



Oregon

John A. Kitzhaber, M.D., Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD

August 4, 2011

TO: Land Conservation and Development Commission

FROM: Bob Rindy and Michael Morrissey, Policy Analysts

SUBJECT: **Agenda Item 7, August 17-19, 2011, LCDC Meeting**

INITIAL DISCUSSION OF 2011-13 POLICY AND RULEMAKING AGENDA

This item is the first of two scheduled opportunities for the Land Conservation and Development Commission (LCDC) to discuss and make decisions about its policy and rulemaking agenda for the 2011-13 biennium. The commission historically approves a policy agenda in the late summer or early fall – at the beginning of each biennium. The department is recommending that the commission reach a final decision on its policy agenda at its October 5-7, 2011, meeting.

The policy agenda is intended to establish the commission's and the department's priorities for the biennium with regard to rulemaking and other policy projects. The policy agenda is not a mandatory exercise, and the commission's approval does not bind the commission or the department to pursuing the projects on the agenda. The commission typically revisits its policy agenda halfway through the biennium and may adjust it at that time.

A preliminary list of policy and rulemaking projects required or underway is provided as Attachment A to this report, as a starting point of this discussion. The department has invited stakeholders to offer ideas, make recommendations, and engage in the discussion at the August meeting. The policy agenda is influenced in large part by legislation, and a report on new land use legislation is provided under Item 6 of LCDC's August meeting agenda.

This item also includes a short report on the previous biennial policy agenda (2009-2011): Attachment B.

For additional information about this report, please contact Bob Rindy at 503-373-0050 ext 229, email at bob.rindy@state.or.us, or Michael Morrissey at 503-373-0050 ext 320, e-mail at michael.morrissey@state.or.us.

I. BACKGROUND AND OVERVIEW

The Land Conservation and Development Commission (LCDC), in its role overseeing the state land use program, is tasked with directing the department, including the director and staff, "*in the*

performance ... of their functions under ORS chapters 195, 196 and 197...” (ORS 197.040). The commission is empowered to adopt and amend statewide goals and “*rules that it considers necessary to carry out...*” state land use laws. The commission is also charged with reviewing and revising the statewide land use planning goals and implementing rules as it deems necessary in administering the program.

In this role, the commission periodically monitors and assesses the status of the land use program and responds to current land use planning issues based on input from the public, the department, the governor and the legislature. The commission and the department engage in efforts to maintain, improve and update the program and its policies through rulemaking and other “policy projects” such as legislative proposals.

The commission began approving a policy agenda in 1993, at the beginning of a biennium, in order to focus and schedule its response to issues and directives and has continued that practice ever since. The statewide planning program faces unique policy challenges every biennium, either in response to new or continuing issues, new legislation, court decisions interpreting the program and other circumstances. This new biennium is no exception, and there are a number of pressing issues both ongoing and new that will require attention this biennium. While policy agendas have tended to focus on review and revision of rules, other types of policy projects that are not rulemaking can and should be pursued and are also identified as part of this exercise.

When considering its policy agenda, and as it carries out projects in the agenda, the commission follows its Citizen Involvement Guidelines for Policy Development (Attachment C). The commission also invites comments and recommendations from local governments and other stakeholders, early in the policy agenda process and throughout. Finally, in deciding on the policy agenda, major consideration must be given to the agency’s budget and staff levels, its ongoing core responsibilities, and other needs and available resources.

II. SUMMARY OF DEPARTMENT RECOMMENDATION

The department is recommending that the commission begin the discussion of the policy agenda at this (August) meeting, including public comment and a discussion about proposed policy priorities. There are several policy issues that must be pursued because they are legislatively required, but there is also a range of projects where attention is not required by law but which may be highly recommended by stakeholders, the department, legislators and others. The commission should provide direction to the department and stakeholders as to how this conversation should continue toward a final recommendation at the October 5-7 meeting.

The department’s preliminary recommendation, to frame the discussion, consists of two categories of projects described in Section IV below: (A) Ongoing Projects scheduled or in-progress from the previous (2009-2011) policy agenda, and (B) Legislatively Required Projects. A summary description is provided in Attachment A.

