



September 26, 2013

TO: Land Conservation and Development Commission
FROM: Bob Rindy, Senior Policy Analyst
SUBJECT: **Agenda Item 13, September 26-27, 2013, LCDC Meeting**

DLCD Summary Response to Comments on Policy Agenda

This memo provides a DLCD brief response to written comments received. These responses are arranged in the order of the written comments in Attachment E to the report for Item 13 the commission's meeting packet, including one comment (Ed Sullivan) received after that packet was sent. Additional comments may be submitted up until the time of this agenda item.

Comments

1. 1000 Friends of Oregon provided lengthy detailed comments that are primarily focused on the draft long-term policy agenda and that propose many changes to the initial draft of the long-term agenda. The department has recommended that the commission take more time for consideration of the long-term policy agenda in order to consider these and other comments. As such, this memo will address only comments on the near-term agenda.

- Comment: The solicitation of comments on LCDC's policy agenda is during a time of year (August) when it is difficult to get the attention of many. It seems the distribution of this Agenda was to the "usual suspects" on the usual DLCD mailing list(s).

Response: The department has little choice in the timing of "the beginning of the biennium;" it is set by law. The policy agenda report always begins mid-summer, but LCDC typically adopts a policy agenda in late September or in October, approximately 3 months from the initial report, and that will be the case this time. The department's mailing lists include all local governments and many citizens statewide who have expressed interest in receiving materials about land use matters. While it is the department's goal to expand its outreach, as described in the policy agenda report, that is an ongoing challenge due to the limits outreach funding in DLCD's budget. Meanwhile, it is unfair and inaccurate to call such lists "the usual suspects."

- Comment: 1000F supports the need to replace the worthy objectives of periodic review with new and more robust method(s) to ensure plans stay up-to-date. Recommends adding an enhanced program of research and data-gathering by the Department so it and the Commission

can better evaluate how the program and its individual elements are performing, and then apply this data to inform revisions and additions to the program.

Response: While the policy agenda report recommends the commission initiate a project to explore new methods to ensure plans stay up to date, the department is not recommending the dedication of scarce (or non-existing) funding to increased data and evaluation of the current program. A significant effort of that sort took place in 2003 as directed by the legislature. The outcome of that (and previous) evaluations was a significant scaling back of periodic review. While lessons learned in periodic review need to be considered in this project, the department is recommending a new effort, not a detailed evaluation of the previous effort.

- Comment: We recommend that the Department require better forecasting, planning, and financing of infrastructure, including evaluation of its life-cycle costs, in all UGB evaluations, Goal 11 implementation, and other large land use and transportation planning projects.

Response: The department intends to include this in the HB 2254 rulemaking project.

- Comment: If the Department decides to address economic development, the Department should undertake development of a factual framework within which to address the economic development needs of existing communities, focusing on realistic aspirations, and should develop information and tools to address many of the elements of such planning, including for example, model guidance for analysis of large lot needs, infrastructure cost information for small- and medium-sized cities, model codes to protect industrial lands from conversion to other uses, and improved training on Goal 9.

Response: The department concurs.

- Comment: It is important to underline the importance of the farmland protection program improvements. The lack of definition with commercial activities and events continues to result in significant litigation. Providing more definition in this area and providing more certainty regarding public and private parks is sorely overdue.

Response: The department agrees that this problem needs to be addressed, and the policy agenda report recommends a multi-year project to find solutions to this, beginning with rulemaking in the near-term. However, it is important to recognize that this project requires additional data that is not easily obtained given funding available to the department, in part because of the failure of legislation in the 2013 legislature that would have provided for research on farmland conflicts.

2. The City of Bend commented on three proposed projects and supports having these projects on the near-term policy agenda:

- Comment: The city supported HB 2253 (population forecasting) and HB 2254 (urban growth boundary streamlining) and wishes to participate in the rulemaking and to be appointed to the rule advisory committee

Response: The department is not recommending that individual cities be represented on the RAC for these rule projects. However, the department is recommending that particular individuals who worked on the legislation, including a planner with the City of Bend, be appointed to assist the department with rulemaking.

