On January 27, 2012, the Land Conservation and Development Commission (LCDC) amended Administrative Rules in OAR 660, division 18, concerning local changes to comprehensive plans and implementing ordinances. These rules implement state laws ORS 197.610 through 197.625. The 2011 legislature amended these statutes; LCDC’s amendments align the rules with the newly amended statutes. The new statutes took effect January 1, 2012. The amended rules took effect on February 14, 2012. While the statutes provide the basic requirements for the process for local governments to propose and/or adopt changes to the local comprehensive plan or land use regulations, the amended rules provide many important details, including timelines and definitions of terms.

1. **What is the purpose of this process?** ORS 197.610 through 197.625 establishes a process for local governments to provide notice to the department concerning a proposed “change” to a comprehensive plan or implementing ordinance such as the zoning code. These statutes also provide for submission of the adopted local changes, and a procedure for those changes to be deemed acknowledged “in compliance with statewide land use planning goals.” Local comprehensive plans and zoning codes are dynamic documents, and changes over time are anticipated and encouraged. This process ensures notice to state agencies and citizens, and provides for automatic acknowledgement except in rare cases where formal appeals are filed with the Land Use Board of Appeals.

2. **Why did the legislature amend this process?** Until the 2011 legislative session, the statutory plan amendment process had not been reviewed for many years, and many local governments suggested the process could be streamlined and clarified. Court decisions since these statutes were originally enacted in 1980 have interpreted and elaborated on the statutory requirements in ways that were not transparent to most citizens and local governments. To address these and other concerns, the department proposed amendments in the 2011 legislative session – House Bill 2129 – intended to clarify this process and its procedures, reduce costs, prevent unreasonable delay, and to make sure that notices serve their intended purposes.

3. **What local actions are affected by these rules?** The rules apply to a “change” to a local land use plan or changes to regulations that implement the plan, such as the local zoning ordinance. The amended statutes no longer use the term “post-acknowledgement plan

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1 The department filed these rules with the Secretary of State on February 14, 2012. However, the Secretary’s office may take up to three months to update online copies of new and amended rules, even though they are in effect upon filing. DLCD’s website at [http://www.oregon.gov/LCD/docs/rulemaking/2011-13/Housekeeping_2012-01/660-018_LC_2012.pdf](http://www.oregon.gov/LCD/docs/rulemaking/2011-13/Housekeeping_2012-01/660-018_LC_2012.pdf) provides an online copy of these amended rules. The amended statutes are already online at the legislative counsel website, [http://www.leg.state.or.us/ors/197.html](http://www.leg.state.or.us/ors/197.html)
amendment” (or PAPA). Instead, the operative term in the revised law is “a change” to a comprehensive plan or regulation. The rules define a “change” to include an amendment to the comprehensive plan text or map, or to a local regulation that implements the plan (such as, for example, a zoning ordinance or map). The term includes additions and deletions to the acknowledged plan or land use regulations, the adoption of a new plan or regulation, or the repeal of an acknowledged plan or regulation.

4. **How is the notice process amended by the legislation and rules?** The revised statutes and rules provide a shorter notice period, in advance of a proposed local “change” (meanwhile, the period for submittal of an adopted change is lengthened; see question 11, below). The notice to DLCD in advance of a local adoption is now 35 days (rather than 45 days) prior to the first evidentiary hearing on a proposed change. The 35 days is counted from the postmark date or the day the amendments are actually received if submitted to the department by any method other than the US Postal Service. The legislation authorizes LCDC to further shorten the notice period for proposed changes, down to 20 days. LCDC may do so in the future as the agency gains experience with the shorter notice period, and as it implements a system to receive electronic notices. The department provides forms and other information about the 35-day notice at the following link: [http://www.oregon.gov/LCD/forms.shtml#Plan_Amendment_Forms](http://www.oregon.gov/LCD/forms.shtml#Plan_Amendment_Forms)

5. **Why not authorize electronic or email submittal of plan amendment notices and adopted changes?** The department is working on improvements to its electronic systems capacity and expects to be able to provide this service in the not too distant future. However, currently the department is not prepared to receive electronic copies of plan and ordinance changes. This is primarily due to current limitations on file size for the state’s email systems (and for many local email systems). Maps and other documents commonly associated with plan and ordinance changes often exceed state email file-size limits. DLCD must also resolve data storage and security concerns, and related issues, before it is able to institute electronic filings. We are actively planning to improve these systems, but it will take time to implement a complete and durable solution.

