



Oregon

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Department of Land Conservation and Development

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September 23, 2011

TO: Land Conservation and Development Commission

FROM: Bob Rindy and Michael Morrissey, Policy Analysts

SUBJECT: **Agenda Item 4, October 6-7, 2011, LCDC Meeting**

LCDC POLICY AND RULEMAKING AGENDA

This item is the second scheduled opportunity for the Land Conservation and Development Commission (LCDC) to consider and possibly adopt a policy and rulemaking agenda for the 2011-13 biennium.

The policy agenda establishes the commission and department's priorities and schedule for policy projects during the biennium, including projects for rulemaking and legislative concepts. Adoption of a policy agenda is not mandatory (although certain projects may be), and if adopted it does not bind the commission or the department to pursuing the projects on the agenda. The commission typically revisits and adjusts its policy agenda halfway through the biennium.

Several of the projects proposed for this policy agenda are mandatory under state law. Some of the projects proposed by the department were previously scheduled during the 2009-11 biennium and are already underway. A list of recommended policy and rulemaking projects proposed by the department is provided as Attachment A to this report.

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 statewide planning program faces unique policy challenges every biennium and many times such challenges may be addressed by changes to rules or laws. Changes to rules may also be necessary in response to recent legislation, court decisions interpreting the program, or for other reasons. This new biennium is no exception, and there are a number of pressing issues both ongoing and new that suggest the commission evaluate current policy and consider amendments to land use rules or consider other policy projects that will lead to program change. In deciding on a list of projects for the policy agenda, the commission first considers the agency's budget and staff levels available to support projects, the agency's ongoing core responsibilities, and other needs and available resources. When considering its policy agenda, and as it carries out projects in the agenda, the commission is guided by its adopted Citizen Involvement Guidelines

for Policy Development.

A number of policy projects have been recommended by stakeholders or the department. Some projects were recommended to the commission in testimony received at LCDC's August 17, 2011, commission meeting. Others were submitted in writing, including proposals by DLCD staff. All the suggested projects are summarized in this report.

II. DEPARTMENT RECOMMENDATION

The department recommends that the commission adopt a policy and rulemaking agenda for the 2011-13 biennium, and that the policy agenda include the following projects:

- A. Projects already underway from the previous (2009-11) policy agenda:
 - a. Amendments to the Transportation Planning Rules (TPR) required by legislation;
 - b. Forum regarding population forecasting (possible legislative concept);
 - c. TDR pilot program (HB 2228 '09);
 - d. Territorial Sea Plan amendments;
 - e. Amendments to Federal Consistency rules regarding the coastal program.

NOTE – three policy projects underway from last biennium involve rulemaking scheduled for the commission's October 6-7 meeting and are expected to be concluded at that time. If completed, they would not be included on the new policy agenda. These projects are:

- f. Solar facilities on farmland rulemaking (see Agenda Item 7);
 - g. Irrigation reservoirs rulemaking (see Agenda Item 6);
 - h. EFU Soils analysis rulemaking (see Agenda Item 5).
- B. New Policy Projects required by new or previously enacted laws:
 - a. Greenhouse Gas Scenario planning (required by 2009 legislation);
 - b. Economic Recovery Review Council work tasks required by SB 766 (2011 session);
 - c. Ballot Measure 49 – includes amendments to administrative rules in response to legislation enacted in 2011.
- C. "Housekeeping" adjustments to existing rules in response to 2011 legislation:
 - a. Transfer of Development Rights (TDR) Pilot Project rules (HB 2132);
 - b. Amendments to EFU rules regarding Farmworker Housing (HB 2154);
 - c. Amendments to EFU rules regarding farm income standards (HB 3290);
 - d. Amendments to PAPA notice rules (HB 2129);
 - e. Amendments to Periodic Review and UGB review rules (HB 2130);
 - f. Amendments to rules for needed housing (HB 2131);
 - g. Amendments to Metro urban reserve rules regarding roads (HB 3225).

NOTE: Projects d. and e., above, concerning the PAPA and Periodic Review process may include rulemaking that is not strictly limited to "housekeeping adjustments" in response to recent legislation.

- D. New Policy projects that are not mandatory but which are recommended by the department (and some stakeholders) as highest priority for the 2011-13 biennium:
- a. Urban Forum in response to ongoing and increasing concerns by stakeholders about provisions of the UGB and urban reserve process, including issues in response to the recent opinions by the Court of Appeals concerning the McMinnville and Woodburn UGB decisions. The Forum would convene a group of stakeholders to consider a collection of urban policy issues. The Forum would seek a consensus toward a legislative concept for the 2013 legislative session to address these issues.
 - b. HB 2229 Pilot, beginning in the Fall of 2011, to engage one or two (as yet undetermined) counties in a farm and forest land remapping project under the procedures established by HB 2229 (2009 legislation). Staff recommends this project be initiated without associated administrative rules, although it is anticipated later rulemaking may be recommended based on experience gained in the pilot.
- E. Additional projects recommended by the department if staff and resources are available:
- a. Study and make recommendations concerning Goal 7 natural hazards requirements: as they relate to climate change adaptation. DLCD would work with other agencies in response to the Governor's climate change adaptation plan. This project may result in clarification of Goal 7 requirements, possibly through rulemaking, or other proposals.
 - b. Private Parks in farm zones: The department will participate in the Oregon Parks and Recreation Department's (OPRD's) planned "Parks Forum" with other stakeholders, and report back to the commission as to whether rulemaking is recommended in response to parks issues, especially issues concerning local parks outside UGBs.

III. RECOMMENDATIONS BY STAKEHOLDERS AND DLCD STAFF

Recommendations were submitted to the commission by several stakeholders. Ideas for new policy projects were also submitted by DLCD staff.

The following new projects were proposed by stakeholders but are not recommended for inclusion on the 2011-13 policy agenda by the department at this time. These proposed projects include:

- Rulemaking suggested by Mitch Rohse to expand the term "sending areas" for transferred development rights (TDRs). Currently sending areas may only consist of "resource zones." It is recommended that allowed sending areas should include "urban areas" in coastal communities threatened by predicted sea level rise. Current statutes for TDRs (ORS 94.531-94.538) effectively restrict sending areas to "a designated area of resource land." As such, rulemaking would not be sufficient to affect this statutory term in the manner suggested - a change in statute would be required.

- Appointment of a committee or task force to review land use policy regarding energy and transmission lines was recommended by Umatilla County Planning Director Tamra Mabbott. She suggests that Oregon can expect to see a number of large transmission lines proposed in the near future. The department notes that an energy transmission task force was proposed in the 2011 legislative session but that legislation was not enacted.
- The Oregon Chapter of the American Planning Association (OAPA) suggested DLCD (and ODOT and the Governor's office) convene an interim work group to identify legislative and other regulatory barriers to effective regional planning and decision-making (outside Metro) and to suggest legislation and rule/regulation revisions to address such barriers.
- The commission's Citizen Involvement Advisory Committee (CIAC) recommends the commission consider new administrative rules to clarify requirements of Goal 1 regarding citizen involvement (see Attachment C). This proposal was also supported by testimony from the League of Women Voters (Robin Wisdom and Peggy Lynch).
- Metro attorney Dick Benner suggests the commission consider rulemaking to clarify issues regarding ORS 197.296 efficiency measures and clarification of the "steps" in the UGB process.