- Comment: the “budget note” requirement for DLCD to convene stakeholders to consider a possible “raise it or waive it” provision in state law regarding local “legislative plan amendments.”

Response: As it turns out, the budget note was not adopted. However, the department continues to recommend convening of stakeholders to discuss this project in the manner suggested by the budget note proposal. It is also important to mention that the note did not mention “raise it or waive it.” Rather, it would have required DLCD to “work with interested parties to develop recommendations for improving the processes through which local governments develop post-acknowledgement plan amendments [and to address] ... public notice of post-acknowledgement plan amendments, public review of amendments and changes to these amendments, conduct of hearings on legislative land use decisions, including applicable criteria.”

3. The City of Cornelius provided comments in support of the DLCD recommendation that LCDC undertake a project to resolve split-zoned property issues in the Metro boundary.

- Comment: The city suggests that legislation should be pursued to resolve these issues.

Response: The department concurs that a project should be undertaken to resolve the split zone issues, as described in the policy agenda report. However, the department suggests that rulemaking options should be explored prior to recommending legislation.

4. Mark Greenfield provided comments regarding a recent LUBA case that he was involved with, *Greenfield v. Multnomah County*, LUBA 2012-102, which concerned farm stands allowed in EFU zones.

- Comment: The case seeks clarification as to the nature and scale of events that are permitted outright at farm stands. While LUBA generally concurred with the issues brought in the case, rulemaking is needed. He interprets the statute to mean that only low intensity uses of occasional duration are allowed under the "promotions clause" of that statute, which authorizes fee-based activities to promote the sale of farm crops and livestock at farm stands. LUBA substantially agreed; however, some counties do not follow this interpretation and have approved a number of broader “farm stand” uses, for example, al fresco “farm-to-plate” dinners, food carts, smaller events (whatever “small” might be) like birthdays and picnics, and the use of 3rd party concessionaires selling food.

Response: The staff report recommends both a near-term and a long term look at this issue. The near-term project recommended by the department will begin to address this concern.

5. John Chandler on behalf of the Oregon Homebuilders Association provided two comments:

- Comment: Implementation of HB 2254 will, of necessity, require attention to housing need analyses, which should be highlighted in the short term work. Residential land supply and Goal 10 compliance are critical.

Response: The department agrees that this is an element that the rules must address.

- Comment: The Oregon House Speaker indicated her intention to convene a workgroup on the topic of housing and inclusionary zoning during the interim. If so, DLCD should be involved this would concern issues within the agency's purview; DLCD staff participation should be mentioned on the short-term policy list.

Response: The Department agrees that, should such a workgroup be formed and if its focus is on issues within the agency's purview, DLCD should participate.

6. Jeff Rasmussen, Jefferson County, notes that the rulemaking regarding youth camps should include both Jefferson and Wasco counties.

Response: The department concurs.

7. Dick Gordon, Medford City Council President on behalf of LOAC

- Comment: The budget note related to "raise it or waive it" reflects city and county wishes to avoid appeals by addressing concerns at the local level rather than at LUBA. Citizen participation early in the process can lead to a reduction of the number of appeals of difficult, lengthy local "legislative" plan amendments. Notice issues for legislative decisions need to be addressed.

Response: As indicated above in response to the City of Bend comments, the budget note was not actually included in the final legislative enactment. Nevertheless the department recommends that the commission undertake the described project. Second, the wording in the legislative direction does not mention "raise it or waive it" as a proposed standard, as described above in response to City of Bend.

- Comment: the commission's top priority should be economic development and insuring that the land use system in Oregon "is not so burdensome that it limits the growth of all types of industries within the state." Therefore, of the eleven recommended additional (not required) policy projects, industrial lands and farmland protection improvements should be given the highest priority. LOAC has increasing concerns about "the restrictions cities and counties face in encouraging industrial development throughout the state."

Response: As indicated in the staff report, there is no priority to the "non-mandatory" projects recommended by the department. It is not clear from the letter as to the nature of the current "restrictions" on industrial development that cause this concern.