The department’s capacity to pursue policy projects is constrained by the availability of staff and other resources. Most of the agency’s staff and resources are focused on other required agency

work. However, the department's budget does include policy staff and some other resources to pursue policy work. The policy agenda is in large part intended to focus these limited resources on the key projects the commission considers necessary or highest priority in order to maintain and improve state land use policy. This report begins with a description and estimate of the "core work" (outside of policy work) the department must perform during the biennium. This is described as "The Base Workload" of the department for the biennium.

III. PREDICTED BASE WORKLOAD FOR THE DEPARTMENT

The department has limited capacity to engage in policy and rulemaking in large part because most department resources are devoted to its core responsibilities, its "base workload." This is described here very summarily through rough estimates of the amount of program staff and other resources necessary to perform periodic review, technical assistance and a large number of other mandated responsibilities. In general, this workload is borne by program staff assigned to support these responsibilities, but much of this work also demands time and effort by the commission as well as grant resources.

Department staff includes two policy analysts assigned to rulemaking and other policy work, but who also help with other "non policy" work. Other program staff also help with policy work for key program areas. Finally, the time and effort required by the commission itself to carry out mandated programs of the department such as periodic review, UGB decisions and similar commission activities often takes precedent over optional policy work.

A significant portion of the base workload (and a key constraint for the commission to consider in establishing its policy agenda) is indicated by the number of jurisdictions entering periodic review and the number of UGB decisions expected to be coming to LCDC for review over the next two years. For the 2011-2013 biennium, it is estimated that 25 periodic review work tasks will be submitted for review by the department and/or the commission. It is estimated that 15 to 20 UGB amendments or Urban Reserve decisions will be submitted for review by the department and/or the commission during the biennium. Core staff also manages periodic review and technical assistance grants and plan amendments, and given the current budget climate, DLCD staff "hands on" technical assistance is crucial to some smaller cities and counties. The base workload also includes tasks managed by the Coastal Division, Emergency Management and the TGM program.

This report is not including policy projects as part of the base workload, but nevertheless several projects are required this biennium, either by legislation or the governor. The list in Section IV of this report, below and in Attachment A, identifies projects required by law (and those which are not required but are underway or scheduled).

IV. POLICY PROJECTS REQUIRED OR UNDERWAY THIS BIENNIUM

The department has included below a list of policy projects that are scheduled or underway and those that are required for the 2011-2013 biennium due to legislation or Governor's order. For all the projects described here, mandatory or otherwise, this report provides only a summary of the intent of the project. The department is prepared to provide additional detail at the meeting.

Attachment A to this report provides an at-a-glance summary of the mandatory and ongoing projects, along with the predicted work load for each project.

This item, the first meeting on the new policy agenda, is also intended as a public hearing to gather input about this topic, and as such, it is anticipated that many ideas not described in this report will be presented in the hearing, including perhaps many new ideas or suggestions that have not been previously offered. The department has asked department staff to contribute to this discussion. These suggestions will be summarized and provided to the commission at the meeting.

This report does not discuss ideas for future LCDC legislative proposals, but the department is mindful of the limited opportunities to propose legislation and the lengthy required timelines in advance of the session for agencies proposing legislation. Agencies must propose legislation in April 2012 in order for DAS and the Governor's office to consider the proposals. Policy work leading up to proposed legislation must begin well in advance of this mandatory deadline for agencies to propose legislation. This exercise is not listed as a mandatory task on the preliminary policy agenda summary in this report, but the commission should consider whether the final policy agenda would include direction regarding future legislative proposals.

Note: while the legislature has now established annual sessions, the upcoming session and future sessions in even-numbered years will generally be shorter and focused on budget issues. For the upcoming 2012 legislative session, the presiding officers of the legislature have already determined that the entire Executive Branch (the Governor on behalf of state agencies) may propose no more than five measures. As such, agencies will have little opportunity to file legislative requests for the 2012 session. Nevertheless, individual members of the legislature will be allowed to file up to 2 measures, and as such land use measures are likely to be considered.

A. Ongoing Projects from 2009-2011 Policy Agenda

The list below includes projects that are already underway from the previous policy agenda, in most cases well underway toward completion, but also two scheduled projects that were not initiated but where preparatory work has been done.