The following new policy projects were suggested by DLCD staff members who specialize in particular program areas:

- Amendments to Goal 5 related rules regarding habitat and water areas proposed by Amanda Punton. This recommendation was also mentioned by and supported in a letter from 1000 Friends of Oregon.
- Amendments to Goal 6 regarding water quality requirements proposed by Amanda Punton.
- Amendments to Goal 4 or related rules regarding the definition of forest land proposed by Katherine Daniels.
- New rules pertaining to non-resource land, proposed by Jon Jinings and Katherine Daniels.
- Rules to resolve whether dog training and dog shows may be permitted on farmland, proposed by Michael Morrissey.

ATTACHMENTS

- A. Chart of DLCD Recommended Policy Projects
- B. DLCD August 4, 2011, Staff Report to LCDC plus Staff Recommendations
- C. Public Comments

**LCDC Policy and Rulemaking Agenda
2011 - 2013**

Agenda Item 4 - Attachment A
October 6-7, 2011 LCDC Meeting

	Priority	Division(s)	Jul--2011	Aug	Sept	Oct	Nov	Dec	Jan--2012	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
II.A. Projects Underway																				
TPR Amendments (SB 795 '11)	Required	PSD	Red	Red	Red	Red	Red	Red												
Urban Forum - Population	High	DO	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow
TDR Pilot Program (HB 2228 '09)	Required	DO/PSD	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green
Territorial Sea Plan Revisions	Required	OCSD	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow									
Federal Consistency	Required	OCSD	Awaiting DOJ Review																	
Solar Rulemaking	High	CSD/DO	Yellow	Yellow	Yellow	Yellow														
Irrigation Reservoirs Rulemaking	Low	PSD	Green	Green	Green															
Soils Assessment Rulemaking (HB 3647 '10)	Required	PSD	Green	Green	Green	Green														
II.B. New Projects Required by Law																				
Metro Scenario Planning Rule (HB 2001 '09)	Required	PSD	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red
Economic Recovery Review Council (SB 766 '11)	Required	PSD	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green	Green
Ballot Measure 49 Rulemaking (HB 3620 '11)	Required	DO				Yellow	Yellow	Yellow	Yellow											
II.C. Housekeeping Rulemaking from 2011 Legislation																				
HB 2132 TDRs, 2154 Farm Worker Housing, 3290 Farm Income Standard, 2129 PAPA Notice, 2130 Periodic Review, 2131 Needed Housing, 3225 Metro Urban Reserves	Required	DO et al					Green	Green	Green		Yellow	Yellow	Yellow	Yellow						
II.D. New Projects Recommended by DLCD																				
Urban Forum - UGB	High	DO				Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red	Red
Farm/Forest Remapping Pilot (HB 2229 '09)	High	DO/PSD/CSD				Possible Rulemaking					Red									
II.E. New Projects Recommended by DLCD if Resources are Available																				
Goal 7 & Climate Change	Medium	PSD/OCS D							Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow					
Private Parks	Medium	PSD/DO											Green							

Work Load: Red=High; Yellow=Medium; Green=Low

DO=Director's Office; CSD=Community Services Division; OCSD=Ocean Coastal Services Division; PSD=Planning Services Division



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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



Oregon

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August 12, 2011

TO: Land Conservation and Development Commission (LCDC)

FROM: Bob Rindy and Michael Morrissey, Legislative Coordinators
Department of Land Conservation and Development (DLCD)

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

**Ideas for LCDC Policy Agenda for the 2011-2013 Biennium
Suggested by DLCD Staff Members**

I. OVERVIEW

LCDC is beginning its process to adopt a Policy Agenda for the 2011-13 biennium. DLCD staff was encouraged to provide ideas for the commission's consideration. Several ideas were suggested and are summarized below. At this point none of these ideas are recommendations by the department. The department will be recommending priorities for the policy agenda at the commission's October 5-7 meeting.

The DLCD staff suggestions for new policy efforts include:

1. Establish policies and standards for non- resource land (rulemaking);
2. Clarify Goal 4 Forest Land definition (through interpretive rules);
3. Provide a "trigger" for Goal 5 rule requirements regarding fish and wildlife resources, wetlands and riparian resources, and other rule clarifications and changes;
4. Consider new rules regarding Goal 6 relating to water quality standards (possible goal amendments);
5. Appoint a work group to clarify key requirements of Goal 7, including consideration of new rules, in order to respond to new hazards information generated by state and federal agencies, and in order to assist in climate change adaption locally;
6. Consider changes to LCDC Parks Planning rules for clarification and to address new issues and concerns.

II. SUMMARY OF SUGGESTIONS

The following summaries are based on proposals submitted by DLCD staff.

1. New rules for non-resource land rezoning

PROBLEM:¹ There are currently no statewide standards to guide counties in identifying and zoning “non-resource land” – land outside UGBs that does not meet the definition of farm or forest land and therefore is not subject to Goal 3 or Goal 4.² At least nine counties have identified non-resource land – over 86,000 acres – and rezoned it for uses other than farm or forest. Typically such land is zoned for low density residential use. Pressure to redesignate farm and forest land as non-resource land is increasing in central, eastern and southern Oregon, particularly in Crook, Deschutes, Jefferson, Klamath, Josephine and Douglas Counties. The department’s *2008-2009 Farm and Forest Report* found that about half of all rezonings from farm or forest to rural residential use in that time period were through non-resource zoning rather than through exceptions, with non-resource proposals converting significantly more acreage than exceptions. A single non-resource land rezoning in Klamath County involved 2,010 acres.

Goal 14 prohibits “urban” uses outside UGBs, but otherwise there is no state goal, rule or statute on non-resource zoning. While some counties have comprehensive plan provisions to guide rezoning from resource to non-resource, most do not. While a few counties apply 20-acre or 10-acre minimum lot sizes to such land, many counties apply a 5-acre rural residential zoning. Some (Klamath in particular) have zoned nonresource land for lot sizes less than 5 acres. In contrast, DLCD exceptions rules require a minimum lot size of at least 10 acres for new lots, based on Goal 14’s intent to prevent urbanization of rural land. While exceptions are due to a preexisting rural lot pattern, non-resource designations occur regardless of the existing and surrounding patterns and lot sizes. For example, Josephine County over the last few years has submitted a stream of PAPAs to rezone Woodland Resource 80-acre (forest) land to RR-5 non-resource land.

