



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

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February 27, 2014

TO: Land Conservation and Development Commission

FROM: Katherine Daniels, Farm and Forest Lands Specialist
Sarah Marvin, Landowner Compensation Specialist
Matt Crall, Planning Services Division Manager

SUBJECT: **Agenda Item 8, March 13-14, 2014, LCDC Meeting**

INITIATION OF RULEMAKING REGARDING MEASURE 49

I. SUMMARY

Section 11(8) of Measure 49 (M49) authorizes counties to establish a system for transferring the development rights granted under the measure. The measure itself does not contain specifics, and no counties have yet established a system. The commission recognized that establishing such a system would yield significant benefits by shifting development to locations that would have less impact on farm, forest or natural areas. The commission directed the department to consider this as a rulemaking project on the 2013-2015 Policy Agenda. Such rules would create a framework that would allow interested counties to develop transfer of development rights (TDR) programs for M49 properties. The department recommends that the commission formally initiate rulemaking and appoint a Rules Advisory Committee (RAC) to assist the department with considering these rules.

For additional information about this report, please contact Katherine Daniels at 503-934-0069 or by email at katherine.daniels@state.or.us.

II. BACKGROUND

A. Authorization in Measure 49

M49 includes the following section that provides broad authorization for transferring the development rights granted under the measure:

(8) A person that is eligible to be a holder as defined in ORS 271.715 may acquire the rights to carry out a use of land authorized under sections 5 to 11, chapter 424, Oregon Laws 2007, from a willing seller in the manner provided by ORS 271.715 to 271.795.

Metro, cities and counties may enter into cooperative agreements under ORS chapter 195 to establish a system for the purchase and sale of severable development interests as described in ORS 94.531. A system established under this subsection may provide for the transfer of severable development interests between the jurisdictions of the public entities

that are parties to the agreement for the purpose of allowing development to occur in a location that is different from the location in which the development interest arises.

Section 11, chapter 424 Oregon Laws 2007

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2007orLaw0424.html

Although this section provides general authorization, it does not provide sufficient detail in itself to guide such a program. This rulemaking would provide counties with specific guidelines and define the limits of these TDR programs. This project may also create customizable model documents for counties to use in their TDR programs. These model documents would include an ordinance creating the system, an inter-governmental agreement, a conservation easement, a deed restriction, and a development credit deed.

Based on a wide range of preliminary conversations, staff concludes that there is significant interest in a TDR program. Furthermore, there would be additional interest once property owners are aware that they have an option to use their M49 home site authorizations other than developing their own property. Many owners would prefer to preserve their property (or develop only a single home site) if they could still gain the financial value of their M49 authorization.

Rulemaking would provide a framework for counties to adopt local M49 TDR programs if they wish to do so, but would not obligate any county to allow transfers. A TDR program would give land owners another option, but would not take away any of the rights that M49 granted if they choose to develop their own property.

B. Issues to Address

Outlined below are some of the issues that would need to be addressed in the rulemaking, along with preliminary concepts. The RAC will address most of these issues, although some will require legal advice. Others may require policy decisions. It is more than likely that additional issues will arise in the process of writing the actual rules and model documents.

1. M49 properties that qualify for TDR – Buildable properties (i.e. no physical constraints that would prevent building) zoned for resource or open space use. Exception areas zoned rural residential within 100-year floodplains or groundwater-restricted areas. Other areas could be considered.
2. Receiving areas – An initially promising option is exception areas zoned rural residential with 10-acre and 5-acre minimum lot sizes that would then permit development at 5-acre or 2-acre densities. Other options would be considered. Some types of areas could be excluded (e.g. floodplains, groundwater-restricted areas).
3. Method of protection – Conservation easements and deed restrictions.
4. Transfer ratios – The system could allow for bonus credits if the sending area was an especially problematic place for development. Examples could include high-value farmland, high-value forest land, floodplains, groundwater restricted areas, wildlife habitat, or Goal 5 resources.

5. Complete preservation – The system could allow for bonus credits if the sending property transferred all of the development rights (typically three home sites) instead of retaining a home site on the property.
6. Inter-Jurisdiction transfer – Should transfers of development credits be allowed from anywhere in Oregon to anywhere else in the state, or should transfers be restricted within regions or within a given distance?
7. Record-keeping to track credits – Especially important if credits are purchased from a sending area but not immediately applied to a receiving area.
8. Conditions of Approval from M49 Final Orders – Most or all of these conditions would not apply to the receiving area.
9. Vested Measure 37 development rights –Included in the TDR authorizing language. These typically include a greater amount of development. How should they be incorporated into a program?
10. Future M49 claims – How would TDR apply to M49 claims based on land use regulations enacted after January 1, 2007?

III. PUBLIC PARTICIPATION

The department has begun contacting potential members of a rules advisory committee (RAC) as listed below. At the time of this report not all positions have been filled and some invitees have not yet confirmed their willingness to serve. The Citizen Involvement Advisory Committee (CIAC) was invited to participate, but has not appointed a representative at the time of this report (CIAC meets March 6). An updated list will be presented at the commission meeting.

1. Jim Johnson, Oregon Department of Agriculture
2. Mike McCallister, Clackamas County Planning Director
3. Joe Fennimore, Marion County Planner
4. Steve McCoy, 1000 Friends of Oregon
5. Kelley Beamer, Executive Director, Coalition of Oregon Land Trusts
6. Lawyer or private planning consultant who has represented a significant number of M49 claimants (TBD)
7. Development interests – homebuilders and real estate representatives (TBD)

The procedures for public involvement under the commission’s “Citizen Involvement Guidelines for Policy Development” are being followed in this process, including:

1. Consultation with the Citizen Involvement Advisory Committee (CIAC) throughout the process
2. Publicizing RAC and LCDC meetings to provide opportunities for citizen participation
3. Having rulemaking information available on paper and on the web
4. Providing opportunities for comment directly to the department and commission

The procedures for citizen involvement will be utilized when the RAC meets and when the commission engages the public in the rulemaking process.