1. **Amendments to the Transportation Planning Rules (TPR):** In March of 2011 Subcommittees of LCDC and OTC jointly recommended amendments to the TPR (OAR chapter 660, division 12) and to the Oregon Highway Plan to address a variety of concerns related to planning for land use and transportation. LCDC initiated amendments to the TPR in April and a rules advisory committee has met several times in anticipation of amendments for commission action in December 2011. Meanwhile, legislation enacted by the 2011 legislature established a deadline for this work (January 1, 2012) and directed that certain types of issues be considered.
2. **Solar Rulemaking:** At its regular September 2010 meeting, the commission directed staff to establish a Rules Advisory Committee (RAC) and work to evaluate the existing rules regarding solar energy projects. Changes to the commission's rules are recommended to

allow solar developers to apply for projects on resource lands. Legislation was introduced in the 2011 session on this topic, and while it did not move forward, the governor's office assured legislators that LCDC would proceed with rules to address the issues behind the legislation prior to the 2012 legislative session. This rulemaking is currently scheduled to conclude at the October 2011 meeting.

3. **Transfer of Development Rights (TDR) Pilot program:** The 2009 legislation established a two-biennium pilot program administered by DLCD, to include up to three pilot projects to test TDRs as a method to conserve forest lands for forest use. In 2011, in response to legislation proposed by DLCD, the legislature adjusted some specific provisions that were problematic. The amended law authorizes additional areas as "receiving areas" for transferred development rights, allows higher transfer ratios in certain circumstances, clarifies public access provisions, and resolves potential inter-jurisdictional ad valorem tax impacts when development rights are transferred from one jurisdiction to another.
4. **Urban Forum - Population Forecasting:** Although LCDC has provided some direction through rules and safe harbors, many counties continue to struggle with providing coordinated up-to-date forecasts; additional strategies and tools to ensure timely coordinated forecasts are necessary, since in general UGBs cannot be amended without timely coordinated forecasts. The department worked in 2010 and early 2011 with PSU and other university planning departments studying this issue and recommending ideas for resolution. In June, LOC and AOC agreed to co-sponsor this project, and a steering committee was established. Working with PSU, the group is considering current and potential new methods for population forecasts used for UGB evaluation and other planning. Much of this is regulated by statute, so it is likely a legislative concept will be one outcome of this project.
5. **Revise the Territorial Sea Plan** to include an element concerning alternative energy resources in the Territorial Sea. The department was tasked by then Governor Kulongoski with preparing a plan for wave energy in the territorial sea for adoption by LCDC as part of an amended Territorial Sea Plan. Text amendments to the plan received commission approval in November of 2009. Map amendments are being developed through the Ocean Policy Advisory Council process and will be finalized in the spring of 2012.
6. **Federal consistency rules:** The commission directed the department (in 2009) to update LCDC rules (OAR 660, division 35) to address "consistency requirements" of the Federal Coastal Zone Management Act. In general, this work is in response to changes to NOAA federal consistency rules and other changes that have occurred since the previous 1988 update of division 35. Revised rules were drafted by the department in 2010. The draft is awaiting review by legal counsel and federal officials at NOAA; when that is complete, the department will propose formal rulemaking. There is no hard deadline for this project, but the department recommends the commission complete the process this biennium.
7. **Soils Analysis Rulemaking:** Legislation in 2010 (HB 3647) created a new intermediary role for DLCD to contract with certified soil classifiers where there are challenges to published agricultural soils productivity data used for local farm and forest zoning. Land owners

contracting for alternative soils information will be required to contract, through DLCD, with a certified soil classifier in good standing with the Soil Science Society of America based on a process to be established by DLCD rules. The bill authorizes the department to charge a fee to meet the costs of assessing the soils and administrative costs. Amendments to OAR 660, division 33, are required and underway.