- Comment: A number of bills last session were directed at farm or forest issues but these derived from an underlying concern about conflicts between agricultural and non-agricultural uses on designated resource land. The definition of "farm use" generates confusion regarding farm stands and wineries. Counties are caught between the use of farmland for traditional

agricultural production and the wishes of property owners who want to develop their land for business which expand the traditional farm. A clearer policy direction, based local considerations, is necessary. Otherwise there could be piecemeal legislation that removes local discretion.

Response: The department concurs with this concern and the recommendation. However, this will be a major undertaking and as such the department does not believe there are sufficient staff resources for rulemaking on this topic this biennium except for the “stopgap” interpretive rule suggested for the near-term in the staff report.

- Comment: We need an “additional system” for slow growing communities to focus on investment and long-term growth strategies. Current development strategies start with population forecasting, but many areas are not growing and instead need a “non-population growth based system” to allow “creative avenues for redevelopment.”

Response: The department concur that this problem exists and should be mentioned in the long-term agenda. In the near-term the department continues to recommend that growing jurisdictions are the highest priority.

- Comment: Streamlining the land use process could include improving the citizen involvement process, thereby reducing appeals based on early participate and inclusion in the process, or reducing the findings needed, thereby reducing the technical errors that are grounds for appeals that merely delay a project or plan without actually amending the end product.

Response: The department intends to explore these issues in the proposed policy project to respond to the budget note as well as the citizen outreach project.

- Comment: The issue of periodic review speaks to a number of underlying issues related to resources, efficiency, and growth. If LCDC wishes to evaluate periodic review and determine a new way to ensure that cities and counties are keeping plans up-to-date, all three areas need to be addressed. Need a consensus of state and local governments to determine whether to change or eliminate PR.

Response: These issues will be explored in the proposed project to explore new options to keep plans up to date.

- Comment: Regarding state agency coordination, LOAC is concerned that there is little discussion on how to prioritize which agencies DLCD will work with after the 2013-2015 biennium. LCDC should outline the specific progression of agencies DLCD should work with in updating these agreements. Regional solutions teams can provide the platform for these inter-agency and local government conversations.

Response: The department intends to begin this work with agencies that intend to update SAC agreements in the near term. Since SAC work typically involves budgeting to other agencies, any such prioritizing may begin with LCDC, but in the end it must be done in the context of the state budgeting process. The department expects further discussion of this issue as the project gets underway.

- Comment: “Regionalized differences” should be taken into account, and a discussion must be started to address these issues. A recent conversation started in Southern Oregon but needs to be some consideration of other areas where studies, work groups, or policy choices can be made, including split-zoned properties in Metro. Allowing local leadership to define a region and its priorities should be paramount.

Response: The discussion of regional differences has been taking place continuously throughout the history of the land use program, and it is ongoing.

- Comment: “Significant concern that [new HB 2254] rules will fail to streamline the process.” Local planners and decision makers should be included in the administrative rule process to ensure that the rules provide “the intended relief to the UGB process.” Cities and counties have a stake in finding ways to address urbanization issues, both to allow cities to grow in the way intended by the statewide regulations and to prevent counties from having to address unincorporated growth areas that “require counties to work not just as a county but as a city as well.”

Response: The department intends to pursue the intents of HB 2254 and is gratified that cities and counties intend to provide significant attention to this major effort. This effort will no doubt provide for a robust discussion of the issues surrounding unincorporated growth areas.

8. League of Women Voters: The League of Woman Voters provided extensive comments. The department notes that the comment letter provides several links to lengthy documents without explanation as to which particular points in these documents should be considered in the policy agenda discussion. Overall, many of the LOWV comments support the direction of the original DLCD policy agenda recommendations.

- Comment: LOWV is encouraged by the attempt to link the Governor’s plan goals with the planning program but “are concerned by the selective nature of the strategies.”

Response: This comment does not provide sufficient explanation to enable a response. The department has recommended a longer time frame to consider the long-term agenda and will seek additional clarification.

- LOWV suggests “complete communities” would assist in meeting the broader goals. Land use planning should include the siting of a variety of community housing needs, but also attention to drinking water sources, improved water quality monitoring and increased availability to transit, rail, bicycle and pedestrian modes.

Response: These are elements of the ongoing work of the department and will be discussed further in the long-term agenda as that proceeds.