A mailing list will be created to provide information and to notify interested persons of RAC meetings and commission hearings. Persons interested in being included on the mailing list should contact Casaria Taylor (casaria.taylor@state.or.us, 503-934-0065).

IV. DEPARTMENT RECOMMENDATION AND DRAFT MOTIONS

The department is recommending that this rulemaking project begin immediately and that the commission appoint a rules advisory committee (RAC). This project is expected to take approximately 6 months.

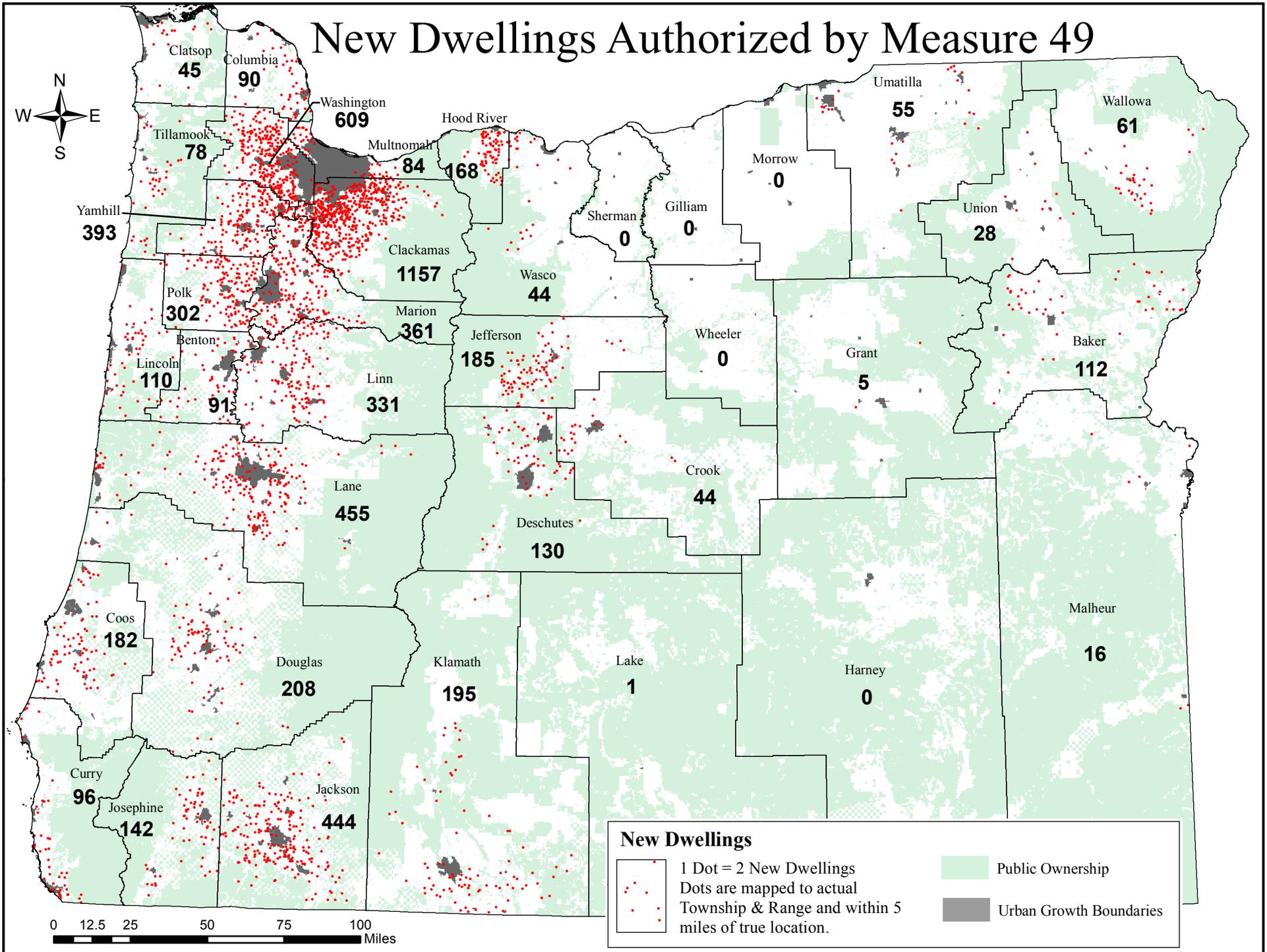
Draft Motion

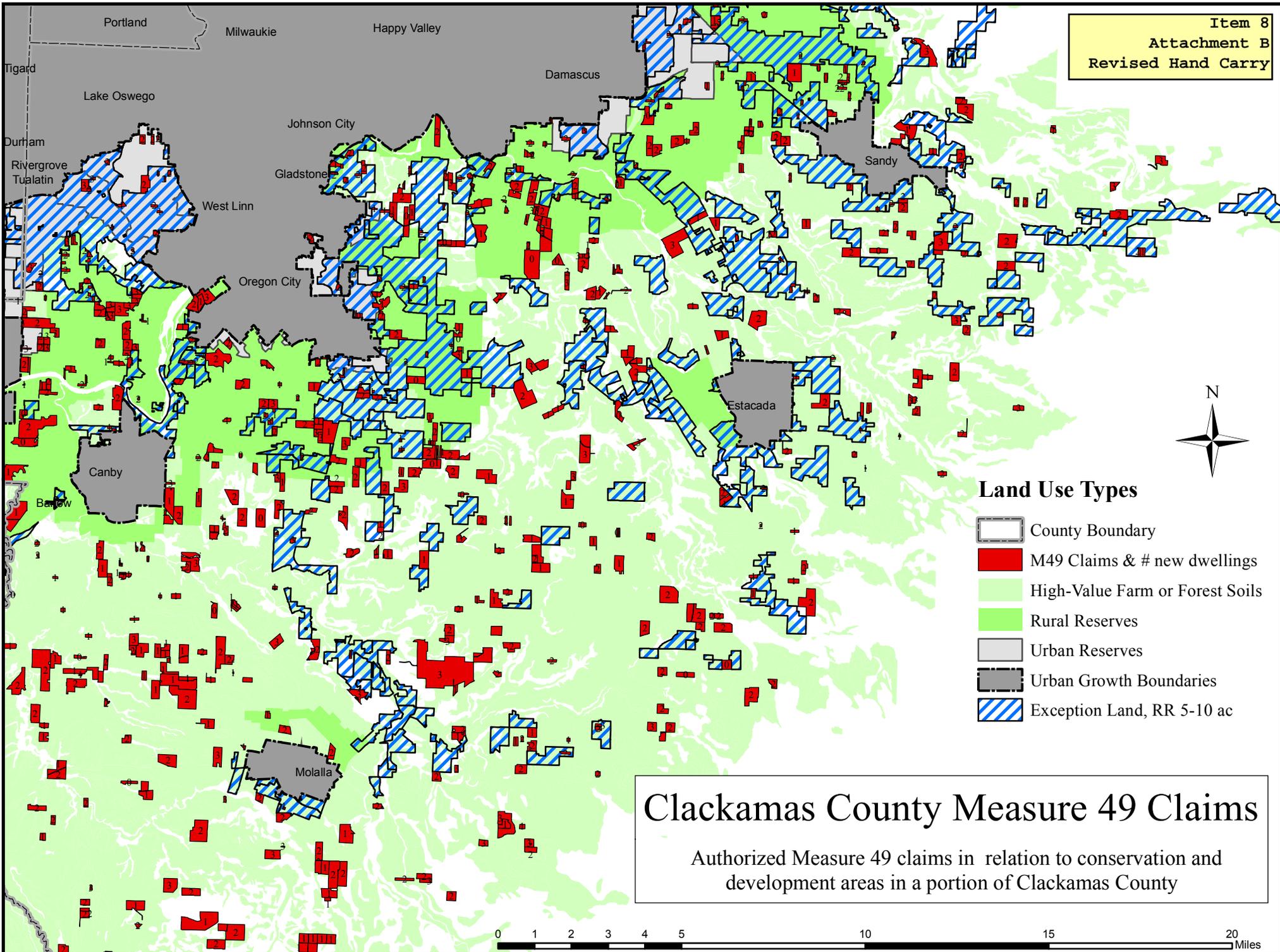
I move to initiate rulemaking to develop a program for transferring development rights granted under Measure 49 and to appoint a rules advisory committee.

V. ATTACHMENTS

- A. Figure of New Dwellings Authorized by Measure 49
- B. Map of Clackamas County M49 Claims

New Dwellings Authorized by Measure 49







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February 27, 2014

TO: Land Conservation and Development Commission

FROM: Bob Rindy, Senior Policy Analyst

SUBJECT: **Agenda Item 8, March 13-14, 2014, LCDC Meeting**

INITIATION OF RULEMAKING REGARDING POPULATION FORECASTS

I. SUMMARY

This item is intended for the Land Conservation and Development Commission (LCDC) to initiate rulemaking required by 2013 legislation, HB 2253, regarding population forecasts. This item is also intended for LCDC to appoint a Rules Advisory Committee (RAC) to assist the department and the commission with the rulemaking. The committee will begin meeting in April and will meet approximately every three weeks. This rule project will take approximately 6 months. The department is proposing consideration of new and amended rules, and the repeal of major portions of existing population rules under OAR 660-024-0030.

For additional information about this report, please contact Bob Rindy at 503-934-0008 or by email at bob.rindy@state.or.us.

II. BACKGROUND

