



# 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 8; October 18, 2007, LCDC Meeting

### **Proposed 2007-2009 Policy and Rulemaking Agenda**

This agenda item is intended for LCDC discussion and direction to staff regarding a policy and rulemaking agenda for the 2007-2009 biennium. This is the second public hearing on a proposed policy agenda – the first hearing was at the Commission's August meeting in Salem.

The department recommends that the Commission approve the policy agenda, and approve the initiation of some of the policy projects listed in this report. The Commission's Policy and Rulemaking Agenda will guide the deployment of department staff and other resources for the biennium. The Commission may review and revise its agenda at other times during the biennium (and has done so in past biennia). This item is also intended as an opportunity for stakeholders and other interested persons to propose policy initiatives for LCDC's consideration, or to comment on the proposed policy and rulemaking ideas in this report.

Historically, the Commission has approved an agenda for new policy initiatives, goal amendments and rulemaking at the beginning of each biennium. In order to inform the Commission and other interests in considering this agenda, this report describes a number of ideas for the Commission to consider. The projects listed in this report include rulemaking and goal amendments necessitated by the enactment of new land use laws, policy projects still underway from last biennium's policy agenda, and a list of potential new policy projects, goal amendment and/or rulemaking proposals that have been suggested by stakeholders or DLCD staff.

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).

### **Summary of DLCD Recommendation**

The Department recommends the Commission approve a Policy Agenda for the 2007-

2009 biennium that includes the following projects (See more detailed recommendation at the end of this report):

1. Adopt Metro Urban and Rural Reserves rules required by SB 1011 (2007); NOTE: this project is already underway;
2. Amend division 33 Agricultural Lands rules in response to HB 2210 (2007), to allow on-farm processing of farm crops into biofuel;
3. Amend division 6 Forest Lands rules in response to 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;
4. 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 a destination resort developed in “Eastern Oregon”;
5. Amend division 24 UGB population forecast “safe harbor” rules in response to HB 3436 (2007), regarding county action on population forecasts developed by cities.
6. Report to the 2009 legislature as required by HB 2096 (2007) regarding the provision of sites for affordable housing development and manufactured dwelling parks. Consider potential new rules intended to streamline expansion of UGB’s to provide sites dedicated to affordable housing and manufactured dwelling parks, possibly as a pilot project that includes a limited number of cities.
7. Revise agency procedures, as necessary, to implement new Environmental Justice requirements in SB 420 (2007). These 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.
8. With UGB Workgroup appointed in 2004, consider “Phase 2” rulemaking to clarify and streamline the UGB amendment process, including consideration of additional safe harbors.
9. 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.
10. Work with Governor's office and other agencies to develop strategic state policies for the long-term management of aggregate resources in Oregon in order to effectively respond to 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.
  11. Repeal Metro Subregional rules under OAR 660, division 26, in response to Court of Appeals decision invalidating these rules.
  12. Amend Post-acknowledgement Plan Amendment Rules under division 18 to update. Clarify, and conform to statutes amended since adoption of these rules.
  13. Amend division 11, Goal 11 rural sewer and water rules, and related division 4 exception rules, to address a recent interpretation by LUBA regarding exceptions to extend a sewer system in certain circumstances.
  14. Updated and clarify division 3 rules regarding acknowledgement of comprehensive plans for newly incorporated cities.
  15. 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. The department will report to LCDC later in the biennium regarding a possible need for changes to Goal 19 or the adoption of implementing rules.

## **Overview of Policy Agenda**

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” land use statutes. The Commission is also required to “review decisions of the ... [courts] to determine if goal or rule amendments are necessary.” As part of this charge, the Commission is also required to “adopt, amend, or revise goals consistent with regional, county and city concerns.” While past Commission Policy Agendas have tended to focus on rulemaking projects, many other types of non-regulatory initiatives are often included.

The Commission’s previous policy and rulemaking agenda for the 2005-2007 biennium (see attachment A) primarily focused on economic development and on streamlining and clarifying state land use requirements related to urban growth boundaries (UGBs). The previous policy agenda scheduled a minimum of new policy projects because Measure 37 and the Task Force on Land Use Planning imposed significant constraints on the ability of staff to support new policy initiatives.

Measure 37 will continue to limit staff resources and the Task Force on Land Use Planning may impose additional staff constraints. In proposing potential policy work for this biennium, the department is mindful that the Task Force on Land Use Planning, if it is refunded to continue its work, would be required to present a final report, including any recommendations for legislation, to the 2009 legislature. At this point it is difficult for the department to predict whether the Task Force will be refunded, and, if it is, which areas of land use policy will be topics for the Task Force recommendations. It is also unclear, if funded, how the Task Force schedule would affect the department’s workload during the biennium. However, in recognition of the potential for continuing Task Force work and legislative mandate, the department’s recommendations in this report for a final policy agenda focus on projects that would provide incremental and near-term land use reform at a higher level of detail than might be anticipated if there are Task Force recommendations.

Measure 37 and its affect on the department’s staff resources continue to be a significant consideration with respect to the Commission’s Policy Agenda decision. At this time, nearly every department staff person whose position is not limited by a particular funding source is involved to some degree in processing Measure 37 claims. The legislature appropriated funds for additional staff to meet the Measure 37 workload; however, based on the significant backlog of new claims, it is expected that the Measure 37 workload will continue to involve many department staff, and will have a significant department-wide impact throughout much of the biennium. This means there are constraints on staff capacity for rulemaking and potential new policy initiatives. It is also unknown whether Measure 37 will be amended by voters in November, and how the results of that election, regardless of its outcome, will affect DLCDC staff resources. For that reason, and because of the uncertainty with the Task Force, discussed above, the department is recommending

that the Commission consider revisiting the Policy Agenda after the legislative session in February, at which time some of these uncertainties may be further clarified.

### **List of Ideas for Policy and Rulemaking Projects**

The lists below provide a menu of potential policy projects recommended department staff and various stakeholders. Additional ideas may be forthcoming in testimony to the Commission as part of this item. However, we note that one project on the list – the rulemaking for Metro Urban and Rural Reserves, is already underway, as per direction from LCDC last August.

The department does not have the capacity to pursue all, or even very many, of the projects listed below – as such, the list is described here as “a menu” of policy or rulemaking ideas. While all of these ideas are important and merit serious consideration, it is anticipated that the final list of rule and other policy projects will be a much shorter list, reflecting the department’s limited staff resources for this type of work, and given the department’s demands and responsibilities for other work not related to the items on this list. The department also suggests that any of the listed policy ideas that LCDC decides to not undertake this biennium could be carried forward for consideration again by LCDC in the future; either later in the biennium or in future biennia. We also note that some of the issues below that are not pursued could nevertheless be addressed in a preliminary way this biennium, such as through special studies or workgroups, even though there are not enough resources to fully address the issue. Finally, the Commission may also consider whether some of these ideas are most appropriately pursued through legislative proposals or through the DLCD budget proposal for the 2009-2011 biennium.

The list of policy ideas below is arranged under four categories:

- A. Conforming Goals and Rules to New Legislation;
- B. Ongoing Projects from LCDC’s 2003-05 Policy Agenda;
- C. Policy and Rulemaking Ideas for the Near Term; and
- D. Policy and Rulemaking Ideas for the Long Term.