8. **Farm and Forest “Mapping Errors” Pilot Project (HB 2229):** This was included in the 2009-11 policy agenda as a pilot project with anticipated participation of a single (undetermined) county to reanalyze farm and forestland designations under current goals as allowed under legislation passed in 2009 (HB 2229). The department began preliminary work on this project in the spring of 2011 but suspended that due to pending legislation (HB 3615) regarding the same topic; that legislation did not pass. The original legislation enacted in 2009 was based on the Big Look Task Force recommendations and authorizes counties to determine whether land is correctly designated with respect to farm and forest definitions. DLCD proposes to begin with a willing county, either without preliminary rulemaking or in conjunction with rulemaking. The statute specifies that counties may not undertake this remapping work unless the department agrees to a work program and is dependant on DLCD funding and staff levels to carry out the assistance and review required for the project. The department may consider rulemaking to address some or all of the following: the analysis and rezoning process under HB 2229, requirements and standards for “non-resource lands” and clarification of forest lands definitions.

9. **Urban Forum regarding UGB and Urban Reserve Requirements:** This project is intended to convene stakeholders to examine the requirements in statute and rules for UGB and urban reserve planning. This is to be pursued as an “urban forum”; the forum would provide a process to discuss and find consensus on ways to improve, clarify and streamline statewide policies regarding urban growth management such as the “priority statutes” for urban growth boundary amendments, land need determinations, urban reserve planning, public facilities planning and costs, and other related topics. The department began work on the urban forum in 2010, but decided to focus on one element of UGB requirements: population forecasts (see task 4, above). Recent court decisions (e.g., *McMinnville* and *Woodburn*) have demonstrated the need for a new statewide discussion concerning the cost, amount of time and legal uncertainty associated with UGB planning. It is increasingly important that the agency continue its efforts to sponsor dialog on ways to improve the process for urban growth decisions, ways to make the process more transparent and methods to improve the efficiency of decision-making at the local and state level. This work may include recommendations for statutory changes in 2013.

B. New Policy Projects Required by the Legislature

1. **Rulemaking for GHG Reduction Required by 2009 Legislation:** HB 2001, the 2009 Jobs and Transportation Act, directed the commission to adopt rules to guide development and adoption of “land use and transportation scenarios” for greenhouse gas emission reduction in the Portland metropolitan area (these are advisory to the Eugene/Springfield MPO). The bill required the commission to adopt rules in June 2011 that set “targets” for vehicle-miles-

traveled reductions in the Portland metropolitan area to meet existing state legislative goals for greenhouse gas emissions reduction. This work was completed in June of this year. The bill also required the commission to adopt rules by January 2013 to guide the development of regional “scenarios” – alternative land use plans that will achieve the required VMT reductions in the Portland Metro area – and required adoption of rules for selecting which scenario to implement through local plans. This portion of the required work is scheduled for this biennium and is already underway.

2. **Economic Recovery Review Council:** Senate Bill 766 established the Economic Recovery Review Council which includes the DLCD director but is supported by the Oregon Business Development Department (OBDD or Business Oregon). The council is authorized to provide expedited review and approval of up to 10 industrial development projects during the biennium. No rulemaking is required; the department’s role will be to complete a land use review of applications and recommend conditions to the council (note, this review is instead of, not in addition to, a local government review and approval). The number of applications and the impact on workload from each potential application is unknown at this time. In addition, the council is required to designate 5 to 15 regionally significant industrial areas within three years. These areas are to be protected by the local governments for continued availability for industrial use. No DLCD rulemaking is required to fulfill this mandate, but rulemaking is authorized by the law should a need be identified.
3. **Ballot Measure 49:** HB 3620 allows a person to file a request for reconsideration of a claim under Ballot Measure 49 if the date of acquisition of property was affected by the conveyance of the property and the person reacquired the property within 10 days after conveyance. Less than ten claims are estimated to be affected by this bill. No new procedural rules are required.
4. **Align DLCD rules with new legislation:** This list is generally described as “Housekeeping Rulemaking,” but it includes two categories for the purposes of this report. First, projects are listed where rulemaking is indeed simple “housekeeping,” i.e., aligning current rules with recent legislation where no policy changes would be made other than those expressed in the legislation. The second category includes projects that could be dealt with through simple housekeeping rule amendments, but where more complex rulemaking is likely to be suggested.

Category 1: Simple “housekeeping” rulemaking, aligning rules with recent legislation.