6. **Are there exemptions to the 35-day notice requirements?** There are three exemptions to the 35-day DLCD notice requirements. First, a local government is not required to provide notice if statewide goals, LCDC rules or land use statutes do not apply to the proposed change. Second, the statute and rules allow for less than 35 days’ notice when there are emergency circumstances (the notice must be provided as soon as practicable). These are not new requirements, but are reworded for clarity in the revised statutes and rules. The third exemption is new: a local government is not required to hold a public hearing in order to adopt a change “solely for the purpose of conforming the plan and regulations to new provisions in a land use statute, statewide land use planning goal or rule.” In this case, the exemption is not to providing the notice to DLCD (it still must be provided), but rather, to providing it in advance of the evidentiary hearing, since there would not be an “evidentiary hearing” under this provision. Instead, the rule requires...
the local government to provide the department with notice 35 days prior to the local government’s scheduled adoption of the change (See OAR 660-018-0020(4)). DLCD must provide the local government with confirmation that the proposed change meets this new requirement prior to the local adoption of the proposed change.

7. **When will DLCD notify local government of any concerns with a proposed change?** The new statute specifies that the department shall notify the local government of any concerns at least 15 days before the final evidentiary hearing (this time limit does not apply if local government fails to provide a notice 35 days before the first evidentiary hearing). While previously the statute did not specify this time limit, the department has a longstanding policy of providing comments to a local government 15 days before the first evidentiary hearing. As such, while the statute and revised rules require comments only 15 days prior to the final hearing, DLCD will continue to strive to provide comments prior to the first evidentiary hearing.

8. **Why did the legislature provide the special exemption to the public hearing requirements under ORS 197.612?** The exemption allows a local government to not hold a public hearing when a change is solely for the purpose of reflecting a new law or rule in the local plan or code. Described in LCDC’s rule at OAR 660-018-0020(4), this type of provision was first enacted in a more limited way in 2009 under legislation promoted by the Big Look Task Force. Local governments are often required to amend their comprehensive plan and land use regulations to conform to changes in state statutes or rules. When local amendments are simply to reflect something already required by a state law or rule, and there is no ability to alter the provision at the local level regardless of public input, the public is often frustrated by the public hearing process. The revised statute allows (but does not require) local governments to adopt conforming amendments to plans and codes in response to new state laws, goals, or rules without public testimony. The revised statute requires that, if a local government intends to use this provision, it must provide the department with notice prior to the adoption of the change. Further, the department must confirm that the proposal meets the requirements of this statute, and must send that confirmation in writing to the local government prior to the final adoption of the change.

9. **What happens if a local government alters a proposal to change the plan or regulations after the initial notice is received by the department?** It is anticipated that citizen input will often result in alterations and improvements to an initial proposal to amend a plan or code. However, if a proposal is substantially altered after notice has been given, but prior to adoption, the initial notice may not accurately describe the change that is ultimately adopted. As a result, the department and other interested parties may not be fully aware of the actual proposed changes until very late in the local process or even after they are adopted. Over time, LUBA has dealt with this concern by overturning adopted plan amendments, as a procedural error, resulting in unnecessary delay and frustration. The revised
statutes provide an abbreviated way for a local government to provide a second, revised notice of a proposed plan or zoning amendment. The local government may resubmit the proposal under a reduced time line, so that the agency and others have a chance to respond to the changed proposal. This new procedure is reflected in the rule amendments at OAR 660-018-0045.

10. **What if the local notice does not provide notice that meets the deadlines described in the rules?** If the local government does not provide the required notices described above, the department or any other person may appeal the local decision to LUBA under ORS 197.830 to 197.84, even if they have not participated in the local hearing. However, if the notice is simply late, ORS 197.620 provides that a local government may cure the late submission of notice materials by either postponing the date for the final evidentiary hearing by the greater of 10 days or the number of days by which the submission was late; or by holding the evidentiary record open for an additional period of time equal to 10 days or the number of days by which the submission was late, whichever is greater. The local government must provide notice of such postponement or record extension to the department. This revised statute is reflected in the rules at OAR 660-018-0040(8).

11. **What needs to be provided to DLCD once a change is approved by the local government?** After a local government changes a plan or land use regulation, it must submit the decision and related documents to the department, with the appropriate forms and other materials specified in the amended LCDC rules under OAR 660-018-0040. The law and rule specify that these must be submitted to the department within 20 days after making the final decision. The amended rule reflects the amended statute. The rule starts the 20 day clock from the date the local government makes its decision to adopt a change. This may be, but is not necessarily, the date the decision is deemed “final” under a local code or charter. The department provides forms for submittal of adopted changes, at the link provided in question 4, above.

12. **Why did the commission adopt a new rule requiring geospatial data?** Increasingly, local government changes to plan or zoning maps involve geospatial data, such as GIS data. Although this capability is by no means available to all local governments, many local governments rely on it, and voluntarily provide it to the department. The department now has the capacity to collect and store such data if provided by the local government. The amended rule would require local governments to provide this data to the department only for data associated with a UGB or urban reserve amendment. Otherwise, such data is not required, although the rule encourages local governments to submit it if that local government has such capability. The main purpose of this requirement is to make sure that GIS data provided in an electronic format is compatible with the State’s Geographic Information System (GIS) software standard specified in DAS rules at OAR 125-600-7550. DLCD is continuing to build its capacity to receive, store, and work with electronic geospatial data, recognizing that land use planning at both the state and local level is increasingly dependent on electronic mapping.