards are unrealistically high, especially for congested urban areas, and that compliance with the standards conflicts with efforts to promote compact urban development. In 2005, the OTC advised the commission that it was committed to supporting compact development including the Metro 2040 plan and was supportive of revising the OHP mobility standards.

The legislature is currently considering a bill (HB 3379) that would authorize OTC to grant limited extensions or exemptions for meeting funding commitments needed to meet OHP standards and 0060.

Links to Similar Issues: Adequacy of transportation facilities to support planned land use is an important element of several other policy issues – including urban and rural reserves, Goal 14 implementation, destination resort siting, and climate change.

Possible Department and Commission Action: If HB 3379 is adopted, the department will coordinate with ODOT as it prepares rules or other guidance to carry out the statute. The department will continue to work with ODOT as it considers alternative mobility standards.

The commission has agreed to review Metro's updated Regional Transportation Plan (RTP) in the manner of periodic review. This review would occur sometime during 2010. A major issue in the RTP update is addressing highway mobility. This may result in proposals to change the OHP mobility standards or the TPR.

The department will convene the commission's Transportation Subcommittee (Worrix, Jenkins, MacPherson) to brief them on the status of the Metro RTP update and related issues.

**d. School Siting and UGB Amendments**

Issue: Pressures to expand Urban Growth Boundaries to include large tracts of undeveloped land for new schools are occurring as school districts seek new sites outside UGBs, where land prices are lower due to farm and forest land protections in Goals 3 and 4. Although the state does not impose acreage requirements on schools, many school districts are under the erroneous impression that they must adhere to previously published site size standards that are now discredited and outdated.<sup>i</sup> Because it is hard to find large tracts of undeveloped land at affordable prices in or close to cities and urban neighborhoods, many school districts continue to look outside UGBs for less expensive land. Because the outlying sites chosen for schools are often too far away for students to walk or bike to school, schools must provide huge parking lots and bus staging areas – hence still larger sites, and rely on state funds for bussing students to these locations. Often the “footprint” of a school parking lot exceeds that of the school. Since the state pays most student transportation costs,<sup>ii</sup> school districts have little incentive to consider the long-term impact of siting decisions on transportation budgets.

Links to Other Issues: In addition to driving up student transportation costs, school siting decisions exert major impacts on local traffic,<sup>iii</sup> farmland, older neighborhoods,<sup>iv</sup> sprawl-type development patterns, and greenhouse gas emissions.

Possible LCDC Actions: LCDC may address this issue through one or a combination of methods suggested below:

- Case studies on successful schools located on smaller sites;
- Make it more clear to Oregon school districts (and periodically remind the districts) that the state does not impose arbitrary site size standards on new schools;
- Require school districts to examine the impact of school siting decisions on long-term transportation costs (to the state, school district, and student households);
- Develop incentives, in cooperation with the Oregon Department of Energy, for school districts to build “transportation-efficient” (i.e., more walkable/bikable) schools. Part of the savings from reduced transportation costs could be “rebated” to the school district and used by them to strengthen educational programs, teacher salaries, etc;
- Encourage school districts to be creative and build multi-level schools on smaller sites; renovate older schools in walkable areas to state standards; share facilities – e.g., parks, parking, and other facilities – with other local entities; and encourage biking and walking to school;
- Promote better coordination between school facility planners, local land-use planners, and transportation planners;
- When UGBs are expanded to accommodate new schools, encourage the integration of plans for new schools with plans for the development of surrounding neighborhoods;
- Ask the Oregon Energy Department to expand the definition of “high performing schools” (a definition that triggers certain financial benefits) to include transportation-, land-, and energy-efficient school siting.

**e. Economic Development**

Issue: DLCD's economic development staff have suggested several ideas for possible inclusion in the commission's 2009-11 Policy Agenda in order to strengthen economic development policy in the Oregon land use program. Some of these would involve rule (or Goal) amendments, some are new or emphasized activities for the department, and some would need to be proposed as legislative concepts for the 2011 legislature:

Ideas:

- Increase Goal 9 “pre-planning” work with local governments. Many local governments working on Goal 9 Economic Opportunities Analyses (EOA) projects do not have a coherent, publicly supported economic development “vision” for their community. Recommendation: make better use of in-house staff capabilities to help with preliminary community vision projects ahead of grant funded technical planning projects.
- Division 009 phase 2 rule-making. A variety of issues in Metro and other MPOs suggest it is time to initiate the second phase of division 009 rule-making. Recommendation: initiate the second phase of Goal 9 rule-making with emphasis on Metro and the other MPOs.
- Regional EOAs. Many employment land solutions require a variety of regional tools and techniques. Recommendation: develop guidance, safe-harbors and administrative rules.
- Infill, redevelopment and brownfields. Useful information and guidance is needed by local governments to estimate and implement infill, redevelopment and brownfield sites into the employment land supply. Ultimately, it requires a solution to the finance gap these projects face in the market. Recommendation: develop guidance, safe-harbors, administrative rules and legislative concepts.
- LUBA, Court of Appeals, filing fees and infill development. There is concern that infill development projects are prone to appeals from neighbors, and this jeopardizes strategies to encourage infill. The department should monitor this issue and consider remedies based on that research.
- Retail planning rule. Recent division 9 rule updates have proven flexible, useful and popular with local governments. However, issues associated with retail development may bring pressure to reduce the flexibility in division 9. The department should develop guidance and consider new retail planning rules.
- Employment projections. A recent LUBA ruling regarding the City of Donald has created confusion about employment projections used as a basis of a UGB adjustment. The department should consider clarification of UGB rules and develop and improve guidance and training for local governments on employment land planning.
- Goal 9 planning guidebook and web-based technology. The first draft of the guidebook has some weaknesses, inconsistencies and faults. With budget limitations it will be necessary and desirable to use web-based technologies to engage participants from all

parts of the state in an update. The department should consider initiating a web-enabled update to the Goal 9 guidebook.

**f. Conversion of Commercial Forest Lands to Non-Forest Uses**

This issue is a concern to DLCD and to the Department of Forestry (ODF). The conversion of forest land to other uses is a problem in many states and is being tracked by the ODF. There needs to be research and analysis to determine how this problem is affected by land use goals and rules. Detailed ODF data show trends in farm and forest land use that are not reflected in more generalized DLCD tracking of farm and forest zoning. ODF tracks land use changes for five resource zone categories, whereas DLCD tracks zoning changes for two land use categories. ODF data show that over the last 20 years, about three times as much forest land is being converted to other uses as is being rezoned to other uses according to DLCD data, but we don't know why. Also, about 20% of ODF-identified forest land (not mixed farm-forest) appears to be zoned mixed farm-forest and we don't know why. At the same time, ODF data show an increase in land devoted to intensive agricultural uses, while our data doesn't reveal this positive trend. Further study and coordination with ODF is necessary. It is suggested that DLCD report to the commission after study of this issue and coordination with ODF. Based on the analysis, rulemaking may be recommended, if the issue can be resolved through rules.

**C. OVERALL RECOMMENDATION**

The department recommends that the commission review the list of items for consideration for the 2009-11 biennium, hear public testimony, and carry over the discussion of these ideas to its July commission meeting. Department staff will provide additional outreach to community members and organizations in the intervening time period. The department recommends the commission review and approve its 2009-11 Policy Agenda at the July commission meeting.

**D. ATTACHMENTS**

- A. Current 2007-09 Policy Agenda
- B. Citizen Involvement Guidelines for Policy Development
- C. Letter of Comment Received Prior to Mailing of This Report

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<sup>i</sup> The Arizona-based Council of Educational Facilities Planners International (CEFPI) once recommended large school sites – 10 acres of land plus 1 acre for every 100 students for an elementary school; 20 acres plus 1 acre for every 100 students for a middle school; & 30 acres plus 1 acre for every 100 students for a high school. Widely criticized for promoting “school sprawl,” CEFPI removed these recommendations (never requirements) from its school facilities guidebook in 2004.

<sup>ii</sup> The State of Oregon reimburses local school districts for between 70 and 90 percent of their student transportation expenses; the districts pay between 10 and 30 percent of these expenses.

<sup>iii</sup> In some school districts, the number of cars on the road during morning rush hours can jump by as much as 30 percent. See *Travel and Environmental Implications of School Siting*, p. 2. U.S. Environmental Protection Agency (2003)

<sup>iv</sup> For example, the construction of a new school in any outlying area can trigger the closing of older, closer-in schools. The loss of a neighborhood school, in turn, can trigger neighborhood disinvestment.



# Oregon

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## LCDC Policy Agenda for 2007-2009



The Land Conservation and Development Commission (LCDC) is required by statute to adopt “statewide land use policies” including statewide goals and administrative rules “necessary to carry out ORS chapters 195, 196 and 197,” (Oregon’s statewide land use planning program). LCDC approves its biennial “policy agenda” – a list of planned policy and rulemaking initiatives – at the beginning of each biennium. In August and October 2007 LCDC considered a list of suggestions to amend, update, streamline and improve state land use policies and rules, and approved a 2007-09 Policy Agenda. LCDC received a progress report and adopted amendments to its Policy Agenda at its meeting in March 2008. The amended Policy and Rulemaking Agenda for the 2007-2009 biennium is as follows:

1. Adopt Metro Urban and Rural Reserves rules required by SB 1011 (2007). (*NOTE: this project was completed in January 2008.*)
2. With the UGB advisory workgroup appointed in 2004, pursue “Phase 2” of the ongoing rulemaking project to clarify and streamline the UGB amendment process. This phase will consider additional “safe harbors” for UGB expansion rules (OAR 660, div. 24). In addition, this rulemaking will consider rules addressing UGB expansions for purposes of adding future school sites.
3. Combine several legislatively mandated rule (and Goal) amendments and other minor and technical rule amendments into a “Housekeeping rulemaking project,” including the following (*Note: this rulemaking was completed in March, 2008*):
  - Amend agricultural lands rules (OAR 660, div 33) as required by HB 2210 (2007) to allow on-farm processing of farm crops into biofuel. Also amend these rules to respond to Supreme Court decision in *Wetherall v Douglas County*, 342 Or 666 (2007);
  - Amend forest lands rules (OAR 660, div 6) as per HB 2992 (2007) to allow land divisions less than the minimum lot size if one of the parcels is sold to a provider of public parks or open space;
  - Amend Goal 8 destination resort standards, required by SB 1044 (2007), to clarify the ratio of “units for residential sale to units of overnight lodging” in “Eastern Oregon” destination resorts;
  - Repeal Metro Subregional rules under OAR 660, division 26, in response to Court of Appeals decision invalidating these rules;
  - Amend the current “Post-acknowledgement Plan Amendment Rules” under division 18 to update, clarify, and to conform the rules to statutes enacted or amended since adoption of these rules. Also amend these rules to respond to *Medford Neighbors v Medford* (LUBA 2006-132);
  - Amend division 11, Goal 11 rural sewer and water rules, and related division 4 exception rules, to address a 2006 interpretation by LUBA (*Todd v Florence*; LUBA 2006-068) as to whether goal exceptions are allowed for extension of sewer systems;
  - Examine and report back to LCDC regarding the need to update and clarify OAR 660, division 3, rules for acknowledgement of comprehensive plans for newly incorporated cities.
4. In response to HB 2096 (2007) work with key interest groups to explore ways to encourage local governments to provide sites “dedicated to affordable housing and manufactured dwelling parks,” including new or amended LCDC rules for this purpose as a “pilot project” applicable to a few cities. (*Note: LCDC initiated this rulemaking and appointed a work group in March, 2008*). Also, prepare a report to the 2009 legislature as required by HB 2096 regarding the provision of sites for affordable housing development and manufactured dwelling parks in the state.

5. Energy Facilities in Rural Areas: Amend rules as necessary to streamline land use criteria for siting of wind and solar energy facilities on resource lands, in coordination with the Oregon Department of Energy. Review the acreage limitations in the current rules and determine if different sizes or criteria should be considered in the evaluation of wind and solar power generation facilities. This review should also determine whether any statutory changes are needed as well.
6. Adopt the current Measure 49 “temporary rules” as “permanent rules” prior to the expiration of the temporary rules in June 2008. In addition, the department may propose additional rules or rule amendments to help interpret Measure 49 (*Note: this rulemaking is scheduled for May 1, 2008*).
7. Continue work with the Joint Oregon Transportation Commission’s Subcommittee and LCDC’s Transportation Subcommittee to assess implementation of the TPR amendments and consider related issues, including:
  - Possible LCDC review of the Metro Regional Transportation Plan (RTP);
  - Implementation of portions of the TPR that apply to plan amendments and zone changes; and
  - Review status of projects involving goal exceptions.
8. Continue ongoing discussions with agencies, the Governor’s Office, and other stakeholders regarding:
  - Guidance to state and federal agencies and private entities with respect to the Territorial Sea Plan and
  - Goal 19 guidance on new uses such as wave energy generation facilities or ocean aquaculture.
9. Work with the Governor’s office in its inter-agency effort to develop strategic state policies for the long-term management of aggregate resources in Oregon in order to effectively respond to changing resource protection requirements, address public and stakeholder interests, and to ensure a stable long-term supply of affordable aggregate for roads, buildings, and other infrastructure.
10. Revise agency procedures, as necessary, to implement new Environmental Justice requirements in SB 420 (2007). Plan a joint meeting with the bill sponsors, the new Environmental Justice Task Force, and the Commission’s Citizen Involvement Advisory Committee. The bill requirements include:
  - Consider the effects of agency actions on environmental justice issues;
  - Engage in public outreach activities in communities affected by agency decisions;
  - Hold hearings at times and in locations convenient for people in communities affected by agency decisions; and
  - Create a “citizen advocate” position responsible for encouraging public participation and to ensure the agency considers environmental justice issues.
11. Schedule an informational LCDC hearing from the Department of Aviation (ODA) on airport planning issues. (*Note: this hearing was completed in March 2008, and the Department was instructed to assist ODA in its 2009 legislative concept regarding airport planning*).