#### **A. Conforming Goals and Rules to New Legislation**

The 2007 legislature enacted new laws that require conforming amendments to LCDC goals or rules. In most cases, this legislation leaves little room for discretion with respect to the content of the goal or rule amendments described below. We note that state law provides that the commission may amend a statewide planning goal to conform to new legislation after only one public hearing (rather than the ten hearings otherwise required for goal amendments, as per ORS 197.235) provided the goal amendment is the minimum necessary to conform to the new legislation.

The following goal and rule amendments and other policy projects are required or suggested in order conform to 2007 legislation:

1. **Metro Urban and Rural Reserves:** SB 1011 modifies the current process for designating urban reserves in the Metro area. The urban reserve process is currently specified under LCDC rules at OAR 660, division 21. SB 1011 (2007) changes that process for Metro, primarily concerning the “priority” of land considered for inclusion in an urban reserve for the Metro UGB. The statute also authorizes Metro and metro area counties to create a process to designate “rural reserves” for land that is not included in an urban growth boundary or a rural community, and not include in an urban reserve. The new law requires LCDC to adopt, by goal or rule, a process and criteria for designating Metro area rural reserves, in consultation with the Oregon Department of Agriculture, and to adopt conforming amendments to goals or rules related to urban reserves for Metro, no later than January 31, 2008. (NOTE: This rule project is already underway at the direction of LCDC provided August 9, 2007.).
2. **Goal 3 Agricultural Lands Rule Amendments:** HB 2210 (2007) amended ORS 215 regarding exclusive farm use (EFU) zones to allow the on-farm processing of farm crops into biofuel, as a farm use or as part of other on-farm processing facilities. Conforming to this amended statute will require minor amendments to the Commission’s Goal 3 rules (OAR 660, division 033) with respect to the list of uses authorized in EFU zones under those rules.
3. **Goal 4 Forest Lands Rule Amendments:** HB 2992 (2007) amended ORS 215 to allow the division of a lot or parcel in a forest zone, or in a mixed farm and forest zone, into two parcels that are less than the established forest zone minimum lot size provided one of the parcels is sold to a provider of public parks or open space, or sold to a not-for-profit land conservation organization, and provided the remaining parcel that is not sold to such a provider remains eligible for a dwelling under criteria in the forest zone statutes. This new law will require conforming amendments to the Commission’s Goal 4 rules (OAR 660, division 6).
4. **Goal 8 Regarding Destination Resorts:** SB 1044 (2007) amended destination resort statutes under ORS 197.445 in order to clarify the ratio of “units for residential sale to units of overnight lodging” provided in a destination resort developed in “Eastern Oregon” (i.e., east of the summit of the Cascade Range). This statute modification is intended to correct a “scriveners’ error” in a 2003 amendment to the same destination resort statute. The correction re-establishes the (higher) ratio that had been “intended” by the 2003 legislation but was incorrectly specified in the enacted 2003 bill. The revised ratio will require conforming amendments to Goal 8, which provides parallel requirements to those in state law. The department notes that DLCD staff has suggested that other amendments to Goal 8 should also be considered, and could be considered simultaneously with the amendments required by SB 1044 (see item D.12, below). However, it should be noted that if the Commission considers Goal 8 amendments beyond the minimum necessary to conform to SB 1044, ten Goal hearings around the state, rather than one hearing, are required by ORS 197.235. Depending on the additional amendments considered, statute changes may be

necessary as well, since most destination resort requirements in Goal 8 were codified into state law in 1987.

5. **UGB Population Forecast Rules:** HB 3436 (2007) modified requirements for the population forecast “safe harbor rules” adopted by LCDC last year under OAR 660-024-0030. The new law establishes consequences for a potential county action (or inaction) in response to a city’s proposed urban area population forecast that is submitted to the county for approval. This law, proposed by the League of Oregon Cities, will necessitate conforming amendments to the Commission’s population safe harbor rules, and codifies certain provisions currently in those rules (as such, the Commission will be unable to amend the codified portions of these rules in the future without legislative action).
6. **Sites for Affordable Housing and Manufactured Housing Parks:** HB 2096 requires DLCD to report to the Seventy-fifth Legislative Assembly (the 2009 legislature) in the manner described in ORS 192.245<sup>1</sup> 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 does imply or suggest that the Commission should consider rules on this topic during the biennium.<sup>2</sup>

If the Commission decides to consider amendments to rules (or applicable goals) in order to streamline the UGB process to encourage affordable housing and manufactured housing parks, this may be pursued either as a specific rule and/or goal amendment project, or combined with other projects such as (a) the ongoing UGB safe harbor project described in item 1 of Section B, below, or (b) a broader project that includes additional ideas for Goal 10 amendments such as those described below in item 11 of section D of this report. In either case, this project would entail

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<sup>1</sup> ORS 192.245 requires that “Whenever a law of this state requires a written report be submitted to the Legislative Assembly, the requirement shall be met by distribution of an executive summary of no more than two pages sent to every member of the Legislative Assembly and one copy of the report to the office of the Speaker of the House of Representatives, one copy to the office of the President of the Senate and five copies to the Legislative Administration Committee.”

<sup>2</sup> The department’s proposed 2007 legislation, SB 187, which did not pass, would have required LCDC to change the process for amending urban growth boundaries so as to expedite UGB amendments intended to provide land dedicated to affordable housing, including land for manufactured housing parks. DLCD staff believes the report item in HB 2096 was in response, in part, to legislative inaction regarding that proposed legislation, as well as the legislature’s broader discussion and concern regarding widespread manufactured housing park closures.

establishment of a workgroup that includes a range of interests to advise the department and to attempt to reach consensus on proposed changes. (NOTE: The department recently met with the Department of Housing and Community Services to discuss ideas for rulemaking similar to those described in the department's legislation - SB 187. If the commission decides to pursue rulemaking on this topic, that department, which supports action on this topic, would play a key role in the development of rules).

Regardless of whether LCDC considers or adopts any changes to goals or rules on this topic, in order to adequately 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 and track changes to this inventory over the biennium.

7. **Environmental Justice: Senate Bill 420.** DLCD is one of the fourteen natural resource agencies named in new "environmental justice" legislation (SB 420) enacted by the 2007 legislature. It is presumed the new statute applies to the Commission as well as the department (although the statute does not mention commissions). The bill (Section 4(1)) requires that the department and presumably the Commission, "in making a determination whether and how to act must consider the effects of the action on environmental justice issues." The bill does not define "environmental justice," but it is assumed the bill is intended to provide new guidance regarding the way agencies, (including DLCD and LCDC) "act" in various matters delegated to the Commission and the department. At a minimum, this mandate probably applies to formal actions by the Commission, such as periodic review, rulemaking, and amending statewide goals.