- A. **HB 2132:** This bill modified provisions of the DLCD pilot program authorizing transfer of development rights in order to conserve forest lands for forest use. The legislation authorizes additional unincorporated communities as “receiving areas” for transferred rights, and allows higher transfer ratios than the 2009 legislation in certain circumstances. Includes additional incentives. Very minor housekeeping rulemaking is needed to insert the new provisions into the current rules.

- B. HB 2154:** This bill expanded definitions of farmworker and contributor for purposes of farmworker housing tax credits. The expanded definitions in this legislation do not apply on land zoned exclusive farm use; the existing definitions and other provisions for farmworker housing on EFU land were not modified but were moved by this legislation to ORS 215.277 with related amendments to ORS 215.278. Minor housekeeping is suggested because there are now two statutes on farmworker housing and DLCD rules need to provide references and clearly indicate which provisions apply to EFU land.
- C. HB 3290:** This bill made minor modifications to the farm income standard for establishing primary and accessory dwellings in EFU. Minor housekeeping rulemaking is needed for conformance.

Category 2: Projects where “simple housekeeping” is required, but where additional more complex rulemaking is suggested or will likely be suggested by stakeholders.

- A. Update and revise PAPA notice rules at OAR 660, division 18:** HB 2129 modified and clarified the process for local government to make post-acknowledgment changes to comprehensive plans and land use regulations, especially with regard to the post-acknowledgement plan amendment (PAPA) notice procedures. This legislation was proposed by DLCD to resolve gaps and ambiguities in current procedural requirements and to clarify requirements. In drafting this bill, the department assumed that some more detailed requirements in the PAPA process were necessary, but would be more appropriately dealt with in rules rather than statute.
- B. Update and Revise Periodic Review rules at OAR 660, division 25:** HB 2130 modified provisions regulating periodic review, including provisions regarding LCDC review of urban growth boundaries and urban reserve designations “in the manner of periodic review.” This legislation was proposed by DLCD in order to clarify and update periodic review standards, especially regarding commission review of urban growth boundary amendments. It was intended to resolve gaps and ambiguities in current procedural requirements and to clarify requirements for the record, and for the scope and standards applicable to LCDC review and applicable to judicial review of LCDC orders. In drafting this bill, the department assumed that some detailed requirements of periodic review needed updating but would be more appropriately dealt with in rules.
- C. Needed Housing:** HB 2131 was legislation requested by DLCD based on recommendations from the commission’s 2008 Affordable Housing Work Group. The bill consolidates, re-orders, and clarifies “needed housing” statutes under ORS 197.303-197.307. While it was not intended to change the intent of these statutes, the bill does intend to resolve some longstanding interpretation issues with respect to these policies. Some minor housekeeping is required to adjust related LCDC rules (OAR 660, divisions 7 and 8). However, stakeholders working with DLCD in drafting this legislation had suggested it should be followed up with additional rulemaking, such as to provide more clarity about “clear and objective standards” and “needed housing.” The clear and objective standards requirements have been the subject of numerous land use appeals,

and many cities have indicated that the terminology is confusing. The meaning and intent of “needed housing” is also problematic. Conforming amendments through simple housekeeping rulemaking is necessary; additional rulemaking is not required by the legislation, but may be recommended by stakeholder groups.

- D. Amend Metro Urban Reserve Rules:** HB 3225 authorizes a county to take exception to a statewide planning goal where necessary to allow establishment of transportation facilities in an area designated as urban reserve. This bill was promulgated at the request of the South Metro Business Alliance, which advocates development of an I-5/99W connector and was concerned that the prohibition on exceptions in the Metro reserves impedes development of key connectors in the region. This rulemaking could be done as a very simple housekeeping exercise, to reflect the new statute. However, it is possible that local governments and other interests in the Metro area still have concerns about other aspects of those rules and would anticipate the commission opening a broader discussion, including discussion of restrictions in rules for rural reserves.

V. RECOMMENDATION

The department recommends that the commission receive testimony on the 2011-2013 Policy Agenda and provide direction to the department and stakeholders on steps to complete the agenda decision at the October 2011 LCDC meeting. Stakeholders have been invited to submit ideas and comments, but it is likely that many have not had time to engage in this discussion prior to this meeting. The commission should indicate to the department whether to continue with projects underway or scheduled last biennium that are not required by law (see above).