This continuing trend, with the potential for tens of thousands of acres of land to be rezoned RR-5 throughout the state, threatens to undermine the policies of the land use program that prevent sprawl and encourage compact, efficient growth. The trend will impair the functioning of urban growth boundaries, impact farm and forest economies, increase already unsustainable costs for rural transportation and other services, significantly add to growing wildfire risk, and increase vehicle miles traveled, transportation congestion and greenhouse gas emissions. This effort is especially needed due to impending pilot projects for HB 2229 (2009), keeping in mind proposed (unsuccessful) recent legislation on rural land rezoning (HB 3615).

PROPOSED POLICY EFFORT: The commission should adopt new rules establishing clear policies and standards for non-resource zoning. The new rules should be based on (and would interpret) Goals 3, 4, 14 and perhaps other goals. The rules would clarify and interpret current

¹ Proposal by Jon Jinings, Community Services Specialist and Katherine Daniels, Farm and Forest Land Specialist

² This is not to be confused with land in exception areas – land that does meet the definition of Goals 3 or 4 but that is not zoned for resource protection due to commitment to other (generally residential) uses or (rarely) due to certain special rural needs. There are almost a million acres of exception land statewide.

statewide goals related to farm and forest land, rural uses outside UGBs, and other goals. However, this effort should not require amendments to any statewide goals. The rules should establish land use planning requirements – including minimum lot sizes for residential use, standards for rural uses other than residential, and standards for public facilities and transportation planning in non-resource land areas. The rules should also provide procedures and standards for deciding whether land currently zoned for farm and forest use does or doesn't meet goal definitions for farm and forest land, and should ensure that this evaluation and planning considers carrying capacity, natural resources, affects on surrounding farm and forest land and local farm and forest economies of areas proposed for rezoning.

2. Clarify Forest Lands Definition

PROBLEM:³ The term “forest land” is defined in Goal 4 only in very general terms, especially the definition applicable when a county amends its plan in response to a PAPA. Statutes and the Goal 4 rules (OAR 660, division 6) do not give enough clarity to this definition in light of a growing number of land owner proposals to rezone individual properties from forest use to residential use contending that the land does not meet the definition of forest land. When interpreting that definition, there is no objective threshold to help decide whether land is “suitable for commercial forest uses” (for example, which if any forest cubic-foot-site-class range should be applied) and no guidance on how to identify other land needed for related purposes, the other two prongs in the goal definition. Contrast this to Goal 3, where there is a much clearer four-prong definition of agricultural land, especially in rules under OAR 660, division 33.

The courts have shed some light on the forest definition, but in general two of the three prongs in the definition have been accorded little weight, in large part due to the lack of interpretive detail by the commission. And new and novel reasons are constantly advanced as to why land should not qualify as forest land under the first prong regarding suitability for forest uses (e.g., “it’s too windy to grow trees”). As counties increasingly rezone land to non-resource zones (see proposal #1 above), the department is called on to provide more a more objective and detailed forest land definition. This issue will become even more pressing as counties use the process under 2009 legislation - HB 2229 - to determine “mapping errors” for a particular county’s forest land.

PROPOSED POLICY EFFORT: Amend OAR 660, division 6, to provide a more concise definition of the key terms that must be considered when a county proposes to amend forest land zoning in response to claims that particular land does not meet the goal definition of forest land. These terms comprise the three prongs of the current Goal 4 definition: “lands suitable for commercial forest uses,” “nearby lands necessary to permit forest operations or practices,” and “other forested land that maintains soil, air, water and fish and wildlife resources.” Fleshing out the meaning and intent of these terms could be done in conjunction with the project described in proposal #1 in this report (see above), or as a stand-alone project. This is necessary regardless of related county efforts to apply HB 2229, due to the increasing numbers of individual property rezoning requests for non-resource zoning on a case by case basis.

³ Proposal by Katherine Daniels, DLCD Farm and Forest Lands Specialist

3. Natural Resource Planning Process Improvements (Goal 5)

PROBLEM:⁴ LCDC's 1995 Goal 5 rules (OAR 660, division 23) require local governments to re-engage, during periodic review, in inventorying certain categories of significant resources and adopting resource protection strategies for those resources (for example, wildlife resources listed under the federal Endangered Species Act or for water quality limited streams identified by DEQ). However, the Goal 5 rules are no longer applied at periodic review (when it occurs) and are "triggered" only during certain plan amendments. Even then, they apply only to new or amended inventories typically initiated voluntarily by local governments, or for new areas added to UGBs or where rezoning or plan amendment proposals affect resources already inventoried.

History: When most local plans were adopted applying the statewide goals in the late 1970's and early 1980's, the requirements of Goal 5 were vague and resource inventory information was sparse or non-existent. As a result, many local governments did little to inventory or protect natural resources. Recognizing this problem, and as a core principle in adopting new more specific Goal 5 rules in 1995, LCDC intended the "new" Goal 5 inventory and protection planning requirements to apply when local governments updated plans through periodic review. Indeed, for a few years after the rules were adopted many jurisdictions used periodic review grants to fund new inventories, although many local protection efforts for newly inventoried resources stalled, in part due to the controversy around Measures 7 and 37.

In 2001 and 2003 the legislature amended the law to end mandatory periodic review for a majority of local governments and thus remove that "trigger" for division 23 in local land use planning. Thus most of the provisions in the Goal 5 rules rarely take affect. Today, despite 35 years of statewide land use planning in Oregon, local government inventories of riparian areas, wetlands, and wildlife habitat – and local efforts to conserve such resources – are inadequate or nonexistent in a large number of cities and counties. Even where ODFW has adopted and updated maps of critical wildlife habitat statewide, for the most part these maps are not reflected by local plans and ordinances and thus are not used in local review of development applications.

PROPOSED POLICY EFFORT: Consider changes to the Goal 5 rules (OAR 660, division 23) in order to advance efforts to inventory key resources (habitat, wetlands, riparian areas) and protect significant resources through comprehensive planning and zoning, and/or through development review. This could be through a work group that should:

- Determine ways to trigger the applicability of the 1995 rules, such as deadlines for local compliance on resource inventories and programs to protect inventoried resources;
- Consider ways to apply the rules to individual development projects that are above a specified size threshold;
- Consider amendments to address a number of issues with the Goal 5 "safe harbor provisions" to correct problems, for example, to make sure all riparian wetlands are identified as significant riparian resources under that applicable safe harbor even if a jurisdiction had not completed a DSL compliant local wetlands inventory.

⁴ Proposal by Amanda Punton, DLCDC Natural Resource/Aggregate Specialist

4. Water Quality Requirements under Goal 6

PROBLEM:⁵ The Clean Water Act generally requires that water quality standards be maintained, but in practice the state (especially DEQ) has very limited ability to remedy water quality problems caused by development in those urban areas less than 50,000 in population. Certain low-impact development strategies to address this have gained recognition nation wide but are not described under Goal 6. Where these strategies are used, they typically recognize the connection between urban land use practices and water quality. While existing Goal 6 language connects to and relies to a large degree on DEQ rules, those rules have limited effect in influencing development patterns or practices that minimize impacts to water quality.