HB 2253 (Attachment C), enacted in 2013, places the responsibility for population forecasting with the Population Forecasting Center at Portland State University (PSU) rather than with counties. The law will require new rules for implementation, both by DLCD and PSU. The law will require substantial repeal and/or amendment of existing LCDC population rules at OAR 660-024-0030 (Attachment D).

The law enacted by HB 2253 provides that the university must adopt rules “in consultation with the department” to carry out this program. In addition, the law requires LCDC (in consultation with PSU) to adopt rules to implement the population forecasting program and to regulate the “transition” from population forecasts produced by counties under statutes in effect immediately before the bill to population forecasts produced by PSU under the new legislation.”

PSU is already considering new rules, in coordination with the department. The department is proposing to initiate the LCDC rulemaking after PSU has completed its rulemaking. PSU rules will regulate the process for forecasting, while LCDC rules will clarify the applicability, and the “phasing in” of new PSU forecasts.

HB 2253 repealed statutes that assigned the responsibility of population forecasting to counties and instead assign that responsibility (outside of Metro) to the Population Forecasting Center at Portland State University (PSU).

HB 2253 states that:

Section 2 (10) The Land Conservation and Development Commission, in consultation with the State Board of Higher Education, shall adopt rules to implement the population forecasting program required by this section.

Section 3 (3):

(a) A local government for which the center is to issue population forecasts under section 2 (2) of this 2013 Act that initiates a periodic review, or any other legislative review of its comprehensive plan that concerns the urban growth boundary, on or before the date the center issues a final population forecast for the urban growth boundary may continue its review under a population forecast that satisfies the requirements of ORS 195.034 and 195.036, as those sections were in effect immediately before the effective date of this 2013 Act.