It appears that the intent of the bill is most pertinent to actions concerning citizen involvement. As such, the Commission's Citizen Involvement Advisory Committee (CIAC) may be the most appropriate body to initially consider how or whether amendments to LCDC procedures or rules or to citizen involvement procedures and requirements are necessary. The bill also requires agencies to: *"Hold hearings at times and in locations that are convenient for people in the communities that will be affected by the decisions stemming from the hearings ... [and to] engage in public outreach activities in the communities that will be affected by decisions of the agency."*

The bill also requires DLCD to create a "citizen advocate" position that is responsible for encouraging public participation, for ensuring that the agency considers environmental justice issues; and to inform the agency of the effect of its decisions on communities traditionally under-represented in public processes. Finally, the bill requires the director to report annually to the Environmental Justice Task Force and to the Governor on the results of the agency's efforts to address environmental justice issues, to increase public participation of individuals and communities affected by agencies' decisions, to determine the effect of the agencies' decisions on traditionally

under-represented communities; and to improve plans to further the progress of environmental justice in Oregon.” The department is awaiting further guidance from the Governor’s office and/or the Department of Justice regarding implementation of this bill.<sup>3</sup>

## **B. Ongoing Projects Underway from LCDC’s 2005-07 Policy Agenda**

LCDC’s Policy Agenda for the 2005-2007 biennium included a number of goal and rule amendment projects. Most of that policy agenda was accomplished by the end of the biennium, but the following three projects are still underway to some extent:

1. **Urban Growth Boundary (UGB) Amendment Process Rulemaking:** This rulemaking effort begun in June 2004, and also included proposed amendments to Goal 14, which LCDC adopted in April 2005. In October 2006, concluding the first phase of this project, LCDC adopted a series of new UGB amendment rules under OAR 660, division 24. The new rules clarify and streamline the UGB amendment process. However, when it adopted the new rules, the Commission directed the department to continue working on streamlining and clarifying the UGB process, and specified that the next phase of this project should include consideration of several additional “safe harbors” discussed by the UGB workgroup. These additional provisions did not have a consensus of the workgroup, or for other reasons were not considered ripe for consideration as part of the new UGB rules. Some of these additional safe harbor ideas concerned: housing density, housing mix, infill and redevelopment assumptions, Goal 5 natural resources, minimum urbanizable lot size, housing vacancy rate, Goal 7 hazard areas, and exempting need analysis for small amounts of land for city facilities. Furthermore, as part of this project, the Commission directed the department and workgroup to study ideas to:

- Clarify new Goal 14 rules specifying that forecasts "should not be held to an unreasonably high level of precision";
- Allow cities to more easily annex urbanizable land that is adjacent to a UGB and is ready for service by existing infrastructure;
- Provide a special (more streamlined) process for UGB amendments for fast growing cities such as Bend;
- Encourage more efficient development of land within UGBs;

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<sup>3</sup> Since several other agencies are mentioned in the bill, general advice to agencies may be forthcoming from DOJ or the Governor's office. Because the bill sets up a task force to provide advice to agencies, the department should wait till it is appointed and begins work (the bill takes affect in January, 2008). It is also suggested the Commission invite Senator Gordly, the bill’s sponsor, to meet with the Commission and the CIAC – as a joint CIAC/LCDC meeting – and explain her intent with regard to this bill. This should occur after the Environmental Justice Task Force established by the bill is appointed and operating.

- Authorize the commission to decide that a city's proposed UGB addition is "close enough" to an amount of land identified in the needs analysis;
- Monitor the implementation of new Goal 14 rule provisions regarding land priority with consideration of the *West Linn* Court of Appeals opinion on that topic, and
- Consider whether land held in an interim zone for 5 or more years should continue to be included in the buildable lands inventory,

In addition to the topics identified above, DLCD staff may suggest other UGB process amendment topics for consideration. It should be anticipated that a UGB workgroup would also suggest changes in addition to the list above. The Commission and department must decide whether to start this project subsequent to completion of the Metro urban/rural reserve rule project next January (see item A.1, above) or whether the department can pursue these projects simultaneously. Running these projects simultaneously may be problematic due to agency staff constraints, and because it is likely several members of the UGB workgroup would also express interest in working on the Metro urban/rural reserve project. As such, if the Commission decides to proceed with this new phase of UGB work, the department suggests the work begin following the Commission's adoption of the Metro urban/rural reserve rules discussed above. Depending on the Commission's decision regarding this project, the department will also need to confer with individuals currently appointed to the UGB workgroup to determine which members would volunteer for another phase of UGB rulemaking, and report back to the commission as to the suggested makeup of a continuing workgroup and whether new members will need appointment.

2. **Transportation Planning Rule (TPR):** The department considered amendments to the TPR as an item on the Commission's 2005-07 Policy Agenda. The department is not currently recommending additional changes to the TPR, but is continuing to work with the Joint Oregon Transportation Commission (OTC)-LCDC Subcommittee, and proposes to continue with the work of the Commission's Transportation Subcommittee (Commissioners Henri, Jenkins, and Worrrix) and to meet with a subcommittee of the OTC. The Joint OTC-LCDC Subcommittee met several times between 2004 and 2006 to guide preparation of amendments to the Transportation Planning Rule (TPR). During that process, the two commissions agreed that the Joint Subcommittee should meet periodically to assess implementation of the TPR amendments and related issues. At this point, three issues in particular are likely candidates for discussion by the Joint Subcommittee:
  - Possible LCDC review of the Metro Regional Transportation Plan (RTP). Metro has indicated that it will request that the Commission review the 2008 Metro RTP "in the manner of periodic review." ODOT has been extensively involved in the Metro RTP as it affects the state highway system.
  - Review of implementation of portions of the TPR that apply to plan amendments and zone changes. In adopting amendments to Section 0060 in 2005, the Commission (and OTC) committed to monitor rule implementation.

- Review status of projects involving goal exceptions. Last summer, the Commission declined to pursue additional rulemaking to guide preparation of goal exceptions but agreed that the department should monitor and report back on projects that involve goal exceptions.
3. **Aggregate Mining Policy:** In 2003 the Governor's office established an Aggregate Consensus Group to explore data and discuss changes to state policy regarding aggregate mining on farmland. The department was a participant in the group and DLCD's participation in this effort was an item on the Commission 2005-07 Policy Agenda. The consensus group spent considerable time gathering data during the biennium, but was not able to agree on the accuracy of the data and on a final report of that data. In addition, the group could not agree to any recommended changes to the current aggregate mining approval process. In January 2007 Oregon Consensus Program, mediators for the group, announced that they have "terminated the consensus process, as in our judgment continuing the process will no longer be productive."

In May 2007 the Governor received an aggregate policy briefing memo developed by his staff and state agencies. The memo, prepared in part due to the demise of the consensus process, provided an overview of aggregate related issues and information needed "to begin developing strategic state policies for the long-term management of aggregate resources in Oregon ... in order to effectively respond to 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." The memo indicates increasing interest among legislators to address aggregate issues during this interim and to develop support for policy changes. The governor's office is scheduling further discussion of recommendations for specific next steps, and may consider restarting the mediation project or a similar or broader project. LCDC Goal 5 rules are central to the state's current aggregate mining policy, and as such it is anticipated the department will need to be involved in this effort. However, at the time of this report it is not clear as to the nature or scope of this project, and the amount of staff time that may be needed for this project. The department will report back to the Commission as the Governor's office proceeds with its discussions on this matter.