PROPOSED POLICY EFFORT: Goal 6 was written thirty five years ago when there was less understanding of non point pollution. The goal language parallels that of the national Clean Water Act, referring to “waste and process discharges.” This language could be changed to recognize the impacts of urban development on storm water discharges and on the natural systems that serve to maintain water quality. Or at least, new rules interpreting the goal should be considered to foster easier integration of water quality protection strategies into local comprehensive plans and implementing ordinances, and to better support DEQ efforts to reduce pollutant load from urban areas into water quality limited streams.

5. Effort to Update and Improve Hazard Mitigation through Goal 7⁶

PROBLEM: Goal 7 was revised in 2001 to require that LCDC notify local governments about new hazard information generated by the state or federal government “if the new hazard information requires a local response.” Local governments must respond to this information within three years of being notified. The amended goal is vague as to the quality and level of detail that must be in the information to trigger such department notice, especially as to when “local response” is “required.” It is by no means clear WHO decides whether new information triggers the notification under Goal 7. (Note: the goal does not prescribe how local governments must respond – it merely sets a deadline for when local governments must respond and some factors they need to consider in their response.) The goal does not specify consequences for a non response, and to date no DLCD notices of have been sent. The department has no statewide mechanism to identify, receive, catalog and assess new hazard information and determine whether it requires notification of local governments. Further, we have no formal process – except with regard to flood hazards with respect to the National Flood Insurance Program (NFIP) – for notifying local governments if we were to decide new hazard information requires a local response.

This lack of specificity is not only troubling to state and federal agencies with hazard responsibilities; it is also disconcerting to local governments and other stakeholders. A recent federal court case in the State of Washington suggests that implementation of FEMA’s flood

⁵ Suggested by Amanda Punton, DLCD Natural Resources/Aggregate Specialist

⁶ Suggested by Chris Shirley, Natural Hazards and Flood Plain Specialist; Jeff Weber, Coastal Conservation Coordinator; and Steve Lucker, Floodplain/Natural Hazards Mapping Specialist

plain management program must be adjusted to address the endangered species act (ESA), and this again raises the question as to when and how Goal 7 applies to new hazard information.

Goal 7 requires local governments to evaluate the risk to people and property based on new inventory information and take action to avoid development in hazard areas. However, there is no agreed standard methodology for evaluating risk and, in fact, no agreed upon understanding of the terms “risk” and “hazard area.” Finally, it is important to note that LCDC’s Interim Climate Change Strategy included a recommendation that LCDC consider adoption of rules to implement Goal 7, including model ordinances. Since 2001, it has become increasingly clear that planning for natural hazards will be an important element in local climate change adaptation efforts. Predicted future climate conditions likely represent increased risk from natural hazards.

PROPOSED POLICY EFFORT: The department and the commission in coordination with other agencies should initiate a process to clarify when new hazard information requires a local response, “who” decides that, and what exactly constitutes a notification process. This could be done through a work group that reports to LCDC and other boards and commissions with recommendations. The group should consider whether these questions require Goal 7 amendments or new administrative rules. This group should also consider ways to improve local preparedness for the predicted increase in climate-related natural hazards. The group should especially consider various agencies’ roles, responsibilities, and practices related to natural hazards, and should identify areas where agency practices could be revised to improve local planning. The group should develop a systematic hazards assessment process deriving from Goal 7, possibly established through Goal 7 implementing rules.

Also with respect to Goal 7 and hazard planning, there is a need to:

- Clarify statutory and strategic roles of DOGAMI and other agencies;
- Suggest consistent methodology for planners and policy makers;
- Identify the real-world needs of communities and determine where DLCD can provide assistance (including new tools and model ordinances);
- Build in and take advantage of new federal agency programs;
- Require that hazard mitigation plans required by FEMA be adopted into local comprehensive plans; and
- Consider the state’s climate change policy recommendations.

6. Need for Clarity regarding Local Park Planning in EFU⁷

PROBLEM: Historically local parks outside UGBs – both public and private – have consisted of relatively small-scale sites intended for passive or low-intensity recreational pursuits. Increasingly new parks are proposed that are large, intensive in nature, and established for special purposes with intent to generate revenue. Parks are often proposed just outside UGBs but intended to serve the nearby urban population. Proposed park uses include large-scale developed recreational facilities such as athletic field complexes, ATV parks, RV campgrounds, paint ball

⁷ Proposal by Katherine Daniels, DLCD Farm and Forest Land Specialist

parks and other similar facilities. Some “parks” have been established for the sole or primary purpose of providing revenue-generating entertainment, such as concerts, festivals, weddings, reunions, food service and other regular event venues. Such parks take agricultural land out of production and have the potential to impact nearby agricultural and forest operations. Cumulatively, or even in individual cases, these uses require higher service levels to rural areas (roads, police, fire) and foster additional requests for non-farm uses in the area. Many of these “park uses” should instead be located inside UGBs, others should be subject to the new “event” provisions of SB 960, and others would be more appropriate in rural commercial zones rather than on farm land. An example is a proposed 249-acre park on high value farmland (in crops and orchards) just outside the Grants Pass UGB, proposed for multiple athletic fields and other uses.

Current statutes and rules provide insufficient guidance as to types, scale and intensity of uses that are appropriate in local parks proposed in EFU and forest zones. Several LUBA cases have noted this fact. While LCDC parks rules at OAR 660, division 34, provide adequate guidance for state park planning, guidance for local parks planning needs attention: although existing rules list permissible local park uses, it is unclear as to which of the listed uses require an exception or park master plan. Similarly, other than for campgrounds, there is no guidance at all for “private parks” authorized in statutes and farmland rules. Successive LUBA cases have ruled that the lack of any specific language in statute or rule implies an open-ended permission for such uses.

This policy issue is recurring and important. The State Parks and Recreation Department (OPRD) has funded park projects on EFU and forest land in instances where the department opposed the projects. OPRD is proposing to hold a “land use forum” with other affected state agencies to try to resolve these issues. However, DLCD should be prepared to respond with adjustments to its policies and rules in response to issues.

PROPOSED POLICY EFFORT: DLCD should participate in the OPRD land use forum, but should be prepared to follow up with rulemaking to address the issues from the forum and the issues described above. It is likely that the OPRD forum will clarify policy on all of these concerns, and it would not be surprising if various stakeholders recommend changes in LCDC rules concerning parks planning. DLCD needs to be at the table as discussion of the state’s role in local park planning occurs. It is likely rulemaking will be recommended to clarify rules, including rules for issues described above and possibly new issues. But even if the forum does not result in agreements or recommendations on these issues, DLCD will increasingly be called upon to interpret state requirements and to participate if these issues are litigated.



Oregon

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August 15, 2011

TO: Land Conservation and Development Commission

FROM: Bob Rindy and Michael Morrissey, Legislative Coordinators
Department of Land Conservation and Development

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

Ideas from DLCD Staff for LCDC Policy Agenda (cont.)