(b) The Land Conservation and Development Commission shall adopt rules to regulate the transition from the application of population forecasts produced under ORS 195.034 and 195.036, as those sections were in effect immediately before the effective date of this 2013 Act, to the application of population forecasts produced under ORS 195.034 and 195.036, as those sections were in effect immediately before the effective date of this 2013 Act, to the application of population forecasts produced under section 2 of this 2013 Act and ORS 195.036, as amended by section 4 of this 2013 Act.

Note that HB 2253 amended ORS 195.036 and the repealed ORS 195.034 regarding population forecasts. As such, LCDC's rules at OAR 660-023-0030 must be adjusted accordingly since those rules are based on and refer to those repealed statutes. In fact, major portions of the existing rules must be repealed since they are no longer valid under new laws enacted by HB 2253. The workgroup should consider whether these rules should continue to reside under division 24. Because that rule division primarily pertains to UGBs, the question arises as to whether they have applicability to other land use topics. Indeed the intent of 2253 is clear that PSU population forecasts are "For the purpose of land use planning." In fact, forecasts are important for many land use planning topics, including transportation planning, economic development planning, housing, and others.

III. DEPARTMENT RECOMMENDATION & DRAFT MOTION

The department is recommending that this rulemaking project begin immediately and that a rule advisory committee (RAC) should be appointed by the commission. The department recommends that the RAC consist primarily of the members of the RAC that was appointed by PSU to develop rules regarding PSU's process and scheduled for implementation of HB 2253.

The department is recommending the following appointments to the RAC. Although all the members of this list have been contacted, at the time of this report not all have not confirmed that they have the ability to serve as a part of this work group.

1. Jason Jurjevich, Portland State University Population Research Center
2. Risa Proehl, Portland State University Population Research Center
3. Dennis Yee, Metro
4. Simon Skiles, Confederated Tribes of Siletz Indians
5. Erin Doyle, League of Oregon Cities
6. Mia Nelson, 1000 Friends of Oregon
7. Mark Nystrom, Association of Oregon Counties
8. Brandon Reich, Marion County
9. Damian Syrnyk, Oregon Planning Association and City of Bend
10. Jon Chandler, Oregon Home Builders Association
11. CIAC (TBD)

Draft Motion

I move to initiate rulemaking on population forecasting and to appoint a rules advisory committee.

IV. CITIZEN INVOLVEMENT

The procedures for public involvement under the commission's "Citizen Involvement Guidelines for Policy Development" (the CIG, Attachment C) are being followed in this process. This includes: (1) consultation with the Citizen Involvement Advisory Committee (CIAC) throughout the process; (2) establishing and publicizing a schedule of work group meetings and LCDC meetings to provide opportunities for citizen participation; (3) having rulemaking information available in paper form and available on the agency's website; and (4) providing opportunities for citizens to comment directly to the department and commission. The procedures for citizen involvement will be utilized when the workgroup meets and when the commission engages the public in the rule amendment process.

A mailing list is being created by the department to provide information and to notify interested persons of workgroup and commission hearings. Information will be available on the agency's website.

Persons with questions about this rule amendment process should contact Bob Rindy at 503-934-0008, or email at bob.rindy@state.or.us.

Persons interested in being included on the mailing list should contact Casaria Taylor at 503-934-0065 or by email at casaria.taylor@state.or.us.

V. ATTACHMENTS

- C. HB 2253
- D. Current Population Rules at OAR 660-024-0030
- E. Citizen Involvement Guidelines for Policy Development (CIG)

77th OREGON LEGISLATIVE ASSEMBLY--2013 Regular Session

Enrolled House Bill 2253

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Land Conservation and Development)

CHAPTER

AN ACT

Relating to population forecasts for land use planning; creating new provisions; amending ORS 195.036 and 197.639; repealing ORS 195.034; appropriating money; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2013 Act is added to and made a part of ORS chapter 195.

SECTION 2. (1) As used in this section, “affected local government” means:

(a) A city or county for which the Portland State University Population Research Center is preparing a population forecast;

(b) A county that contains all or part of a city or an urban growth boundary for which the center is preparing a population forecast; and

(c) A local service district, as defined in ORS 174.116, that includes territory within the area subject to the population forecast.

(2) For the purpose of land use planning, the center shall issue a population forecast for:

(a) Each county except Multnomah, Clackamas and Washington Counties;

(b) The portions of Multnomah, Clackamas and Washington Counties that are not within Metro; and

(c) The area within each urban growth boundary other than the urban growth boundary of Metro.

(3) A local government with land use jurisdiction over land for which the center issues population forecasts under subsection (2) of this section shall apply the current final population forecast when changing the comprehensive plan or a land use regulation of the local government.

(4) The center shall issue population forecasts for each area described in subsection (2) of this section not less than once every four years on a schedule established by rule of the State Board of Higher Education adopted in consultation with the Department of Land Conservation and Development.

(5) When issuing a population forecast, the center shall:

(a) Consider and, if appropriate, incorporate available local data and information about local conditions received from representatives of local governments and members of the public;

(b) Cause, directly or with the assistance of the Department of Land Conservation and Development, the issuance of notice to all affected local governments and to members of the public that have provided a written request for notice to the center; and

(c) Post the methodology and supporting data used to make the population forecast on a publicly available website when the center causes notice to be issued as described in paragraph (b) of this subsection.

(6) A population forecast must forecast population for a 50-year period including:

(a) Forecasts for intervals, within the 50-year period, that are established by rule of the State Board of Higher Education adopted in consultation with the Department of Land Conservation and Development; and

(b) Population cohorts as provided by rule of the board adopted in consultation with the department.

(7) Within 45 days after the center issues a proposed population forecast under this section, a member of the public or an affected local government may file objections with the center. An objection must be supported by the inclusion of data or information that supports the objection. If the center:

(a) Does not receive an objection within the 45-day period, the proposed population forecast becomes final.