### **C. New Policy or Rulemaking Ideas for the Near-term**

The ideas described under this section are not required by legislation and are not based on policy work underway. As such, this is a list of ideas for potential new policy projects that the Commission may decide to pursue depending on its priorities, staff availability, and other considerations. These ideas derive from a variety of sources, including issues identified in the ongoing work of the department (e.g., acknowledgement of new cities, or working with the Territorial Sea Plan) and ideas from other committees (e.g., the CIAC). The ideas in this section differ from those ideas in the following Section (Section D of

this report) in that they consist of rulemaking or other policy projects that they are either non-controversial and will take a low level of staff, or, for those that are more difficult (items 5 and 6), they have been recommended by advisory committees (CIAC or OPAC). Under this section, the department has also attempted to list only those ideas that, if pursued, could reasonably be concluded this biennium given current staff constraints. Many of these ideas involve updating current land use regulations.

The department suggests that some or all of the projects listed in items 1 through 4, below, could be combined into one project that primarily concerns “housekeeping,” i.e., updating or minor amendments of current rules to conform to changes in circumstances that have occurred since the adoption of the particular rule.

1. **Metro Subregional Analysis Rules:** In July 2005, the Oregon Court of Appeals invalidated LCDC’s Subregional rules, OAR 660, division 26. The court decided that the rule could be applied in a manner that does not conform to Goal 14 (although such an application had not occurred). The department appealed this decision to the Oregon Supreme Court, but the Court declined to hear the appeal. The department also unsuccessfully proposed legislation to address the new legal approach employed by the court in this decision. As such, these rules are not valid, and should either be repealed or amended to respond to the concerns raised by the court. Alternatively, Goal 14 could be amended to respond to the concerns raised by the court and authorize subregional analysis of a UGB. However, we note that Metro’s efforts to establish urban and rural reserves (see item A.1, above) will probably resolve the concerns of stakeholders in the region that suggested the subregional analysis rules in the first place. As such, the department recommends that the Commission repeal these rules.
2. **Post-acknowledgement Plan Amendment Rules:** OAR 660, division 18, provides a series of rules regulating the post acknowledgement plan amendment (PAPA) process under ORS 197.610, *et seq.* These rules were initially adopted by LCDC in 1981, and with some minor amendments in 1983 and 2004. However, DLCD staff has identified areas where the current rules may not agree with current statutory requirements, and has also identified some parts of these rules that need clarification, although a project to update these rules need not address all of these items, which include the following:
  - Several definitions need to be expanded, added, corrected, clarified, and updated;
  - Submittal requirements need to be updated, clarified or corrected regarding proposed local amendments, local adoption of amendments, and withdrawals or denials of proposed amendments;
  - Current deadlines need to be expanded and clarified;
  - Reporting requirements need updating and clarification;
  - Local notice requirements need to be updated to reference electronic or digital options;
  - The fee schedule for proposed notices, participation notices, and notices of adopted amendments need updating to reflect DLCD’s actual costs;

- Rules for time limits regarding certified industrial sites might be more appropriately placed in division 9 rather than division 18;
  - References to the Land Use Board of Appeals process should be added;
  - There is no clear definition of a “small tract zone change” mentioned in these rules (this is an issue in a current Medford appeal to the Court of Appeals).
3. **Goal 11 Rural Sewer and Water Exceptions Rules:** Changes to current rules are suggested by DLCD in order to resolve an issue of interpretation raised by the LUBA decision in the *Todd v. Florence* case. In that case, LUBA declared that “exceptions” are not authorized by Commission rules with respect to the Goal’s prohibition on extension of a sewer or water systems. Instead, LUBA ruled that an exception may be pursued only for the uses to be served by such an extension. The department believes this interpretation does not comport with the Commission’s intended exception policy in the Goal 11 rules. Under those rules, at OAR 660-011-0060(9), “*A local government may allow the establishment of new sewer systems or the extension of sewer lines not otherwise provided for ..., or allow a use to connect to an existing sewer line not otherwise provided for in ... this rule, provided the standards for an exception to Goal 11 have been met...*” That rule provides standards for a Goal 11 exception, but apparently LUBA did not consider these, or else did not interpret this authorization as allowing a sewer extension via a Goal 11 exception (separate from or rather than an exception for a particular use).

If the Commission agrees to address this matter, the department would consider modification to the Goal 11 rules and to the (broader) exceptions rules (OAR 660, division 4), which are the basis for the LUBA decision. Also, if this project is pursued, DLCD staff may consider modification of other portions of the Goal 11 rules for clarification purposes only, i.e., “policy-neutral” amendments not requiring appointment of a rulemaking workgroup.

4. **Acknowledgement of New Cities:** Rules under OAR 660, division 3, provide a process for the first-time acknowledgement of plans and land use regulations. The rules have not been in use since the mid-1980’s, when the first round of acknowledgement was completed. Today, these rules are only applicable for new cities. The new cities of Damascus and La Pine will be operating under these rules in the near future, and in anticipation of that, the department has identified several provisions of these rules that should be updated and clarified with respect to acknowledgement of new city plans. None of the changes suggested by the department as part of this project would constitute changes to the “policy” set forth by the rules; rather this would be a clarifying and “housekeeping project. (For example, these procedural rules need updating to address submittal of electronic information).
5. **Ocean Resources (Goal 19):** The department is not currently recommending additional changes to Goal 19 or the adoption of implementing rules, but in its continuing work with state and federal agencies the department anticipates that the need for rulemaking may be suggested later in this biennium. At present, Oregon has

only two legs of a policy and regulatory stool for ocean uses. A third leg – administrative rules – may be needed.

The Commission previously adopted and applied extensive administrative rules for Goal 16, Estuarine Resources; Goal 17, Coastal Shorelands; and Goal 18, Beaches and Dunes. No similar administrative rules exist for Goal 19, which is a complex goal to apply. ORS 19.405 *et seq.* establishes an Ocean Resources Management Program, a vehicle for state planning for ocean uses and marine resources in order to meet Goal 19. The resultant Territorial Sea Plan includes mandatory requirements to provide state agencies with sufficient information and analysis with respect to compliance with Goal 19. The Commission also previously adopted the Territorial Sea Plan by rule, which gives force to these requirements, and the Legislature (through ORS 196.485) stipulated the coordination and consistency requirements for state agencies with respect to provisions of the Territorial Sea Plan and Ocean Resources Management Plan. However, Goal 19 implementation requirements do not provide adequate guidance to state and federal agencies or private entities with respect to standards in the goal and the Territorial Sea Plan, especially in anticipation of policies and designations for new uses such as wave energy generation facilities or ocean aquaculture. For the most part, other state agencies look to DLCD's Coastal Division for guidance on how to in order to comply with Goal 19, but have not yet confronted the problem of how to address Goal 19 and apply the requirements of the Territorial Sea Plan regarding regulatory and licensing authorities applied to ocean uses (the department currently provides a Goal 19 "checklist" as an informal guidance document. Rules provided under this project would be based on and similar to this checklist).

As such, depending on ongoing discussions with the Governor's Office and other state agencies, and possibly in response to an executive order anticipated within the next few months, staff may approach the Commission later this biennium to recommend that a rule be developed in order to:

- Provide clear delineation of state agency responsibilities, required information, and the process to be followed, in applying Goal 19 and provisions of Territorial Sea Plan,
- Detail the process and specific types of information and analysis needed to assess the effects of particular proposed activities on ocean and coastal resources, and
- Define how area use designations within the Territorial Sea are to be accomplished.