As an addendum to the August 12, 2011 department memo to the commission, staff proposes one additional idea for policy change as described below.

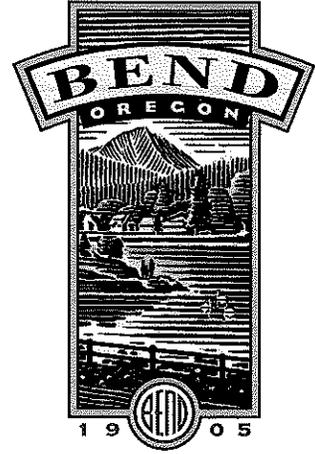
7. Expanded provisions for dog training on farmland

PROBLEM: There is growing pressure to allow dog training facilities on farmland. In the 2011 Legislative session, House Bill 3047 would have expanded the definition of “farm use” to include facilities for breeding, raising and training dogs in canine skills on EFU land, including dog shows and perhaps other similar uses. Neither this department nor the Oregon Department of Agriculture considers dogs to be livestock. Only in the narrowest sense could aspects of this proposed use be considered a “farm use,” such as when dogs are used in herding. Nevertheless, HB 3047 came very close to passing.

Dog kennels are currently a conditional use in statute in EFU zones, although the term is not defined. The conditional use process ensures that proposed dog kennels are compatible with nearby farm and forest uses. The department’s farmland administrative rules (OAR 660, division 33) further limit dog kennels to non high-value farmland. Dog kennels are not permitted in forest zones. These provisions are seen by legislation proponents as too onerous for siting dog kennels outside urban growth boundaries in the Willamette Valley, where there is a significant amount of high value farmland. Counties differ in their approaches as to what they consider to be dog kennels. Some interpret the term broadly to include breeding, raising and training dogs, and some do not. At least one county is planning to allow dog training facilities as a home occupation, with sideboards. However, home occupations must be operated substantially indoors and dog training occurs primarily outdoors.

During the legislative session, department staff, ODA and the Farm Bureau offered to support statutory expansion of the definition of dog kennels to clearly include the breeding, raising and training of dogs. However, bill proponents objected to a conditional use process and will probably propose that the use be permitted outright in the 2012 Legislative session. Staff suggests allowing a conditional use through amendments to current rules to forestall future legislation.

PROPOSED POLICY EFFORT: Amend OAR 660, division 33, to clarify that “dog kennels” (a conditional use currently allowed) includes the breeding, raising and training of dogs, and explore the possibility of allowing the use on high-value farmland.



September 13, 2011

John Van Landingham, Chair
Oregon Land Conservation and Development
Commission
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RE: Comments from the City of Bend on Proposed 2011-2013 Policy
and Rulemaking Agenda.

Dear Chair Van Landingham and Commissioners:

The City of Bend has prepared the enclosed comments on your
recommended 2011-2013 Policy and Rulemaking Agenda. Thank you for
this opportunity to comment.

JEFF EAGER
Mayor

JODIE BARRAM
Mayor Pro Tem

TOM GREENE
City Councilor

KATHIE ECKMAN
City Councilor

JIM CLINTON
City Councilor

MARK CAPELL
City Councilor

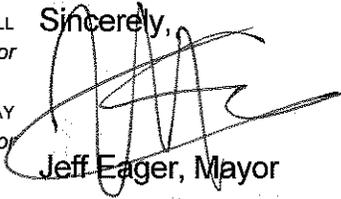
SCOTT RAMSAY
City Councilor

ERIC KING
City Manager

The City supports the proposed Urban Forum for examining ways to clarify
and streamline the respective processes for amending urban growth
boundaries and establishing urban reserves. The Commission's recent
experiences with Bend, McMinnville, and Woodburn argue for making the
Urban Forum a priority on the Commission's 2011-2013 policy agenda.
The process needs to be more efficient, and the rules for making such
decisions need to be clearer.

Thank you again for the opportunity to comment.

Sincerely,


Jeff Eager, Mayor

Cc: Eric King, City Manager
Mel Oberst, Community Development Director
Mary Winters, Gary Firestone, City Attorneys
Brian Shetterly, AICP, Long Range Planning Manager
Damian Syrynk, AICP, Senior Planner

From: [Rindy, Bob](#)
To: [Howard, Lisa](#)
Subject: FW: LCDC Policy Agenda for 2011-13
Date: Wednesday, August 10, 2011 11:45:07 AM

[Bob Rindy](#)

From: Mitch Rohse [mailto:mitchrohse@comcast.net]
Sent: Tuesday, August 09, 2011 2:48 PM
To: 'Rindy, Bob'
Cc: Laren WOOLLEY, DLCD; Katherine Daniels, DLCD
Subject: RE: LCDC Policy Agenda for 2011-13

Bob, please forward the following memo to the commission for its meeting on August 17.

To: Land Conservation and Development Commission
From: Mitch Rohse, Planning Consultant
Subject: Request for Rule-Making Pertaining to Transfer of Development Rights

There is a little-known policy problem that I hope LCDC can fix with some simple rule-making. The problem has to do with transfer of development rights (TDR). When the 2009 legislature passed SB 763, the lawmakers defined key terms too narrowly. In doing so, they precluded (probably inadvertently) the use of TDR in certain situations where it not only should be allowed but encouraged, namely in coastal communities threatened by rising sea level and severe coastal erosion. TDR has the potential to be a useful tool where relocation to more secure upland areas becomes necessary. With TDR, shorefront property endangered by sea level rise or coastal erosion would be a sending area, while secure upland property would be the receiving area. The problem with SB 763 is that it implies that sending areas can only be "resource land." Most of the coastal areas that may be subject to sea level rise and severe erosion are unincorporated rural communities designated for various levels of residential development, and hence are not resource land.

The key passages from SB 763 that I'm concerned about are these definitions:

(8) "Sending area" means a designated area of resource land from which development credits generated from forgone development are transferable, for uses or development not otherwise allowed, to a receiving area.

...

(11) "Transferable development credit system" means a land use planning tool that allows the record owner of a lot, parcel or tract of resource land in a sending area to voluntarily sever and sell development interests from the lot, parcel or tract for purchase and use by a potential developer to develop a lot, parcel or tract in a receiving area at a higher intensity than otherwise allowed.

I am not aware of any coastal communities that are presently considering relocation or that need this form of TDR immediately. Some communities, however, would like to have TDR as a long-term contingency option to be used if and when the threat of coastal erosion and ocean flooding become a major risk. They would like to have the TDR policy mechanism in place if relocation should become necessary. At the present time, however, such a policy seems to be prohibited by the state law. I realize that LCDC cannot use rule-making to amend a statute, but I wonder whether it could use its rule-making authority to clarify that the definitions in SB 763 don't necessarily prohibit TDR in all situations where the sending areas are not resource lands.