- Comment: League would like to propose a focus on the two most important pieces of legislation from the 2013 legislature: HB 2253 and 2254

Response: This is already proposed as part of the policy agenda.

- Comment: Sage Grouse: the Department of Fish and Wildlife should take the lead, with department's staff and broad interests participating in any Work Group'

Response: The Sage Grouse effort is well underway with affected agencies participating. It is not clear what different course of action is suggested by this comment.

- Comment: the Commission needs help from the Department of Agriculture to learn exactly where in Eastern Oregon these youth camps should be sited

Response: The Department of Agriculture will participate in the rulemaking on this topic.

9. Metro (Steve Wheeler, Interim Director of Planning and Development) indicates:

- Comment: Metro agrees with the proposal to address Metro Boundary issues and pursuit of clarification regarding the application Goal 9 to the Metro area. Allow split-zoned parcels to annex and develop while preserving resource parcels outside the UGB.

Response: The department concurs that these should be priorities on the near-term agenda.

10. Oregon Chapter of the American Planning Association (Jeannine Rustad on behalf of OAPA)

- Comment: In addition to state and local public parks, OAPA has concern over what type of private parks are allowed in EFU zones and how intensive activities permitted. Private parks should be primarily for passive recreational uses and not intensive amusement type parks, especially due to the extent to which wineries undertake nonfarm uses on farmland. Private parks are not defined and there are situations in which the term has been stretched to include commercial paintball parks, amusement facilities, and motocross racing tracks. Suggests adoption of rules to define the various related terms used in ORS 215 and limit their impacts on agriculture. Concerned over the potential proliferation of private parks; need rules to deal with this problem to the 2013 work program.

Response: The department concurs and in fact has recommended that this, but as a long-term project with some specific efforts in the near-term.

11. Oregon Shores Comments: In general, the main theme of the Oregon Shores' comments can be boiled down to a desire to see more effort directed toward climate change adaptation planning. The comment letter concludes with a request to include five specific, near-term goals, all related to climate change adaptation, each is addressed below:

- Comment: "Incorporate consideration of climate change impacts to land use decision making at the state and local level"

Response: This may be overly broad for a specific near-term goal, but is more appropriate as a long term strategy. Advancing this concept would involve a number of more specific policy projects. The

department has suggested building upon the Climate Change Adaptation Framework and monitoring the effects of climate change as the principal long term strategy related to climate change for Coastal and Natural Resources.

- Comment: “Develop a planning toolbox to assist local governments in transitioning to a more adaptive planning outlook.”

Response: The development of technical guidance for local government adaptation planning is a very worthwhile concept and will definitely be considered in the development of future policy projects related to planning for climate change. However, specific tasks related to the long term strategy on climate change adaptation have not been identified at this point.

- Comment: “Re-engage in Periodic Review or an alternative system to allow for adaptive planning over time.”

Response: The department’s staff report suggests the commission began a project this biennium to consider an alternative to Periodic Review for maintaining local plans. This recommendation stems from the fact that periodic review is no longer required for most local governments. As such, re-engagement in periodic review is probably not a viable long term option in order to ensure local adaptive planning.

- Comment: “Collaborate with Oregon Parks and Recreation Department to address the trend of increasing shoreline hardening and armoring along Oregon’s coast.”

Response: The department has identified coastal erosion as one of a number of natural hazard issues to be addressed within the Coastal and Natural Resources long term strategies. Establishing baseline data and evaluating policy related to shoreline hardening is expected to be a significant component of this future work. In preparation for this work, the department, in collaboration with OPRD, has recently secured the services of a NOAA Coastal Fellow who, over the next two years, will complete the data collection needed to facilitate this work.

- Comment: “Add consideration of long term projections of estuary movement to the current Estuary Planning and development of tools policy priority area”

Response: A central component of the Estuary Planning near term policy effort is the development of digital estuary habitat classification maps. Due to data and resource limitations, the development of these maps will incorporate only limited consideration of the effects of sea level rise on estuarine habitats. The design of the digital map products will allow for future addition of this information when resources are available.

12. City of Portland Bureau of Planning and Sustainability provided four comments:

- Comment: Adaptation to climate change should be re-framed as a matter of statewide concern, not just the coast.