VI. ATTACHMENTS

- A. Chart of policy projects required by law or underway from previous biennium
- B. 2009-11 LCDC Policy Agenda Progress Report
- C. Citizen Involvement Guidelines for Policy Development

**LCDC POLICY AGENDA
2011-2013**

BASE PROGRAM WORKLOAD

Item	Work unit	Proposed Action	Level of Effort & Timeline
20-25 Local UGB/Urban Reserve Decisions	Community Services, Planning Services	Review as they are submitted.	H , Entire biennium
10 Periodic Review Work Task Decisions	Comm. Services and Planning Services	Review as they are submitted.	M , Entire biennium
Review of Plan Amendments (PAPAs)	Comm. Services and Planning Services	Review and comment as notices are submitted.	H , Entire biennium

ONGOING PROJECTS FROM 2009-11 DLCD POLICY AGENDA

Amendments to Transportation Planning Rule, OAR 660-012-0060	Crall	LCDC initiated amendments to the TPR in April. SB 795 (2011) also requires LCDC to adopt revisions to the Transportation Planning Rules by December 2011. A workgroup is underway.	H , Dec. 2011
Solar Energy Generation Siting – Rulemaking	Morrissey, Jinings	Rulemaking was initiated by LCDC in September 2010. The rulemaking was on hold during the legislative session due to related legislation, which was unsuccessful, but legislators and the governor’s office have given direction for the continued rulemaking.	M , Fall 2011
Transfer of Development Rights Pilot Program	Rindy, Daniels	Ongoing two-biennium project directed by legislation (HB 2132) to involve up to three pilot projects. New legislation requires conforming rule changes.	L , Fall 2011, continuing thru 2013
Urban Forum on Population Forecasting	Rindy	Study and consider current and potential new methods for population forecasts for UGB & other planning uses. Begun in 2010; LOC and AOC joint sponsorship.	M , Fall/Winter 2011
Territorial Sea Plan Revisions	Klarin	Add an element concerning alternative energy resources in the Territorial Sea, as directed by the governor. Text amendments to the plan were adopted in late 2009. Map amendments are in process and will be adopted by spring of 2012.	M
Federal Consistency (Coastal) Rulemaking	Blanton	Amended rules (OAR 660, division 35) have been drafted & are waiting for DOJ and NOAA review. The draft rules address “consistency requirements” of the Federal Coastal Zone Management Act.	M , 2011
Soils Assessments on Farmland Rules	Daniels	Rules for the department’s facilitation of soils assessments on farmland. This rulemaking is underway in response to HB 3647 (2010).	L , Fall 2011
Farm/forest mapping error pilot project (HB 2229) involving one county	Morrissey, Daniels	Proposed pilot: one (undetermined) county will reanalyze local farm and forestland designations under current goals and may amend designations under 2009 statute (HB 2229). The commission may consider associated rulemaking regarding non-resource lands and Goal 4 definitions.	H , Fall 2011
Urban Forum: UGB and urban reserve policies	Rindy	Sponsor stakeholder discussions on ways to improve the process for UGB decisions and urban reserve planning, including methods to improve transparency and efficiency of local process. May include recommendations for statutory changes in 2013.	H , Winter 2011