The extent to which relocation of at-risk communities might be needed in the future is, of course, difficult to predict. FEMA and USACE already have relocated several shoreline communities in Alaska to upland areas, but the hazard there stemmed mainly from a decline in winter ice along the shore that previously had acted as a sort of natural seawall to protect the communities from severe winter storms. Obviously, that's not a problem we would see along Oregon's coast. But well-documented sea level rise and increases in winter storm wave heights here may cause relocation to be necessary in some of our coastal communities at some point. Needless to say, that would be an exceedingly difficult and expensive undertaking, so anything we can do to facilitate the process would help. Making the state's TDR provisions applicable in such situations would be one way to do that.

Thank you very much for your attention and action on this matter. Please don't hesitate to contact me if you have any questions or comments.

Mitch Rohse

Mitch Rohse
503.559.6558
mitchrohse@comcast.net

From: Rindy, Bob [mailto:bob.rindy@state.or.us]
Sent: Monday, August 08, 2011 3:14 PM
To: bob.rindy@state.or.us
Cc: Rue, Jim; Morrissey, Michael
Subject: LCDC Policy Agenda for 2011-13

You are invited to participate in discussions of LCDC's Policy Agenda. The Oregon land use program is always changing in response to new and emerging issues and the needs of communities statewide. The Policy Agenda is a plan for changes to the program. The Land Conservation and Development Commission (LCDC) encourages citizens, local governments and stakeholders to help set its Policy Agenda at the beginning of each biennium. The agenda sets priorities for the 2011-13 biennium, including projects to adopt or amend administrative rules, conduct information forums, propose legislation, or participate in other policy projects.

LCDC has scheduled two public meetings to consider ideas and recommendations. These meetings will occur August 17 in Portland and October 5-7 in Grants Pass. The first meeting, August 17, will begin the discussion with public and staff input, including oral and written testimony. After the meeting for the next six weeks the commission and department will continue to seek input and recommendations, with

anticipated adoption of the Policy Agenda at LCDC's October meeting in Grants Pass.

The following link provides background information on this topic, including information about the hearing times and locations, and how to mail or email ideas and recommendations.

http://www.oregon.gov/LCD/docs/meetings/lcdc/081711/Item_7_Policy_Agenda.pdf

The following link is the LCDC agenda for the August meeting, including location information:

<http://www.oregon.gov/LCD/docs/meetings/lcdc/081711/lcdcmtnot081711.pdf>

Please call or email if you have questions or need additional information. Thank you,

Bob Rindy | Senior Policy Analyst
Oregon Dept. of Land Conservation and Development
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August 17, 2011

Land Conservation and Development Commission
 635 Capitol St. NE, Suite 150
 Salem 97301-2540

Dear Commissioners,

Thank you for this opportunity to comment on the Department’s policy and rulemaking agenda for the 2011-2013 biennium. 1000 Friends of Oregon is a statewide charitable nonprofit organization that works with Oregonians to enhance our quality of life by building livable urban and rural communities, protecting family farms and forests, and conserving natural and scenic areas.

Given the likely budget-constrained reality of this biennium, we recommend that the department not take on any new projects that are not required by law or already in process. Instead, DLCD should focus on what it is doing now and how to improve these efforts, and establish methods to monitor how well the land use program is meeting its objectives.

DLCD has started a project to create a better, more standardized and scientific method for cities and counties to access updated and coordinated population and employment forecasts. The department should complete this effort. This should cut down on the time and money local governments now spend doing population and employment forecasts and it should cut down on the current confusion in this area. Additional certainty in population and employment forecasting will benefit the state and all parties involved. Once the work is completed on new methods for population and employment forecasts, LCDC could consider other changes to the UGB expansion process in the next biennium if they are warranted.¹

DLCD should continue to integrate SB 1059 (2010) – the MPO greenhouse gas planning legislation – into its overall policy framework, including into plan updates, UGB evaluations, TSPs, and other state, regional, and local planning tasks.

DLCD should also continue its work improving monitoring of the land use program. This should include establishing a process to monitor the on-the-ground impacts of this year’s SB 960 (commercial activities on EFU) and HB 3280 (expanded activities and uses at wineries). Property line adjustments should also get extra scrutiny as there is anecdotal evidence that PLAs are being used to skirt the intent of Goal 3 and the EFU statutes and rules. Improved reporting of PLAs could help the department to better understand the intent and the effect of the thousands of PLAs that take place each year.

The solar rulemaking and the irrigation reservoir rulemaking should each be continued to their logical conclusion. The department and stakeholders have invested time and money into both these

¹ Since Goal 14 was recently amended and there has been little experience with the operation of the new rules it is premature to take on other aspects of UGB expansions.



Celebrating Thirty-five Years of Innovation

EXHIBIT: 12 AGENDA ITEM: 7
 LAND CONSERVATION & DEVELOPMENT
 COMMISSION
 DATE: 8-17-11 Steve McCoy
 SUBMITTED BY: 1000 Friends

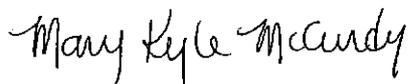
rulemakings and each addresses a nascent need in rural Oregon. Continuation will head off unnecessary future conflicts.

If the commission determines there is additional money in the budget and sufficient staff time, other areas that would benefit from attention include:

- Improvements to Goal 5 to reflect current wildlife science and improve the land use program's treatment of mining on farm and forest lands.
- Improvements to the definition and recent LUBA re-interpretation of forest lands in the state.
- Implementation of Goal 1 in rule, including improvements to public notice requirements, web use guidelines, records requests, and standards for what must be included in the Citizen Involvement Program with criteria to judge whether it is followed.
- Implementation of Goal 7 in rule, including integrating DOGAMI's advice on landslide and tsunami hazards and FEMA's updated mapping of flood hazards, in part due to anticipated increased landslide and flooding issues from climate change. Once the hazards are integrated, clear rules should be set for building within hazard-prone areas.
- A regulatory response to the Supreme Court's interpretation of the Commission's definition of "agricultural land" with respect to profitability.

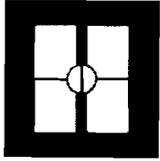
Thank you for your attention to these views.

Sincerely,

A handwritten signature in cursive script that reads "Mary Kyle McCurdy".

Mary Kyle McCurdy
Policy Director

CITY OF HILLSBORO



August 17, 2011

John VanLandingham, Chair and
Land Conservation and Development Commission Members
Metro Regional Center Council Chambers
600 NE Grand Avenue
Portland, OR 97232

Re: Hillsboro Comments on 2011-13 LCDC Policy and Rulemaking Agenda (Item #7)

Dear Chair VanLandingham and LCDC Commissioners:

This letter expresses the city of Hillsboro's support for and interest in LCDC's "Urban Forum on UGB and Urban Reserve Requirements" proposed for your 2011-13 Policy Agenda. We agree with DLCD staff that there is a "demonstrated need for a new statewide discussion concerning the cost, amount of time and legal uncertainty associated with UGB planning."