Response: In fact, the department (and the staff report) considers this a statewide matter and does not suggest or intend that it to be framed as simply a coastal matter.

- Comment: Participants should raise issues in a local legislative hearing. A “raise it” standard is certainly worth exploring, but would entail a similar exploration of how detailed public notices should be for legislative decisions.

Response: This will be considered in the group effort to consider the budget note.

- Comment: Electronic Submission should be broadened to include the electronic submission of periodic review tasks.

Response: This is intended by the rule change to division 18 scheduled on the commission’s agenda.

- Comment: provide for some local notices in electronic form for quasi-judicial land use decisions. While every affected property owner should continue to receive an initial mailed notice, community organizations and other interested persons could receive their notices electronically. Explore more affordable ways to notify for projects with hundreds of potentially affected property owners

Response: This would require statute change, not rules. The department believes this should be explored as part of the recommended project to address the budget note (which is not actually a budget note).

- Comment: Agrees there is need to clarify regional and local responsibilities in the application Goal 9 in the Portland metropolitan area, particularly how Goal 9 and locally-adopted and acknowledged “economic opportunities analyses” inform employment land supply assumptions for regional urban growth boundary amendments. Portland also believes there is an equally compelling need to explain how Statewide Planning Goal 10 and locally adopted and acknowledged housing needs analyses should inform housing land supply assumptions for regional urban growth boundary amendments.

Response: The department believes the Metro Housing Rules in OAR 660, division 7, provide sufficient clarity on this topic. The department will be evaluating ways to meet Goal 10 as part of the HB 2254 rulemaking. These rules will not apply to Metro.

13. James Vidal (resident of Sunriver)

- Comment: “Thoughtful small amendments to the statewide planning goals does deserve discussion but nothing of a major nature needs to be decided”

Response: No goal amendments are proposed in the DLCD recommendations for policy projects. However, HB 2254 does direct the department to consider whether goal amendments are necessary to implement the streamlined UGB process.

- Comment: Believes that a 20-year UGB land supply is better than the 14 year supply in HB 2254.

Response: This issue will likely be discussed further in the rulemaking for HB 2254. That statute cannot be changed by the rules, and as such the question cannot be settled without further legislation. However, the UGAC concurred that a 14 year “serviced and serviceable” supply is better than a general 20-year supply.

- Comment: This would be a good time to consider a ban on outdoor billboards

Response: There has been no discussion or recommendation on this before LCDC within the past decade. The department does not concur that this topic should be placed on the near-term agenda.

14. Michael Wagner (Resident of Mulino)

- Comment: The [Clackamas Co] permitting of many heavy industrial uses in light industrial zones via a “legislative amendment” to the county code circumvented the requirement for public notice to surrounding homeowners. Changing the uses permitted, prohibited and conditionally permitted in the county code was a de facto rezoning of most light industrial and rural industrial lands to heavy industrial uses [which] should have been properly noticed pursuant to Goal 1.

Response: This is perhaps an example of problems with legislative amendments and notice of such amendments. The department is suggesting that a group of stakeholders be assembled to discuss these issues and report back to the legislature (as recommended by the budget note that was not enacted).

15. Washington County (Andrew Singelakis, Director of Land Use and Transportation Dept)

Comment: Resolving the split-zoning issue in the Metro area should be a high priority.

Response: The department concurs.

16. Ed Sullivan:

- Comment: Suggests that the budget note project – to study process improvements and appeals standards with respect to 'legislatively' amendments to local plans and ordinances' – “is a bad idea, cannot be done through rulemaking, and damages the citizen participation element of the Oregon planning program.” Also indicates “notices for legislative plan amendments are often very general, do not indicate decision criteria, “and may be months or years ahead of any final action on a proposal that may be very different from the one originally proposed.” As such, “waive it or waive it” should not apply. The Commission should preserve the current process for review of legislative or policy plan and land use ordinance amendments and reject any proposal to cut off citizen participation.

Response: The department intends a report to the legislature on this project, not to propose rules. The department agrees that administrative rules would probably not be a useful exercise since rules cannot change statutes (but cannot foreclose discussion of such ideas). The staff report does not recommend rulemaking.