6. **Citizen Involvement Rulemaking:** The Commission's Citizen Involvement Advisory Committee (CIAC) is recommending new administrative rules to interpret and implement requirements of Goal 1 regarding citizen involvement. The Commission required extensive citizen involvement during the initial acknowledgement process and, to a lesser extent, during periodic review. However,

few local governments are now required to do periodic review, and even for those few, CIAC believes citizens do not know how to effectively participate. Some citizen-focused laws and rules have been added to statutes or rules in the past (e.g., notice requirements, a cap on fees for the first appeal to a public body).

The CIAC believes that citizens currently have little real opportunity to participate in planning, and there are high levels of frustration in this regard. As such the CIAC suggests rules to alleviate this situation, including the following:

- Clarify and strengthen existing Goal 1 requirement for a local Committee on Citizen Involvement. Require jurisdictions over a certain size (counties over 10,000, cities over 5,000 population) to have an actual CCI, not the Planning Commission. Require annual evaluations of the local programs against the requirements of Goal 1, and require reports to DLCD/LCDC/CIAC on the citizen involvement program detailing all citizen involvement activities in quantitative terms, including penalties for non-compliance.
- Require all jurisdictions to provide full access to all planning applications, documents and correspondence on request (other than Open Records exceptions) during all phases of the application process within 2 working days of the request.
- Define and require jurisdictions to recognize neighborhood groups/area committees. Define the rights and responsibilities of these groups, and provide local government support as described in paragraphs 3 – 6 of Goal 1.
- Require consultation with neighborhood groups, or in their absence, a geographically defined “notice” population, prior to a land use application for larger developments being deemed complete. Require signoff that such consultation has taken place. A “notice area” should be 500 feet in urban areas and one-half mile in rural areas, measured from the site of any proposals for industrial, commercial or multi-family development, and single-family residential development proposals of more than 3 units.
- Cap appeal fees at the local level to no more than the corresponding LUBA fee.

#### **D. Policy or Rulemaking Ideas for the Long Term**

The projects described below represent projects that would streamline, update and improve the statewide land use system. In general, most of these projects will be difficult for the Commission and the department to pursue this biennium due their potential scale, controversy, funding needs, or DLCD staff constraints. Furthermore, there is potential for many of these ideas to overlap with the work by the Task Force on Land Use Planning, depending on whether the Task Force is funded. As such, the department suggests that the list below consists of projects that should have lower priority than projects listed under categories A through C above. The department is not recommending that any the particular projects on this list be included under the Commission’s adopted Policy Agenda for this biennium. However, the Commission may wish to reprioritize these ideas and recommend work on one or more of them this biennium, or plan more detailed discussion of particular ideas in the future, either this biennium or later. The Commission

may also consider whether there are any portions of these ideas that might be combined with other rulemaking efforts included in this biennium's policy agenda. The order of items listed below is not meant to imply a higher priority for any particular project.

1. **Many Rules Take Effect Only During Periodic Review:** Legislation has substantially narrowed the scope of periodic review (PR) by exempting small cities (generally, less than 10,000 in population), and all counties, from the requirement to follow the statutory periodic review process.<sup>4</sup> However, some pre-existing LCDC rules and some statutes rely on periodic review as the “trigger” for new planning to implement their requirements. As such, these pre-existing rules and statutes will apply to very few local governments and therefore will not be implemented for most cities and counties. The following divisions of LCDC rules (OAR Chapter 660) cite periodic review as the only time when a local plan must apply certain requirements (probably in all cases local governments are free to voluntarily implement these requirements):
  - Division 8, Interpretation of Goal 10 Housing – a plan update to meet the “housing rule” requirements for affordable and other housing is required only during PR.
  - Division 12, Transportation Planning – Transportation System Plan updates are only “triggered” by PR.
  - Division 13, Airport Planning – planning requirements for certain airports only apply at PR (most airports have not adopted or updated plans to meet these rules).
  - Division 23, Procedures and Requirements for Complying with Goal 5 – all the “new” provisions of the 1996 Goal 5 rule are triggered only by PR.

One statutory requirement, ORS 195.020-.085 mandating coordination agreements among districts and local governments, is triggered only by periodic review. In addition, the following statutes rely on periodic review for compliance, although periodic review is not specifically cited in these statutes:

- ORS 197.186 – removal from buildable lands inventory of land subject to open space tax assessment.
- ORS 197.480 – planning for manufactured dwelling parks.

There are some other statutes that take effect only at periodic review, but these statutes apply only to cities that are required to undertake periodic review (i.e., they do not apply to the small cities and counties that are now exempt from periodic review).

Although most of the rules and statutes above have been in effect for many years, many local plans do not yet address the requirements that were enacted after the plan was acknowledged. Many local governments will never be required to address certain requirements unless the commission amends statewide rules (or the legislature enacts new laws) establishing new deadlines or other “triggers” for local compliance. It should be noted that ORS 197.631(1) requires the commission to “adopt, amend or

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<sup>4</sup> It should be noted that Goal 2 still requires that plans be updated periodically.

repeal the statewide land use planning goals, guidelines and corresponding rules as necessary to facilitate periodic review and to provide for compliance by local governments with those goals” that concentrate periodic review on “adequate provision of economic development, needed housing, transportation, public facilities and services and urbanization.”

This policy project is important to a number of supportive land use program stakeholders. Nevertheless, it will likely be very controversial if pursued. In some cases, requiring local governments to meet certain rules outside of Periodic Review would not provide opportunity for state grant funding and thus may trigger statutes regarding “unfunded mandates” to local governments. One option the Commission might consider would be to establish a work group that would propose and discuss solutions, including rulemaking and, if necessary, statute changes. However, rulemaking would not be initiated until and unless the workgroup reaches agreement on a set of options that avoid statutory “unfunded mandate” prohibitions.

2. **Non-Resource Land:** There are currently no formal statewide rules or other standards to guide local governments in determining and zoning “non-resource land” – land outside UGBs (and unincorporated communities) that does not satisfy the definition of farm or forest land, and therefore is not subject to farm or forest goals. A few counties have identified non-resource land and LCDC has established some very general policy direction through acknowledgment of these plans. However, this policy direction, which suggested 20-acre minimum lot sizes, and other restrictions, is not necessarily applicable outside the acknowledgement process. There are no formal rules establishing allowable land uses, and minimum lot sizes for land divisions, on non-resource land, although some general requirements may be inferred from the 1986 “*1000 Friends v. Curry County*” Supreme Court opinion. The department notes that any new statewide standards for designating non-resource land would probably not trigger Measure 37 claims because new non-resource zoning applied by a county would usually be less restrictive than agricultural or forest land zoning. However, Measure 37 claims could arise if new standards add new restrictions to land already zoned for non-resource use, in which case the department would not recommend such restrictions.

The pressure to designate non-resource land continues to increase in Central and Eastern Oregon. In the last couple of years Baker, Crook, Jefferson and Malheur counties have all expressed strong interest in designating non-resource lands. So far Crook County is the only jurisdiction to move forward with new plan amendments and rezoning new areas. In this case the county converted over 1,000 acres from EFU to RR-10 on the edge of Prineville (in this case, it appeared the county may have been motivated to approve the proposal due to the prospect of acquiring right-of-way for a future county road). The Department of State Lands (DSL) almost immediately expressed an interest in rezoning lands they (i.e., the state) own in that vicinity, changing them from EFU to Rural Residential. Klamath County currently has many

thousands of acres of designated non-resource lands, which it regularly converts from a 20-acre to a 5-acre minimum parcel size.