(b) Receives an objection within the 45-day period, the center shall review the objections filed, make changes to the proposed population forecast, if necessary in the discretion of the center, and issue a final population forecast.

(8) Periodically, the Department of Land Conservation and Development may require the center to submit its forecasting methodology and local data collection practices for review by an advisory committee established by the department and composed of experts in the field of population forecasting, representatives of cities and counties and members of the public.

(9) The issuance of a final population forecast under this section is:

(a) Not a land use decision; and

(b) A final decision not subject to further review or appeal.

(10) The Land Conservation and Development Commission, in consultation with the State Board of Higher Education, shall adopt rules to implement the population forecasting program required by this section.

(11) Each biennium, the commission shall allocate, from the grant funding described in ORS 197.639 (5), an amount of moneys that the Land Conservation and Development Commission, in consultation with the State Board of Higher Education, determines is sufficient to operate the population forecasting program required by this section.

SECTION 3. (1) The first complete set of final population forecasts required by section 2 of this 2013 Act must be issued and made available for use within four years after the effective date of this 2013 Act.

(2) The Portland State University Population Research Center shall phase in production of the first set of population forecasts required by section 2 of this 2013 Act and shall make each population forecast available for use as produced.

(3) Notwithstanding the amendments to ORS 195.036 by section 4 of this 2013 Act and the repeal of ORS 195.034 by section 6 of this 2013 Act:

(a) A local government for which the center is to issue population forecasts under section 2 (2) of this 2013 Act that initiates a periodic review, or any other legislative review of its comprehensive plan that concerns the urban growth boundary, on or before the date the center issues a final population forecast for the urban growth boundary may continue its review under a population forecast that satisfies the requirements of ORS 195.034 and 195.036, as those sections were in effect immediately before the effective date of this 2013 Act.

(b) The Land Conservation and Development Commission shall adopt rules to regulate the transition from the application of population forecasts produced under ORS 195.034 and 195.036, as those sections were in effect immediately before the effective date of this 2013 Act, to the application of population forecasts produced under section 2 of this 2013 Act and ORS 195.036, as amended by section 4 of this 2013 Act.

SECTION 4. ORS 195.036 is amended to read:

195.036. *[The coordinating body under ORS 195.025 (1) shall establish and maintain a population forecast for the entire area within its boundary for use in maintaining and updating comprehensive plans, and shall coordinate the forecast with the local governments within its boundary.]* **Metro, in coordination with local governments within its boundary, shall issue a population forecast for the entire area within its boundary to be applied by Metro and local governments within the boundary of Metro as a basis for changes to comprehensive plans and land use regulations.**

SECTION 5. ORS 197.639 is amended to read:

197.639. (1) In addition to coordination between state agencies and local government established in certified state agency coordination programs, the Department of Land Conservation and Development may establish one or more state assistance teams made up of representatives of various agencies and local governments, utilize the Economic Revitalization Team established under ORS 284.555 or institute an alternative process for coordinating agency participation in the periodic review of comprehensive plans.

(2) The Economic Revitalization Team may work with a city to create a voluntary comprehensive plan review that focuses on the unique vision of the city, instead of conducting a standard periodic review, if the team identifies a city that the team determines can benefit from a customized voluntary comprehensive plan review.

(3) The department may develop model ordinance provisions to assist local governments in the periodic review plan update process and in complying with new statutory requirements or new land use planning goal or rule requirements adopted by the Land Conservation and Development Commission outside the periodic review process.

(4) A local government may arrange with the department for the provision of periodic review planning services and those services may be paid with grant program funds **allocated under subsection (5) of this section.**

(5) The commission shall establish an advisory committee composed, at a minimum, of representatives from the League of Oregon Cities, the Association of Oregon Counties, metropolitan service districts, the Special Districts Association of Oregon, land use planning public interest groups and developer interest groups. The advisory committee shall advise the commission and the department on the allocation of grants and technical assistance funding from General Fund sources and other issues assigned by the commission.

(6) The population forecasting program operated by the Portland State University Population Research Center pursuant to section 2 of this 2013 Act is the highest priority for the allocation of grant funding under subsection (5) of this section.

SECTION 6. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium beginning July 1, 2013, out of the General Fund, the amount of \$250,000 for the purpose of allocating grant moneys pursuant to section 2 (11) of this 2013 Act to operate the population forecasting program required by section 2 of this 2013 Act.

SECTION 7. ORS 195.034 is repealed.

SECTION 8. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect July 1, 2013.

Passed by House June 12, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 20, 2013

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State

DIVISION 24

URBAN GROWTH BOUNDARIES

660-024-0030

Population Forecasts

(1) Counties must adopt and maintain a coordinated 20-year population forecast for the county and for each urban area within the county consistent with statutory requirements for such forecasts under ORS 195.025 and 195.036. Cities must adopt a 20-year population forecast for the urban area consistent with the coordinated county forecast, except that a metropolitan service district must adopt and maintain a 20-year population forecast for the area within its jurisdiction. In adopting the coordinated forecast, local governments must follow applicable procedures and requirements in ORS 197.610 to 197.650 and must provide notice to all other local governments in the county. The adopted forecast must be included in the comprehensive plan or in a document referenced by the plan.

(2) The forecast must be developed using commonly accepted practices and standards for population forecasting used by professional practitioners in the field of demography or economics, and must be based on current, reliable and objective sources and verifiable factual information, such as the most recent long-range forecast for the county published by the Oregon Office of Economic Analysis (OEA). The forecast must take into account documented long-term demographic trends as well as recent events that have a reasonable likelihood of changing historical trends. The population forecast is an estimate which, although based on the best available information and methodology, should not be held to an unreasonably high level of precision.