We are particularly interested in a LCDC/DLCD process that will address these UGB issues, along with the fit between Statewide Planning Goals 14 (Urbanization) and 9 (Economic Development). As demonstrated by recent case law (e.g., *Woodburn*), realizing the potential economic benefits to communities envisioned by the Goal 9 Economic Opportunities Analysis can be challenging, especially when the local government seeks to establish an adequate competitive short term industrial land supply in accordance with OAR 660-009-0020 through 0025 (*Designation of Lands for Industrial and Other Employment Uses*)¹.

While the ability to consider short term industrial needs and choice in markets is implicit in Statewide Planning Goal 14 and the rules that implement it, a more explicit and clear linkage would benefit communities who are working to revive local economies. Enclosed please find four attachments authored by Johnson Reid Land Economics, LLC in 2010, which we believe illustrate one of the key issues facing our State as we strive to emerge from a long and difficult economic downturn.

¹ OAR 660-009-0005(10) "Short-term Supply of Land" means suitable land that is ready for construction within one year of an application for a building permit or request for service extension. Engineering feasibility is sufficient to qualify land for the short-term supply of land. Funding availability is not required. "Competitive Short-term Supply" means the short-term supply of land provides a range of site sizes and locations to accommodate the market needs of a variety of industrial and other employment uses.

It is hoped enactment of SB766 in 2011, which identifies industrial development as a matter of statewide significance, will assist local government economic recovery throughout the State. We believe better integration of Statewide Planning Goals 9 and 14 will also be needed to enhance local economic opportunities for industrial and employment uses. LCDC's Urban Forum could provide the platform to "improve the process for urban growth decisions" as they relate to family-wage job creation opportunities statewide.

We encourage LCDC and DLCD to make its proposed Urban Forum a top priority in this biennium and look forward to participating in the dialogue on this topic that began in 2009.

Thank you for the opportunity to provide local government feedback on LCDC's 2011-13 Policy and Rulemaking Agenda. Please feel free to contact me (503-681-6481) or our Long Range Planning Manager, Alwin Turiel (503-681-6156) if you have any questions or need additional information about these matters.

CITY OF HILLSBORO



Patrick Ribellia
Planning Director

Encl (4):



MEMORANDUM

DATE: January 26, 2010

TO: Patrick Ribellia, Esq., Planning Director, CITY OF HILLSBORO
John Southgate, Economic Development Director, CITY OF HILLSBORO

FROM: Bill Reid, Principal
JOHNSON REID, LLC

SUBJECT: Portland Metro Region Large Industrial Site Query Survey

JOHNSON REID was retained to document both large industrial site market activity throughout the Portland metro area, as well as large industrial site supply strategy employed by regions elsewhere in the country that are competitive with the Portland metro area in high-tech and alternative energy sectors. This memorandum is a summary of key findings, a graphical schematic of large industry site recruitment process by competitors to the Portland metro area, and a summary of Hillsboro’s own large-user recruitment leads over just the last three years.

Competitive Market key findings:

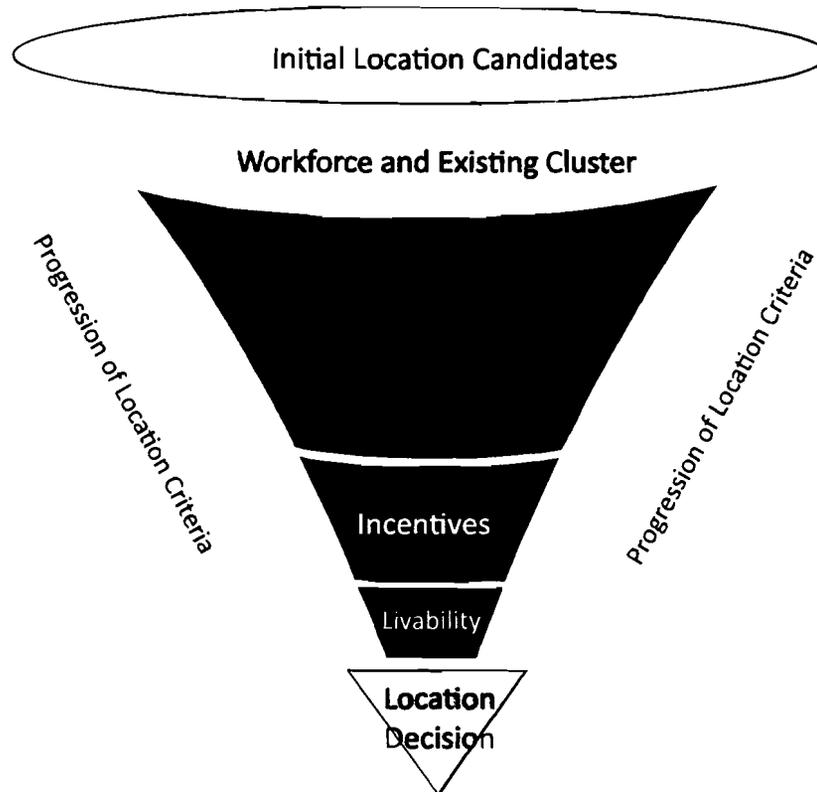
- Competing high-tech, alternative energy, and high quality-of-life markets, including Austin, Texas and Raleigh-Durham, North Carolina, are faced with far less rigorous land use planning process and do not face mandated site count minimums for adequate supply or “choice” nor maximum restrictions on the number of large industrial sites in their inventory.
- Large industrial site strategy by most competitors is an issue of providing significant, prospective supply and choice based not on any study, best practice or empirical approach, but rather regional or jurisdictional economic goals and objectives and market/land owner coordination. Survey of competitor large site supply is below.

	Albuquerque	Austin	Colorado Springs	Raleigh, NC	Seattle/King County
50-100 Acres	2-3 retrofit sites	380 acs in a "Featured Property Profile"	20 shovel-ready 15 not certified	60 ac, 66 ac	None
100+ Acres	8-10 100 ac	5-6 100 ac - 185 ac 140-acre park for clean energy agglomeration	500 acres with rail	472 ac, 998 ac	None
Other	18,000 acres of planned communities with significant dedicated employment land	Over 1,000 acres of large lot sites in total, many like Albuquerque in planned communities	Rail-served supply capacity increase still in progress	Larger, supersites intended for larger users but can and will be subdivided if necessary.	Capitalizes on Fred Hutchison Cancer Research Center and University of Washington for research/innovation jobs.

- Large site quantity, diversity, and flexibility to give firms multiple options was universally viewed as essential to Portland metro area’s economic development competitors.
- Large site provision is one of many important factors including quality of life. However, inadequate site provision and cost eliminates a market from contention early in the process before factors like quality of life and incentives are even seriously factored into a decision, indicated by the following schematic.