3. **Urban Reserve Process Reform:** The Commission adopted administrative rules for urban reserve areas in 1996. Since that time, only a handful of local governments have adopted an urban reserve area, even though many stakeholders have declared that planning for urban reserves holds great promise toward alleviating some of the problems and concerns associated with the UGB amendment process. Cities, counties and some other stakeholders have indicated (for example, in UGB workgroup discussions) that LCDC rulemaking to streamline and clarify urban reserve requirements should be considered in order to encourage broader application of the urban reserve planning process. (However, recent successful efforts to establish urban reserves, such as that by the City of Redmond, have drawn praise for the current process and those local governments did not identify particular rule problems.)

The Metro-specific urban reserve rules required by SB 1011 (see policy proposal A.1, above), which must be completed by January 31, 2008, may inform the Commission and the department about the statewide urban reserve process in general (the statewide urban reserve process, described by OAR 660, division 21, is different than the new Metro process enacted with SB 1011). As such, the department would not recommend that the Commission not begin work on reform of the statewide urban reserve process, if at all, at least until after January 2008. If the Commission does consider changes to these rules, as part of this exercise it may wish to address the concern that higher value farm and forest land within urban reserves is allowed to be subsequently added to a UGB ahead of exception land and lower quality resource land.

4. **Measure 37 (or Measure 49) – Resolution of Conflicts with LCDC Goals or Rules:** Measure 37 raises a large number of issues with respect to statewide land use planning goals. Any work on this topic should not be considered until after the November elections regarding Measure 49. For example, the following questions and ideas concerning statewide and local land use planning concerns might be resolvable by LCDC rulemaking over the long term:
  - How does Measure 37 (or Measure 49, if enacted) affect current rules and statutes regarding goal exceptions? Does development outside UGBs as a result of a “waiver” constitute grounds for a “committed lands exception” for a property and for adjacent farmland, and therefore authorize Goal 3 or 4 exceptions for those lands?
  - Should UGB expansions be required to consider approved Measure 37 (or Measure 49) “waivers” authorizing development of land adjacent to or in the vicinity of a UGB, and if so, should this consideration occur regardless of whether such waivers are exercised?
5. **Regional Problem Solving:** The 1999 Legislature enacted the Regional Problem Solving (RPS) statutes authorizing local governments to form partnerships and reach

agreement on land use plans that solve planning issues particular to a region. These statutes (under ORS 197.656) amended the state land use program to allow the Commission to take into account particular regional and local circumstances, and to encourage consensus among stakeholders and agencies with respect to region-specific problems. Under RPS, the Commission is authorized to acknowledge a regional plan that might not conform to all applicable rules, provided the plan is consistent with the goals. The flexibility provided by this process has encouraged five RPS projects to date, only one of which has been successfully concluded at this point. Each of these projects has encountered difficulty in interpreting terms and requirements in the RPS statutes. Stakeholders and DLCD staff have suggested that the Commission consider new administrative rules to help interpret the statute and resolve several ambiguities with this law. DOJ has been asked to clarify wording in the statute and in many cases, the Commission will be required to interpret this unclear wording if it receives a request to review and approve an RPS agreement. The unclear provisions in this statute are major, and this has created a high degree of uncertainty for regions attempting to use this statute. If rulemaking is pursued, some issues to be addressed could include:

- Clarifying the department's and the Commission's role in the RPS process;
- Clarifying the standard of review by the Commission in determining that an RPS agreement and amendments implementing the agreements conform, on the whole, with the purposes of the statewide planning goals;"
- Specifying basic contents and other characteristics of a participants agreement, a core feature of this process;
- Clarifying whether RPS agreements are land use decisions;
- Providing procedures regarding local plan amendments to implement RPS agreements, and for future amendments to such agreements; and
- Other procedural and definitional issues.

6. **Review of ORS Chapter 215 and Rural Lands:** Chapter 215 began as an enabling statute for county land use planning, but it is now a complex collection of provisions regarding county planning, protection of farm and forest lands and other rural planning matters. Every legislative session since 1973 has seen multiple *ad hoc* amendments to the statutory exclusive farm use (EFU) zone and related provisions regarding farm and forestlands in Oregon, and two different yet similar (and lengthy) EFU sections are now included in Chapter 215: one for "marginal land counties (Lane and Washington) and one for the remaining 34 counties. The list of allowed uses on farm land has been continuously amended by the legislature and has grown from a list of six to uses to a current list of more than 50 uses. There are also multiple sections and definitions scattered throughout the statute that establish various land use policies, provide for different types of dwellings and non-farm uses, set minimum lot sizes, allow various types of land partitions, identify "marginal lands" and a host of related and unrelated provisions. A large number of LUBA and Court opinions have provided differing and in some cases conflicting interpretations of these statutes. Many stakeholders and others involved with these statutes have suggested a comprehensive review (both "policy-neutral" and "substantive") of this important

land use statute in order to remove conflicting provisions, incorporate key legal interpretations and make it easier to understand, use and administer.

This is a major task that will eventually need Legislative attention and an appropriate work group.<sup>5</sup> This task could be divided into two parts, described below, and the first part could be considered for the near term, while the second part is clearly long-term in scope. The first part would be a “policy neutral” review of ORS Chapter 215 and its related rules and the second part would try to develop some consensus for longer term policy updates and changes regarding farm and forest protection. It is suggested that, as a first step, the Commission establish an appropriate advisory group to work on both the short- and long-term aspects of this project. This would require involvement by experienced county planners and interest groups, and is likely well outside the scope of the Big Look Task Force work. As such, if included on this biennium’s policy agenda, this project should proceed separate from the Big Look, although workgroup recommendations could be combined with recommendations from the Task Force depending on timing. The two phases of a policy project on this subject might be:

- Near-term: Appoint a workgroup to recommend to LCDC a conceptual “policy-neutral” reorganization/clean-up of ORS Chapter 215 and its related administrative rules, including recommendations to remove conflicting provisions, incorporate key legal interpretations and make it easier to understand, use and administer; and
- Long-term: Appoint a workgroup to consider and propose amendments to the statutory EFU and forest zones, and related provisions regarding farm and forestlands, focused on ensuring adequate protection of Oregon’s agricultural and forest lands while also providing adequate flexibility in their administration at the state and local level. This review should analyze the statutory and applicable legal opinions with respect to the definitions, statutory policy statements, the list of allowed uses on farm land, standards for dwellings on farm and forest lands, minimum lot sizes, special provisions for the partition of certain resource lands, the identification of "marginal lands" and the related provisions in ORS 215 and other sections of state law.

7. **Goal 5 Natural Resources Rules:** OAR 660, division 23, provides rules implementing Goal 5. The Goal 5 rule, adopted in 1995, should be improved for effectiveness and ease of implementation.