(3) For a population forecast used as a basis for a decision adopting or amending a UGB submitted under ORS 197.626, the director or Commission may approve the forecast if they determine that a failure to meet a particular requirement of section (2) of this rule is insignificant in nature and is unlikely to have a significant effect on the needs determined under OAR 660-024-0040.

(4) A city and county may apply one of the safe harbors in subsections (a), (b), or (c) of this section, if applicable, in order to develop and adopt a population forecast for an urban area:

(a) If a coordinated population forecast was adopted by a county within the previous 10 years but does not provide a 20-year forecast for an urban area at the time a city initiates an evaluation or amendment of the UGB, a city and county may adopt an updated forecast for the urban area consistent with this section. The updated forecast is deemed to comply with applicable goals and laws regarding population forecasts for purposes of the current UGB evaluation or amendment provided the forecast:

(A) Is adopted by the city and county in accordance with the notice, procedures and requirements described in section (1) of this rule; and

(B) Extends the current urban area forecast to a 20-year period commencing on the date determined under OAR 660-024-0040(2) by using the same growth trend for the urban area assumed in the county's current adopted forecast.

(b) A city and county may adopt a 20-year forecast for an urban area consistent with this section. The forecast is deemed to comply with applicable goals and laws regarding population forecasts for purposes of the current UGB evaluation or amendment provided the forecast:

(A) Is adopted by the city and county in accordance with the notice, procedures and requirements described in section (1) of this rule;

(B) Is based on OEA's population forecast for the county for a 20-year period commencing on the date determined under OAR 660-024-0040(2); and

(C) Is developed by assuming that the urban area's share of the forecasted county population determined in subsection (B) of this rule will be the same as the urban area's current share of county population based on the most recent certified population estimates from Portland State University and the most recent data for the urban area published by the U.S. Census Bureau.

(c) A city may adopt a revised 20-year forecast for its urban area by following the requirements in ORS 195.034.

Stat. Auth.: ORS 197.040, Statewide Planning Goal 14, 195.034

Stats. Implemented: ORS 195.036, 197.015, 197.295 - 197.314, 197.610 - 197.650, 197.764, 195.034

Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 2-2009, f. 4-8-09, cert. ef. 4-16-09

LAND CONSERVATION AND DEVELOPMENT COMMISSION CITIZEN INVOLVEMENT GUIDELINES FOR POLICY DEVELOPMENT

Approved by LCDC on April 23, 2004

I. Purpose

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

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

II. Public Involvement Objectives in Development of Commission Policy

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

III. Public Participation and Outreach Methods

A. Citizen Involvement Guidelines

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

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

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

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

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

IV. Communication with Citizens

A. Understandable Information

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

B. Notice of Decisions

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

C. Costs

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

D. Appeal Information

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

E. Electronic Communication

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

V. Applicability

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



Oregon

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February 27, 2014

TO: Land Conservation and Development Commission

FROM: Jon Jinings, Community Services Specialist
Jim Rue, Director

SUBJECT: **Agenda Item 8, March 13-14, 2014, LCDC Meeting**

INITIATION OF RULEMAKING REGARDING YOUTH CAMPS ON CERTAIN AGRICULTURAL LANDS IN EASTERN OREGON

I. SUMMARY

A. Type of Action and Commission Role

The department is asking the Land Conservation and Development Commission (LCDC) to initiate rulemaking required by legislation enacted in the 2013 legislative session and to appoint a rules advisory committee (RAC) to assist the department and the commission with the rulemaking. The purpose of this project is to allow counties to authorize establishment of youth camps on land in Eastern Oregon zoned exclusive farm use (EFU) that predominantly consisting of Class VI, VII, or VIII soils. The RAC will begin meeting in April and is expected to meet at least twice in order to recommend a set of rules for hearing and adoption by LCDC. This rule project will take approximately six months. This rulemaking is on the 2013-2015 policy agenda approved by the commission.

For additional information about this report, please contact Jon Jinings at 541-322-2032, or by email at jon.jinings@state.or.us.

II. BACKGROUND

A bill enacted in the 2013 session ([HB 3098](#)) authorizes youth camps in EFU zones, and requires LCDC to adopt rules to provide for this use. The LCDC rules must be based on current rules authorizing youth camps in forest zones, although it is not clear whether all the elements of those rules may be simply translated into new rules for farmland. HB 3098 was proposed in response to a request for expansion of the Young Life development in Jefferson and Wasco counties, but the initial bill was adjusted considerably during legislative consideration. The final legislation is not necessarily intended to apply to the current Young Life development.

III. DEPARTMENT RECOMMENDATION & DRAFT MOTION

The department recommends that this rulemaking project begin immediately, that the rulemaking project be based on the express provisions of HB 3098 and consideration of rules adopted to site youth camps in forest and mixed farm-forest zoning districts. See [OAR 660-006-0031](#).

At the time of this report, several agencies and other stakeholders have expressed their availability to serve on a RAC. The department recommends that membership of the RAC be comprised as follows.

1. John Roberts, Wasco County Planning Director
2. Jim Johnson, Oregon Department of Agriculture
3. Joy Vaughan, Oregon Department of Fish &
4. Nancy Swearingen, Young Life
5. Steve McCoy, 1000 Friends of Oregon
6. Oregon Cattleman's Association (TBD)
7. Tribes (TBD)
8. Representative of camping interests (TBD)

Draft Motion

I move to initiate rulemaking on youth camps and to appoint a rules advisory committee.

