

June 14, 2006

TO: Land Conservation and Development Commission (LCDC)

FROM: Bob Rindy, DLCD

SUBJECT: **Agenda Item 4; June 29, 2006, LCDC meeting**

**Public Hearing and Possible Adoption of Amendments to Administrative Rules  
Regarding Application of the Goals to Newly Incorporated Cities and Annexations**

**AGENDA ITEM SUMMARY**

This item is intended as a public hearing on proposed amendments (and repeal) of administrative rules regarding the application of statewide goals to annexations and newly incorporated cities (see Attachment A to this report). At the conclusion of the hearing, the Land Conservation and Development Commission (LCDC) may adopt the proposed rule amendments and repeals. These are “housekeeping” proposals intended to align current rules with statutes regarding newly incorporated cities, and to consolidate “purpose statements” for current annexation rules.

For more information about this agenda item, contact Bob Rindy, at (503) 373-0050, Ext. 229, or email at [bob.rindy@state.or.us](mailto:bob.rindy@state.or.us).

**SUMMARY OF RECOMMENDED ACTION**

The department recommends that the Commission adopt the proposed rule amendments under OAR 660, division 14, and repeal the rule under OAR 660, division 1, as per Attachment A to this report.

**BACKGROUND**

This proposal grew out of discussions between the department and the newly incorporated City of Damascus with regard to the proper procedures for acknowledgement of the city’s plan. It appears there is a conflict between LCDC rules and state law at ORS 197.757.

Currently, rules under OAR 660-014-0010(4) state that a newly incorporated city’s plan shall be acknowledged under either the “acknowledgement procedures,” “periodic review procedures,” or “post-acknowledgement procedures.” Post-acknowledgement procedures are codified at ORS 197.610 to 197.625. LCDC’s current rule lists this sequence of statutes, but also lists ORS 197.626 – 197.650. These are the “periodic review

procedures,” i.e., different procedures than the “post-acknowledgement procedures.” Thus, OAR 660-014-0010(4) is, at a minimum, ambiguous as to which acknowledgement procedures to follow. Moreover, state law at ORS 197.757<sup>1</sup> requires that a newly incorporated city’s comprehensive plan and land use regulations be acknowledged under the “acknowledgement procedures” in ORS 197.251 (clarified by LCDC rules in OAR 660, division 3). As such, this statute appears to rule out acknowledgement by following either the post-acknowledgement process or the periodic review process. The department therefore concludes that current rules at OAR 660-014-0010(4) are inconsistent with state law.

It should be noted that OAR 660-014-0010(3) contains similar language that references statutes under ORS 197.610 to 197.650. The department is not proposing to amend these rules at this time because they appear to relate only to a county order that authorizes an incorporation election pursuant to ORS 221.040, or a resolution adopted by a city approving an incorporation within three miles of its city limits. In other words, this rule does not relate to the process of acknowledging a newly incorporated city’s plan, and so does not conflict with ORS 197.757.

It should be also noted that ORS 197.757 includes an acknowledgement deadline, and requires a newly incorporated city to have its plan acknowledged within four years after the date of incorporation:

**“197.757 Acknowledgment deadline for newly incorporated cities.** Cities incorporated after January 1, 1982, shall have their comprehensive plans and land use regulations acknowledged under ORS 197.251 no later than four years after the date of incorporation.”

Therefore, it is reasonable to conclude that this deadline is in fact a “compliance schedule,” required under ORS 197.251(10) and OAR 660, division 3. Statutes and rules regarding the acknowledgement process mention the “compliance schedule,” but do not clearly indicate the manner of its adoption, or whether it is mandatory for cities to have such a schedule. ORS 197.251(10) implies that the schedule would be necessary as part of an extension of time after a city misses an acknowledgement deadline. The department concludes that that read together, these statutes require acknowledgement of a newly incorporated city’s plan either in four years, or as extended by a “compliance schedule.” The department therefore proposes that the revised OAR 660-014-0010(3) be drafted so as to clarify that the four year schedule may be modified by a (different) schedule adopted by the Commission.

Finally, regarding rules under OAR 660, division 14, several months ago legal counsel notified the department about an “orphan” rule codified under OAR 660-001-0300 – a rule that used to introduce a cluster of rules that no longer exist at that location. This

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<sup>1</sup> 197.757 states that “cities incorporated after January 1, 1982, shall have their comprehensive plans and land use regulations acknowledged under ORS 197.251 . . .”. This is the “acknowledgement process,” further clarified under LCDC rules at OAR 660, division 3.

provision indicates the purpose of two subsequent annexation rules that used to reside at OAR 660-001-0310 and -0315. In 2004, these rules were moved to OAR 660, division 14, because they were “substantive”, and division 1 is intended to be about “procedures.” The staff report from that meeting indicates the commission intended to also move the “purpose” statement or combine it with the purpose statement under division 14, but apparently documents filed with the secretary of state’s office did not carry this out: Official sites listing LCDC rules still show the purpose statement under OAR 660-001-0030, even though it has no meaning in that context. As such the department proposes the repeal of the “orphan” purpose rule, and to make minor amendments to the purpose statement in OAR 660, division 14, to include the repealed provisions (See Attachment A).

### **OVERALL CONCLUSION AND RECOMMENDATION**

The department is recommending that the Commission amend administrative rules specifying the process for acknowledgment of comprehensive plans for newly incorporated cities (OAR 660-014-0010(4)) in order to conform the rule to state law at ORS 197.757. That law requires evaluation and acknowledgement of the plans for newly incorporated cities under the acknowledgement process in ORS 197.251. Current Commission rules at OAR 660-014-0010(4) require acknowledgement following the post-acknowledgement (or periodic review) procedures provided in ORS 197.610 to 197.650.

There is also a need to repeal OAR 660-001-0300 regarding the “purpose” of rules regarding application of statewide goals to annexations. This “purpose” statement no longer applies to any rule; the rules originally introduced by this “purpose” statement were renumbered in 2004 to OAR 660-014-0060 and OAR 660-014-0070, and, at that location, are currently introduced by a similar purpose statement at OAR 660-014-000, which will be slightly amended as part of this proposal.

The department recommends that the Commission adopt the proposed rule amendments under OAR 660, division 14, and repeal the rule under OAR 660, division 1, as per Attachment A to this report.

### **ATTACHMENTS**

- A. Proposed rule amendments, June 1, 2006 draft.
- B. ORS 197.251 and ORS 197.757.
- C. Public Notices
- D. Comments received prior to mailing this report