The current rules for riparian resources have been criticized by stakeholders and local governments as confusing and out of date. These rules were adopted at a time when there was less recognition of the importance of maintaining elements of a natural landscape within urban areas. The result is that the Goal 5 rule can be an obstacle to efforts toward an integrated approach to protecting stream systems and managing

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<sup>5</sup> There is a precedent for this type of effort: a similar reorganization of ORS Chapter 308 concerning farm use property tax assessment was successfully completed during the 1998 interim period and led to the adoption of ORS Chapter 308A by the 1999 Legislative Assembly.

surface waters, wildlife habitat, and open space within a UGB. Some ideas for revision include the following:

- Set a time certain for local compliance with key elements of the rules (see Item D.1, above), or consider other methods to require application of the rule during comprehensive plan amendments given that required implementation of division 23 did not proceed along the anticipated periodic review timelines. Amend the rule so that all riparian, wetland and wildlife habitat resources be considered at the time of a PAPA, not just resources that have previously been determined to be significant resources. This would require creating some different options for evaluating significant wetlands that did not necessitate a full local wetlands inventory.
- Revise confusing definitions and usage of the terms “riparian area,” “riparian corridor,” “riparian corridor boundary” and “significant riparian corridor.”
- Where a riparian corridor includes all or portions of a significant wetland, consider requiring that the standard distance to the riparian corridor boundary shall be measured from and include the upland edge of the wetland. This would ensure that the entirety of a riparian wetland to be protected under a riparian corridor ordinance even if there is no broader local wetlands inventory (wetlands associated with riparian areas are most important for water quality, hydrology and wildlife habitat.)
- Revise safe harbor requirements for riparian setbacks. Goal 5 riparian safe harbors were adopted prior to water quality guidelines for functional riparian areas published by federal agencies administering the Endangered Species Act (ESA). Those guidelines recommend a stream setback distance equal to the tree height of local vegetation. Thus, the current safe harbor for riparian areas and for wetland “buffer areas” would be insufficient for ESA compliance in many areas. For similar reasons, some of the allowable uses in the safe harbor riparian setback rules would not be allowed under federal guidelines. Local governments trying to meet both Goal 5 and ESA are therefore advised to follow the “standard” ESEE Goal 5 process for riparian and wetland planning, a more lengthy and complex process for compliance than the safe harbor approach. A single planning effort to achieve compliance with both Goal 5 and federal ESA water quality objectives should be encouraged. However, a new safe harbor for this purpose should not be considered unless the commission has assurance that federal agencies would be likely to approve local government measures that are adopted consistent with the safe harbor.

8. **Goal 6 Regarding Water Quality:** The Clean Water Act requires that water quality standards be maintained, but has limited ability to remedy problems or prevent future impacts caused by development in urban areas with fewer than 50,000 in population. Low impact development strategies have gained recognition nationwide. These strategies recognize a connection between urban land use practices and water quality. Existing Goal 6 language and a strong reliance on DEQ rules for implementing the goal have proven to be an inadequate approach to protecting water quality in development areas. Some ideas to remedy this include:

- Amend the goal – Goal 6 was written thirty years ago when there was less understanding of non-point pollution. The language parallels that of the Clean Water Act, referring to “waste and process discharges.” This language could be changed to recognize the impacts of urban development on storm water discharges and the natural systems that serve to maintain water quality.
  - Write new rules that would allow for easier integration of water quality protection strategies into local comprehensive plans and implementing ordinances.
  - Consider other strategies to better support DEQ efforts to reduce pollutant load from urban areas into water quality limited streams.
9. **Goal 8 Destination Resorts:** Under current law, destination resorts are not allowed within 24 air-miles from UGBs that exceed 100,000 population. However, neither state law nor Goal 8 is clear as to rules that would apply to a proposed resort that is under review at such time as a UGB reaches this limit. This confusion also occurs with regard to maps adopted by counties that allow resorts in these areas, and local processing of applications previously submitted in accordance with these maps at such time as the population limit is reached. Other destination resort provisions in statute and Goal 8 are also problematic, including issues of timing for proposed map amendments. It is possible that some clarity on the population limits could be achieved by a rule, rather than by Goal amendments. Otherwise, goal amendments and, very likely, statute amendments, would be required to resolve this and other questions.
10. **Goal 9 Economic Development Rulemaking Phase II:** The October 2003 report to the Governor from his Industrial Lands Task Force included several recommendations for LCDC policy work aimed at increasing and maintaining the supply of industrial land in the state. The Commission’s Economic Development Advisory Committee (EDPAC) undertook projects in the 2003-2005 biennium to study and implement these and other recommendations, especially through the Goal 9 rulemaking completed last biennium. However, EDPAC identified additional recommendations that were not included in last biennium’s Goal 9 rule efforts, including clarification of the application of Goal 9 and its rule to Metro. A Goal 9 Phase II rulemaking effort would study methods, including rules and other agreements, to clarify the relationship among Metro and Metro jurisdictions regarding Goal 9 planning inventories, need estimates, and the “concept plans” currently required by Metro.

In addition to the above project, the Governor’s Economic Recovery Team (ERT) has suggested additional economic development policy projects for the biennium (Note: some recent ERT recommendations are major land use program changes along the lines of recommendations that have been under consideration by the Big Look Task Force, and are not including on this list).

- Improve training for local governments. Establish strategic partnerships with the American Planning Association, Urban Land Institute, Oregon Planning Institute (OPI), Oregon Downtown Development Association (ODDA), councils of

governments (COGs) and institute DLCD in-house training functions that do not duplicate other efforts.

- Create model “employment land” comprehensive plan elements, zoning codes and planned development templates, coordinated with OECDD.
- Create a “prime industrial land” definition, identification, designation and protection policy, including incentives and a toolbox, and consider methods to streamline the inclusion of potential prime industrial sites in the UGB (this idea was the subject of DLCD’s 2007 proposed legislation, SB 186, which did not pass).
- Create a model comprehensive plan, code and management structures that local governments can use to implement a variety of Transfer of Development Rights (TDR) smart development incentives, including historic preservation, wetlands banking, conservation easements, and in-fill/affordable housing bonus programs. This would be developed as a series of coordinated technical assistance grant projects with local partners.

11. **Goal 10 Housing:** The Commission has not examined its policies addressing affordable housing issues and Goal 10 in general for several biennia. However, the goal remains a cornerstone of the statewide program, especially with regard to the UGB process. Goal 10 issues surface repeatedly in periodic review at the staff and Commission level. Last biennium, rather than convene a formal policy project, the Commission recommended that a panel of experts be invited to discuss the intent, history of implementation, effectiveness, and future direction of Goal 10. However, this did not occur, in part because of other Commission priorities.

If the Commission should decide to schedule a discussion or more detailed work regarding Goal 10 policy this biennium, this should be included as part of the affordable housing policy project described in Item A6 of this report (see above). Or, if the Commission decides undertake more extensive updates to Goal 10, it may wish to consider amendments to the two rules that implement that Goal – OAR 660, divisions 7 and 8. DLCD staff has suggested consideration of the following issues, some of which could instead be pursued as a part of a next “phase” of UGB rulemaking (see Item , above):

- Revise the rule definitions or other requirements regarding buildable land for residential purposes to require or suggest minimum density requirements, and to address “buildable land” implications of Goal 5 resources, floodplains and floodways, steep slopes and publicly owned land.
- Clarify whether “needed housing” includes housing for high-income households, and, if it does, determine whether such need may be given higher priority than housing needs of lower and middle income households.
- Define “Land with infill potential” mentioned in current housing rules.
- Update the Metropolitan Housing Rule (OAR 660, division 7) to indicate residential density for new cities in the Metro area (that rule already addresses minimum housing density for other Metro area cities).