IV. PUBLIC INVOLVEMENT

The procedures for public involvement under the commission's "Citizen Involvement Guidelines for Policy Development" (the CIG) are being followed in this process. This includes:

(1) consultation with the Citizen Involvement Advisory Committee (CIAC) throughout the process; (2) establishing and publicizing a schedule of work group meetings and LCDC meetings to provide opportunities for citizen participation; (3) having rulemaking information available in paper form and available on the agency's website; and (4) providing opportunities for citizens to comment directly to the department and commission. The procedures for citizen involvement will be utilized when the workgroup meets and when the commission engages the public in the rule amendment process.

A mailing list is being created by the department to provide information and to notify interested persons of workgroup and commission hearings. Information will be available on the agency's website. Persons interested in being included on the mailing list should contact Casaria Taylor at 503-934-0065 or by email at ccasaria.taylor@state.or.us.

77th OREGON LEGISLATIVE ASSEMBLY--2013 Regular Session

Enrolled
House Bill 3098

Sponsored by Representative HUFFMAN; Representatives CONGER, DAVIS, ESQUIVEL,
MCLANE, WHISNANT, Senators FERRIOLI, HANSELL

CHAPTER

AN ACT

Relating to youth camp expansion; creating new provisions; amending ORS 215.457; appropriating money; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 215.457 is amended to read:

215.457. A person may establish a youth camp:

(1) On land zoned for forest use or mixed farm and forest use, consistent with rules adopted by the Land Conservation and Development Commission [*under section 3, chapter 586, Oregon Laws 1999*].

(2) **On land in eastern Oregon, as defined in ORS 321.805, that is zoned for exclusive farm use and is composed predominantly of class VI, VII or VIII soils, consistent with rules adopted by the Land Conservation and Development Commission. However, a person may not establish a youth camp authorized under this subsection within an irrigation district or within three miles of an urban growth boundary as defined in ORS 197.295. A youth camp may be authorized under this subsection only on a lawfully established unit of land as defined in ORS 92.010 of at least 1,000 acres.**

SECTION 2. (1) Within one year after the effective date of this 2013 Act, the Land Conservation and Development Commission shall adopt rules to establish criteria for implementation of ORS 215.457 (2).

(2) The rules must:

(a) Protect adjacent uses in a manner that is substantially similar to the protections described in ORS 215.296;

(b) Be based on the rules adopted under ORS 215.457 before the effective date of this 2013 Act; and

(c) Require strict adherence to the protection of archaeological objects, archaeological sites, burials, funerary objects, human remains, objects of cultural patrimony and sacred objects, as set forth in ORS 97.740 to 97.760 and 358.905 to 358.961, in the development and use of the youth camp.

(3) A local government may not authorize the establishment of a youth camp under ORS 215.457 (2) before the effective date of rules adopted under this section.

SECTION 3. In addition to and not in lieu of any other appropriation, there is appropriated to the Department of Land Conservation and Development, for the biennium beginning July 1, 2013, out of the General Fund, the amount of \$50,000 for the purpose of carrying out the provisions of this 2013 Act.

SECTION 4. The amendments to ORS 215.457 by section 1 of this 2013 Act become operative on the effective date of rules adopted under section 2 of this 2013 Act. The Land Conservation and Development Commission shall notify the Legislative Counsel immediately upon filing the rules with the Secretary of State.

SECTION 5. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by House July 6, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate July 7, 2013

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2013

Approved:

.....M.,....., 2013

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2013

.....
Kate Brown, Secretary of State

1 **OAR 660-006-0031**

2 **Youth Camps**

3

4 (1) A youth camp may be established in compliance with the provisions of this rule. The purpose of this
5 rule is to provide for the establishment of a youth camp that is generally self-contained and located on a
6 parcel suitable to limit potential impacts on nearby and adjacent land and to be compatible with the
7 forest environment.

8 (2) Changes to or expansions of youth camps established prior to the effective date of this rule shall be
9 subject to the provisions of ORS 215.130.

10 (3) A "youth camp" is a facility either owned or leased, and operated by a state or local government, or a
11 nonprofit corporation as defined under ORS 65.001, to provide an outdoor recreational and educational
12 experience primarily for the benefit of persons 21 years of age and younger. Youth camps do not include
13 any manner of juvenile detention center or juvenile detention facility.

14 (4) An application for a proposed youth camp shall comply with the following:

15 (a) The number of overnight camp participants that may be accommodated shall be determined by the
16 governing body, or its designate, based on the size, topography, geographic features and any other
17 characteristics of the proposed site for the youth camp. Except as provided by subsection (4)(b) of this
18 rule a youth camp shall not provide overnight accommodations for more than 350 youth camp
19 participants, including staff.

20 (b) The governing body, or its designated may allow up to eight (8) nights during the calendar year when
21 the number of overnight participants may exceed the total number of overnight participants allowed
22 under subsection (4)(a) of this rule.

23 (c) Overnight stays for adult programs primarily for individuals over 21 years of age, not including staff,
24 shall not exceed 10 percent of the total camper nights offered by the youth camp.

25 (d) The provisions of OAR 660-006-0025 (5)(a).

26 (e) A campground as described in ORS 215.283(2)(c), 215.213(2)(e) and OAR 660-006-0025 (4)(e) shall
27 not be established in conjunction with a youth camp.

28 (f) A youth camp shall not be allowed in conjunction with an existing golf course.

29 (g) A youth camp shall not interfere with the exercise of legally established water rights on adjacent
30 properties.

31 (5) The youth camp shall be located on a lawful parcel that is:

32 (a) Suitable to provide a forested setting needed to ensure a primarily outdoor experience without
33 depending upon the use or natural characteristics of adjacent and nearby public and private land. This
34 determination shall be based on the size, topography, geographic features and any other characteristics

1 of the proposed site for the youth camp, as well as, the number of overnight participants and type and
2 number of proposed facilities. A youth camp shall be located on a parcel of at least:

3 (A) 80-acres if located in eastern Oregon.