PROJECTS REQUIRED BY THE LEGISLATURE OR THE GOVERNOR

Climate Change Scenario Planning	Cortright	The 2009 Jobs and Transportation Act directed the commission to adopt rules to guide land use and transportation “scenarios” for greenhouse gas reduction in the Metropolitan area. In May 2011 the Portland area VMT target reductions were adopted by the commission. The next step is rulemaking to guide regional scenario planning and implementation by local governments (must be completed by 2013).	H , Products due 2011-2014, incl. rule adoption June 2011
Housekeeping Rulemaking: HB 2132, HB 2154, HB 3290	Rindy	New (2011) legislation requires conforming rules for: HB 2132: Transfer of Development Rights HB 2154: Farm worker housing tax credits HB 3290: Farm income standard	L , Fall 2011
Housekeeping: Simple to Complex Rulemaking: HB 2129, HB 2130, HB 2131, HB 3225	Rindy	New (2011) legislation requires conforming rules for the following, but more complex rulemaking is recommended by the department or stakeholders: HB 2129: PAPA notice rules HB 2130: Periodic Review rules HB 2131: Needed housing HB 3225: Metro Urban Reserve rules	L to M , Fall 2011
Industrial Development Areas of State Significance (SB 766)	Planning Services	Participate in up to 10 expedited site reviews for industrial development projects of state significance by the Economic Recovery Review Council.	L , Entire biennium
Measure 49 “straw man” Claims.” (HB 3620)	Morrissey	Process the 7-10 claims authorized for review by HB 3620. No rulemaking required.	M , Fall 2011



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Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD

LCDC Policy Agenda for 2009-2011

In August 2009 the Land Conservation and Development Commission (LCDC) approved a list of policy projects it intends to pursue in the 2009-11 biennium. LCDC also indicated its intent to revisit its Policy Agenda in the spring of 2010. LCDC's policy agenda is a list of projects to improve and update statewide land use policies and rules, including changes necessary to respond to recent legislation, executive orders, and litigation. State law (ORS 197.040) requires LCDC to adopt, amend and revise statewide planning goals, land use policies and administrative rules as "necessary to carry out Oregon's statewide land use planning program." The commission's 2009-2011 Policy Agenda includes:

A. Projects Required by the Legislature, the Governor or the Courts

1. In response to recent court decisions applying the federal Religious Land Use and Institutionalized Persons Act (RLUIPA), work with an appointed workgroup to consider amendments to LCDC farmland rules (OAR 660, division 33) regarding uses that involve the assembly of people. (Scheduled for fall/winter of 2009). **STATUS: Completed**
2. Revise the Oregon Territorial Sea Plan to include an element concerning alternative energy resources in the territorial sea, as ordered by a Governor's Executive Order (Text amendments scheduled for October 2009; map amendments will be scheduled about July 2010). **STATUS: This project is underway but is not complete at this time. The Text Amendments to the plan were adopted; map amendments are in progress with public meetings scheduled with an advisory committee.**
3. With the Oregon Department of Transportation, staff the Metropolitan Area Planning Organization (MPO) Greenhouse Gas Task Force to prepare legislative recommendations as required by House Bill 2186. (Task Force report due Jan 2010). **STATUS: Complete, recommendations were provided to the legislature.**
4. Adopt state greenhouse gas reduction "goals" for purposes of the Portland Metro Area "scenario planning" land use patterns to meet the reduction goals, as required by House Bill 2001 (rules by June 2011; other work 2011-2014). **STATUS: Part 1 for Metro area was completed in April 2011; additional work on Part 2 of this project – required by 2014 – is now underway.**
5. Adopt the Metolius Area of Critical State Concern Management Plan by administrative rule, including minor amendments, as required by House Bill 3286 (hearing Dec. 2009). **STATUS: Completed**
6. Adopt procedural amendments to LCDC's Measure 49 implementing rules to carry out adjustments to the claims process enacted by House Bill 3225 (scheduled October 2009). **STATUS: Completed**
7. Adopt "housekeeping" amendments to LCDC's farmland rules to make the rules consistent with recently amended statutory provisions in House Bill 3099 regarding farm uses. **STATUS: Completed**

8. Update LCDC rules (OAR 660, division 35) that implement the “consistency requirements” of the Federal Coastal Zone Management Act to address changes to NOAA federal consistency rules and other changes since the last (1988) update of division 35. **STATUS: The rules have been drafted as of 2010 but are still under review by legal counsel and NOAA.**
9. Adopt procedural rules for the DLCDC Transfer of Development Pilot Project authorized under House Bill 2228. **STATUS: Rules were adopted in 2009 and revised in 2010. However, as of this time, there are no pilot projects proposed. The department proposed amendments to the statutes in order to encourage additional participation, and these amendments were enacted by the legislature. The department will continue to work on this project, but at this point there are no formal requests for a pilot project.**