- Provide methodology for local governments to determine the supply of land available for housing within mixed-use zones, in order to both encourage the use of such zones and make sure that these zones maintain needed housing land supplies.
- As raised in the McMinnville periodic review appeal, determine whether Goal 10 imposes any affirmative duty on local governments to make affordable housing happen, rather than simply provide a land supply for that purpose.

12. **Dune Grading (Goal 18):** Dune grading requirements in Goal 18 reflect the new practice of foredune grading for dune habitat restoration. Currently, the goal has language that limits foredune breaching, allowing it only to replenish sand supply for interdune areas or for temporary emergency purposes. This limitation follows a section of the goal that discourages grading to maintain views or to prevent sand inundation for committed developed areas. Additional guidelines discuss requirements for foredune grading plans. Noticeably absent is any provision allowing foredune grading for the purpose of habitat restoration. With snowy plover management activities continuing to be a controversial issue in some counties, it is recommended the commission update the goal to account for this relatively new management practice. It is likely such amendment would be supported by the Oregon Parks and Recreation department (OPRD) and other “wildlife agencies.”

## **Recommendation**

The department's recommendation is briefly summarized at the end of this section (see **Summary**, below).

The department recommends the commission direct the department to pursue all of the projects listed under Categories A and B of this report as part of this biennium's LCDC Policy Agenda. The department also recommends the Commission authorize the department to update and make four additional "housekeeping" rule amendment projects listed in Category C, but pursue those in combination or simultaneously with minor amendments to farm, forest, and UGB safe harbor rules listed in Category A. Finally, the department is also noting that the Goal 19 project listed under Category C may also be recommended later this biennium, after further work with stakeholders. The combination of projects described here (and in the summary below) would constitute LCDC's policy agenda for this biennium.

**Explanation:** The department is required to conform rules and goals to new laws enacted by the legislature (Category A). As such, there is little discretion for projects in Category A, except Project 6 regarding the report to the legislature on provision of affordable housing and manufactured dwelling parks. That project may be pursued as a legislative report only, but based on discussions with legislators and the Department of Housing and Community Development, the department recommends further discussions with stakeholders and, based on these discussions, may recommend rulemaking to streamline the UGB process so as to encourage local governments to provide additional sites dedicated to affordable housing. If this rulemaking is pursued, the Commission should decide whether to combine the work with the "Phase 2 of UGB safe harbor" project described in Category B, or as a separate project with a new workgroup.

The department is recommending that several projects already underway from last biennium (listed under Category B) should continue to be pursued. However, the first project – "Phase 2" work on UGB safe harbors – should not begin until after the Metro Reserve Rules are adopted in January, 2008. Also, before beginning that project, the department recommends further discussion with the current workgroup members, possibly at the Commission's January or March meeting, to provide the a determination of which workgroup members wish to continue, timelines for this work, and the opinion of the workgroup about the nature and extent of further work on UGB safe harbors.

Projects 2 and 3 on the B list (TPR and aggregate mining policy) are uncertain as to their extent and timelines, since the need for rulemaking is undetermined at this time. For these two projects, the department recommends a report to the Commission later in the biennium and, depending on the report, possible amendment of the Policy Agenda to indicate additional rule projects, if necessary.

The department recommends that the first four "new rulemaking proposals" under Category C should also be included in the Policy Agenda, but should be combined into a

single “housekeeping” project. The department anticipates that this project could be limited to proposals with a low level of controversy, can be pursued without a major commitment of limited DLCD staff resources, and would not require appointment of a workgroup provided the proposed amendments are “policy neutral.” The department recommends that Project 5 under Category C, Ocean Policy work, is also a high priority and should be pursued, but cannot determine at this time whether this project will involve rule or Goal consideration. For this project, the department recommends a report to the Commission later in the biennium and, depending on the report, possible amendment of the Policy Agenda. The department recommends that Project 6 under Category C – new rules for citizen involvement – would overlap with work that is anticipated to occur if the Big Look Task Force is refunded. Therefore, the department recommends that the Commission not include this project on its Policy Agenda at this time. Later in the biennium, it will be more certain as to whether the Big Look will continue, and whether their focus will include citizen involvement. As such, the Commission may wish to revisit this question at a later time in the biennium.

The department does not recommend pursuit of any of the other projects on lists C and D. These projects generally include controversial issues and are expected to be staff-intensive; moreover, many of them overlap work that may be pursued by the Big Look Task Force if it is refunded later this biennium. Other projects should not be pursued until the outcome of the pending election decision regarding Measure 37 and Measure 49 in November. For these two reasons, the department suggests that other projects on the list in this report should not be included on the Policy Agenda, but should be reevaluated at a later time, possibly at the March 2008 meeting, at which time the Commission will have additional information about the future of Measure 37 and the Big Look Task Force, as well as department staff resources available for the pursuit of additional policy projects.

**Summary:** The Department’s recommended Policy Agenda for the 2007-2009 biennium would consist of the following projects:

16. Adopt Metro Urban and Rural Reserves rules required by SB 1011 (2007); NOTE: this project is already underway;
17. Amend division 33 Agricultural Lands rules in response to HB 2210 (2007), to allow on-farm processing of farm crops into biofuel;
18. Amend division 6 Forest Lands rules in response to 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;
19. 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 a destination resort developed in “Eastern Oregon”;
20. Amend division 24 UGB population forecast “safe harbor” rules in response to

HB 3436 (2007), regarding county action on population forecasts developed by cities.

21. Report to the 2009 legislature as required by HB 2096 (2007) regarding the provision of sites for affordable housing development and manufactured dwelling parks. Consider potential new rules intended to streamline expansion of UGB's to provide sites dedicated to affordable housing and manufactured dwelling parks, possibly as a pilot project that includes a limited number of cities.
22. Revise agency procedures, as necessary, to implement new Environmental Justice requirements in SB 420 (2007). These 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.
23. With UGB Workgroup appointed in 2004, consider "Phase 2" rulemaking to clarify and streamline the UGB amendment process, including consideration of additional safe harbors.
24. 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.
25. Work with Governor's office and other agencies to develop strategic state policies for the long-term management of aggregate resources in Oregon in order to effectively respond to 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.
26. Repeal Metro Subregional rules under OAR 660, division 26, in response to Court of Appeals decision invalidating these rules.
27. Amend Post-acknowledgement Plan Amendment Rules under division 18 to update. Clarify, and conform to statutes amended since adoption of these rules.
28. Amend division 11, Goal 11 rural sewer and water rules, and related division 4 exception rules, to address a recent interpretation by LUBA regarding exceptions to extend a sewer system in certain circumstances.

29. Updated and clarify division 3 rules regarding acknowledgement of comprehensive plans for newly incorporated cities.
30. 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. The department will report to LCDC later in the biennium regarding a possible need for changes to Goal 19 or the adoption of implementing rules.

### **Attachments**

- A. 2005-07 LCDC Policy Agenda Summary
- B. Links to 2007 Legislation Requiring LCDC Rule or Goal Amendment
- C. Comments Received prior to mail out of this report