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](mailto:bob.rindy@state.or.us)

## **LAND CONSERVATION AND DEVELOPMENT COMMISSION CITIZEN INVOLVEMENT GUIDELINES FOR POLICY DEVELOPMENT**

Approved by LCDC on April 23, 2004

### **I. Purpose**

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

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

### **II. Public Involvement Objectives in Development of Commission Policy**

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

### **III. Public Participation and Outreach Methods**

#### **A. Citizen Involvement Guidelines**

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

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

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

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

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

#### **IV. Communication with Citizens**

##### **A. Understandable Information**

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

##### **B. Notice of Decisions**

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

##### **C. Costs**

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

##### **D. Appeal Information**

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

##### **E. Electronic Communication**

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

**V. Applicability**

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



May 20, 2009

Land Conservation and Development Commission (LCDC)  
Oregon Department of Land Conservation and Development  
635 Capitol St. NE, Suite 150  
Salem 97301-2540

Re: Request for LCDC to Initiate Rulemaking for Farm Stands in lieu of HB 3129

Dear Commissioners:

I am the General Counsel for the Oregon Winegrowers Association (OWA), the statewide trade association representing the Oregon grape and wine industry. In the current 2009 Oregon legislative session, OWA proposed House Bill 3129, which would have altered the statutory criteria for siting wine tasting room retail locations as farm stands in EFU zones. We would like to pursue this policy instead via administrative rulemaking by your agency.

In recent years, LCDC expanded its farm stand rules such that the definition of "farm products" encompasses processed farm products, including wine, and the definition of the "local agricultural area" such that farm products from throughout the state of Oregon may be sold at farm stand locations. OWA's leaders are concerned that these rules would enable non-industry members to site (as a permitted use "farm stand") what is effectively a retail wine shop for Oregon wines, under factual circumstances where an actual winery could not be sited as a permitted use.

Accordingly, the OWA is advocating that any farm stand which proposes to sell wine as more than a "retail incidental item" (<25% of sales) should satisfy the same on-site vineyard requirements that a producing winery must satisfy in order to be an outright permitted use (with its accompanying retail wine sales uses).

Additionally, there are sometimes instances in which wineries not meeting permitted use criteria have been proposed as conditional uses (commercial activities in conjunction with farm use in EFU zones). Certain jurisdictions have failed to recognize that option until much legal wrangling with the applicants. OWA would like this option confirmed in LCDC rules, as well. Such a clarifying rule would alleviate these inefficient county-by-county deliberations, and demonstrate to our own industry members that if they don't maintain 15 acres of on-site or contiguous vineyards, they may still pursue winery development provided they successfully satisfy conditional use criteria and applicable local government conditions. Finally, OWA believes that the same should go for stand-alone winery tasting rooms that seek qualification as a

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farm stand, but do not have 15 acres of on-site or contiguous vineyards. If permitted use criteria are not met, conditional use criteria and local government conditions may still be used to site such farm stand tasting rooms (as commercial activities in conjunction with farm use) as and when appropriate.

In summary, HB 3129 was drafted to accomplish the following goals:

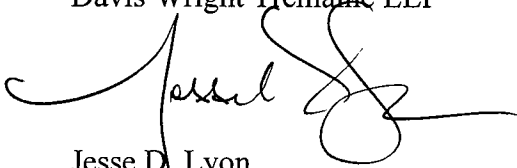
- Confirm that a stand-alone wine tasting-room (without an on-site producing winery) in an EFU zone may be located and approved as an outright permitted use farm stand only if it is subject to the same permitted use criteria as a winery in an EFU zone.
- Confirm that both wineries and tasting-rooms as farm stands that don't satisfy such permitted use criteria for EFU zones may still be evaluated and approved, subject to going through appropriate conditional use permitting under "commercial activity in conjunction with farm use" criteria and specific conditions imposed by local government.
- Ensure that farm stands which sell a limited amount of wine only among their retail incidental items (<25% of sales) are not impacted.

OWA looks forward to working directly and actively with LCDC and ODA staff on rulemaking, which would accomplish these same objectives. We appreciate your time and consideration of this matter.

Please call me if you have any questions.

Very truly yours,

Davis Wright Tremaine LLP



Jesse D. Lyon

JL:al

cc: Jim Johnson, Oregon Department of Agriculture  
Oregon Winegrowers Association  
Gary Conkling, Conkling Fiskum McCormick