4 (B) 40-acres if located in western Oregon.

5 (b) Suitable to provide a protective buffer to separate the visual and audible aspects of youth camp
6 activities from other nearby and adjacent lands. The buffers shall consist of forest vegetation,
7 topographic or other natural features as well as structural setbacks from adjacent public and private
8 lands, roads, and riparian areas. The structural setback from roads and adjacent public and private
9 property shall be 250 feet unless the governing body, or its designate sets a different setback based
10 upon the following criteria that may be applied on a case-by-case basis:

11 (A) The proposed setback will prevent conflicts with commercial resource management practices;

12 (B) The proposed setback will prevent a significant increase in safety hazards associated with vehicular
13 traffic; and

14 (C) The proposed setback will provide an appropriate buffer from visual and audible aspects of youth
15 camp activities from other nearby and adjacent resource lands.

16 (c) Suitable to provide for the establishment of sewage disposal facilities without requiring a sewer
17 system as defined in OAR 660-011-0060 (1)(f). Prior to granting final approval, the governing body or its
18 designate shall verify that a proposed youth camp will not result in the need for a sewer system.

19 (d) Predominantly forestland if within a mixed agricultural/forest zone as provided for under OAR 660-
20 006-0050 .

21 (6) A youth camp may provide for the following facilities:

22 (a) Recreational facilities limited to passive improvements, such as open areas suitable for ball fields,
23 volleyball courts, soccer fields, archery or shooting ranges, hiking and biking trails, horse back riding or
24 swimming that can be provided in conjunction with the site's natural environment. Intensively
25 developed facilities such as tennis courts, gymnasiums, and golf courses shall not be allowed. One
26 swimming pool may be allowed if no lake or other water feature suitable for aquatic recreation is
27 located on the subject property or immediately available for youth camp use.

28 (b) Primary cooking and eating facilities shall be included in a single building. Except in sleeping quarters,
29 the governing body, or its designate, may allow secondary cooking and eating facilities in one or more
30 buildings designed to accommodate other youth camp activities. Food services shall be limited to the
31 operation of the youth camp and shall be provided only for youth camp participants. The sale of
32 individual meals may be offered only to family members or guardians of youth camp participants.

33 (c) Bathing and laundry facilities except that they shall not be provided in the same building as sleeping
34 quarters.

- 1 (d) Up to three camp activity buildings, not including primary cooking and eating facilities.
- 2 (e) Sleeping quarters including cabins, tents or other structures. Sleeping quarters may include toilets,
3 but, except for the caretaker's dwelling, shall not include kitchen facilities. Sleeping quarters shall be
4 provided only for youth camp participants and shall not be offered as overnight accommodations for
5 persons not participating in youth camp activities or as individual rentals.
- 6 (f) Covered areas that are not fully enclosed.
- 7 (g) Administrative, maintenance and storage buildings; permanent structure for administrative services,
8 first aid, equipment and supply storage, and for use as an infirmary if necessary or requested by the
9 applicant.
- 10 (h) An infirmary may provide sleeping quarters for the medical care provider (e.g. Doctor, Registered
11 Nurse, Emergency Medical Technician, etc.).
- 12 (i) A caretaker's residence may be established in conjunction with a youth camp prior to or after June 14,
13 2000, if no other dwelling exists on the subject property.
- 14 (7) A proposed youth camp shall comply with the following fire safety requirements:
- 15 (a) The fire siting standards in OAR 660-006-0035 ;
- 16 (b) A fire safety protection plan shall be developed for each youth camp that includes the following:
- 17 (A) Fire prevention measures;
- 18 (B) On site pre-suppression and suppression measures; and
- 19 (C) The establishment and maintenance of fire safe area(s) in which camp participants can gather in the
20 event of a fire.
- 21 (c) Except as determined under subsection (7)(d) of this rule, a youth camp's on-site fire suppression
22 capability shall at least include:
- 23 (A) A 1000 gallon mobile water supply that can access all areas of the camp;
- 24 (B) A 30 gallon-per-minute water pump and an adequate amount of hose and nozzles;
- 25 (C) A sufficient number of fire fighting hand tools; and
- 26 (D) Trained personnel capable of operating all fire suppression equipment at the camp during
27 designated periods of fire danger.
- 28 (d) An equivalent level of fire suppression facilities may be determined by the governing body, or its
29 designate. The equivalent capability shall be based on the Oregon Department of Forestry's (ODF)
30 Wildfire Hazard Zone rating system, the response time of the effective wildfire suppression agencies,

1 and consultation with ODF personnel if the camp is within an area protected by ODF and not served by a
2 local structural fire protection provider.

3 (e) The provisions of OAR 660-006-0031 (7)(d) may be waived by the governing body, or its designate, if
4 the youth camp is located in an area served by a structural fire protection provider and that provider
5 informs the governing body in writing that on-site fire suppression at the camp is not needed.

6 (8) The governing body, or its designate, shall require as a condition of approval of a youth camp, that
7 the land owner of the youth camp sign and record in the deed records for the county a document
8 binding the land owner, or operator of the youth camp if different from the owner, and the land owner's
9 or operator's successors in interest, prohibiting them from pursuing a claim for relief or cause of action
10 alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936
11 or 30.937.

12 (9) Nothing in this rule relieves governing bodies from complying with other requirements contained in
13 the comprehensive plan or implementing land use regulations such as the requirements addressing
14 other resource values (e.g. Goal 5) that exist on forest lands.

15 (10) The provisions of this rule shall apply directly to any land use decision pursuant to ORS 197.646 and
16 215.427(3) commencing October 12, 2000. A county may adopt provisions in its comprehensive plan or
17 land use regulations that establish standards and criteria in addition to those set forth in this rule, or to
18 ensure compliance with any standards or criteria.