B. High Priority Policy and Rulemaking Projects

1. Begin to assist communities in preparing for the effects of climate change, in coordination with state agencies and other stakeholders. This will include work on a statewide *adaptation* plan in coordination with state agencies and may include “pilot communities.” Statewide climate change *mitigation* planning described above re HB 2001 and HB 2186. **STATUS: Completed**
2. Conduct a public “policy forum” (or a series), including stakeholders and legislators, to consider the following topics and determine consensus and future direction:
 - Population Forecasting **STATUS: Underway. The department is currently working with a steering committee. LOC and AOC have agreed to co-sponsor the project.**
 - Consider public facility finance and planning issues facing local governments, including those raised by the Big Look Task Force and local governments, and consider land use strategies and policy amendments to address these concerns. **STATUS: The department began work on this project in the summer of 2010, but ceased work on it after the state’s “budget sweep” removed DLCDC funding intended for an initial white paper to frame issues for the project.**
 - In conjunction with public facility planning work described above, explore changes to streamline and update statewide policy regarding urban growth management, including the priority of lands statutes, urban reserve requirements, Goals 9 and 10, governance and related topics (biennium). **STATUS: The department did not pursue this project since it is intended to follow work on population forecasting, which is not complete. The department proposes to continue work on this item in the 2011-13 biennium.**
3. Work with ODOT and the OTC to review implementation of the Transportation Planning Rule (TPR), including alternative mobility standards and STIP criteria and the requirements of House Bill 3379. (beginning Oct 2009) **STATUS: Underway, to be completed in December 2011.**
4. Study and (as necessary) clarify the “forest lands” definition in Goal 4, and address possible rule inconsistencies (in OAR 660, division 6) related to that definition. **STATUS: The department did not pursue this project, in part due to pending legislation on regional farm and forest definitions. That legislation (HB 3615) did not pass. This project, and a related project described under C2, below, may be proposed for consideration as part of the 2011-13 policy agenda.**

5. Revise agency procedures, as necessary, to implement Environmental Justice requirements in 2007 Senate Bill 420. **STATUS: The EJ task force has not issued recommendations.**

C. Projects to be Pursued if DLCD Resources are Available

1. Continue consideration of potential policy actions suggested by LCDC's 2008 Affordable Housing Work Group, including possible rulemaking and/or legislation. **STATUS: The department considered and included some of these recommendations in a legislative proposal for the 2011 legislature. The legislation (HB 2131) was enacted.**
2. Consider and, if necessary, adopt rules regarding "nonresource land," especially as may be necessary to guide implementation of farm and forest resource land rezoning authorized for individual counties under House Bill 2229. **STATUS: The department did not pursue this project, in part due to pending legislation on regional farm and forest definitions. That legislation (HB 3615) did not pass. This project, and a related project described under B5, above, may be proposed for consideration as part of the 2011-13 policy agenda.**
3. As authorized by HB 2230, amend rules under OAR 660 divisions 30 and 31 and take other actions necessary to update and streamline state agency coordination. **STATUS: Not pursued. The department did not have funding or staff resources available for this project during the 2009-11 biennium.**
4. Reconvene a "farm stands work group" to consider concerns about farm stand sales of wine products. **STATUS: The department did not pursue this task. The 2011 Legislature passed legislation on this topic to address many of the concerns that led to this proposal, although the legislation does raise new issues.**

For questions or additional information about LCDC's 2007-09 Policy Agenda, contact Bob Rindy at 503-373-0050, Ext 229, or email at: bob.rindy@state.or.us or Michael Morrissey at 503-373-0050 Ext 320 or email Michael.morrissey@state.or.us

LAND CONSERVATION AND DEVELOPMENT COMMISSION CITIZEN INVOLVEMENT GUIDELINES FOR POLICY DEVELOPMENT

Approved by LCDC on April 23, 2004

I. Purpose

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

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

II. Public Involvement Objectives in Development of Commission Policy

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

III. Public Participation and Outreach Methods

A. Citizen Involvement Guidelines

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

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

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

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

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

IV. Communication with Citizens

A. Understandable Information

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

B. Notice of Decisions

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

C. Costs

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

D. Appeal Information

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

E. Electronic Communication

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

V. Applicability

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