FIGURE 1: BUSINESS LOCATION DECISION PROCESS



Portland Metro Broker Survey Key Findings:

- The Portland metro three-county region's industrial brokers fielded an estimate of eleven 50+ acre parcel queries annually over the last ten years, largely by technology manufacturers and warehouse/distribution.
- Technology manufacturers comprised 35% of all 50+ acre site queries over the last decade, indicating continued viability and continued growth potential for the cluster.
- For every public lead that generated a large site query fielded by a broker, private brokerages fielded nearly 3 large site queries independent of public economic development involvement.
- The region loses at least one large site query annually due explicitly to site unavailability, however JOHNSON REID concludes more are also likely lost to site unavailability but limited broker involvement and firm confidentiality prevent verification.
- Almost one of every three sites purchased by large users over the last ten years has not yet realized development. In other words supply capacity should include at least 33% land investment and "transaction demand" capacity to enable firms adequate choice for the large site market to function.

Conclusion:

Portland metro competes with regions across the country for high-tech and renewable energy sectors that offer significantly greater development-ready industrial land supply, selection, diversity, and lower land cost. Continued inability to factor competitiveness as borne out by surveyed regional broker activity, including diversity of large industrial site supply and competitive cost, sacrifices the region's long-term competitiveness for these key industries.



MEMORANDUM

DATE: January 25, 2010

TO: Patrick Ribellia, Esq., Planning Director, CITY OF HILLSBORO

FROM: Bill Reid, Principal
JOHNSON REID, LLC

SUBJECT: Portland Metro Region Large Industrial Site Query Survey

JOHNSON REID was retained by the City of Hillsboro to document private, market query activity over the last ten years for large industrial sites throughout the Portland metro area. To this end, JOHNSON REID surveyed membership of the Society of Industrial & Office Realtors (SIOR) on details of ten-year large industrial site demand. SIOR comprises many of the region's prominent industrial and office property brokers, who in turn are most likely to have been involved in large site queries, marketing and transactions.

Our survey results indicate the following key findings:

- The three-county region's industrial brokers field an estimate of eleven 50+ acre parcel queries annually.
- Technology manufacturers comprise 35% of all 50+ acre site queries.
- 12% of all large site queries, or three annually, are actually realized as a transaction for site development.
- Almost one of every three large site transactions does not realize development, i.e. transaction demand.
- The region loses at least one large site query annually explicitly due to site unavailability.
- The region likely loses more queries due to site availability, but broker participation in the site selection process frequently does not enable full knowledge of a firm's decisions and final outcome.
- For every public lead that generated a large site query, brokers fielded nearly 3 private, large site queries in the metro area over the last ten years.

Large Site Query Findings

Seven industrial brokers, six SIOR members and one non-affiliate, throughout the Portland metro area provided survey responses to a host of questions about the nature of large industrial site queries, realized demand, and non-realized queries over the past ten years. Regional SIOR membership presently includes approximately 20 industrial brokers, therefore the sample represents 30% of total SIOR industrial broker population in the Portland metro tri-county area. We further estimate that respondents comprise the great majority of active industrial brokers in the larger site/parcel market.

Figure 1 on the following page provides a comprehensive summary of survey results within the format of the survey instrument utilized. Below is a summary of key query statistics.

- Total 50+ Industrial Site Queries: 106, or 11 annually
- Total 50-100 Acre Queries: 79, or 8 annually
- Total 100+ Acre Queries: 27, or 3 annually
- Share of Total Queries Which Were Public/State Leads: 26%
- Share of Total Queries That Transacted/Location Decision: 12% (14% 50-100 Acres, 7% 100+ Acres)



- Share of Transactions That Did Not See Development (Transaction Supply): 23% (18% 50-100 Acres, 50% 100+ Acres)
- Survey respondents indicated that individual user queries most commonly compared a Portland metro site with up to six other geographic markets in the country, in generally Pacific Northwest or western states, though the typical range reported was 2-6 other markets competing with the Portland metro area.

FIGURE 1: SURVEY INSTRUMENT & RESULTS SUMMARY

Please Enter Your Identification (Broker, Developer, Both)

This is a survey of large industrial site demand queries over the last ten years in the Portland metro area. For this survey, "industrial site" is defined as fully development-ready within a 180-day period. For this survey, "large industrial site" is divided into two size categories: 50 - 100 Acres & 100+ Acres. For this survey, "Portland metro area" is defined as Multnomah, Washington, and Clackamas Counties.

To the best of your knowledge:

For both size categories, please enter into the shaded cells below the number of large site queries you have handled since 1999. Please provide query counts for each Query Description & Outcome (1 - 7) by each User Type (A - E).

Finally (8), for each User Type (A - E), please indicate the typical number of competing, Out of State markets the query considered.

50 - 100 Acre Sites	User Types					
	A	B	C	D	E	
	Individual User				Multi-Tenant	
Query Description & Outcome	Technology Manufacturing	General Manufacturing	Warehouse/ Distribution	Corporate/ Institutional Campus	Industrial/ Business Park	
How many total metro area queries?	22	12		29	5	12
How many of the total were public leads?	12	1		4	1	0
How many of the total actually transacted?	4	1		5	0	1
How many transacted have since been built upon?	2	1		5	0	1
Failed to transact:						
<i>No local site availability and went elsewhere?</i>	0	1		6	0	1
<i>No local site availability and did not proceed elsewhere?</i>	0	1		5	0	0
<i>Did not transact but outcome uncertain?</i>	14	10		14	5	8

100+ Acre Sites	User Types					
	A	B	C	D	E	
	Individual User				Multi-Tenant	
Use	Technology Manufacturing	General Manufacturing	Warehouse/ Distribution	Corporate/ Institutional Campus	Industrial/ Business Park	
How many total metro area queries?	15	4		3	5	0
How many of the total were public leads?	8	0		2	0	0
How many of the total actually transacted?	2	0		0	0	0
How many transacted have since been built upon?	1	0		0	0	0
Failed to transact:						
<i>No local site availability and went elsewhere?</i>	3	0		3	0	0
<i>No local site availability and did not proceed elsewhere?</i>	0	0		0	0	0
<i>Did not transact but outcome uncertain?</i>	7	4		0	5	0

Generally by User Type:	A	B	C	D	E
How many alternative markets outside of Oregon did the typical query in each User Type (A - E) competitively consider, if at all?	"5"; "6"	"3-4"; "5"	"Generally North-west or Western States"; "2-3"; "6"; "3"	"6"	

In addition to general characterization of industrial site queries, query or demand by industrial user type emerged:

- Fifty percent of all queries for large industrial sites were for manufacturers.
- Technology manufacturers have comprised 35% of all large-site queries over the past ten years, the single greatest share of all large-site land interest.
- Technology manufacturers have comprised a full 56% of all 100+ acre site queries since 1999 despite far slower activity in the high-tech sectors since 2000.



- Warehouse/distribution users accounted for the second-largest share of all large-site demand at 30%, though queries were overwhelmingly in the 50-100 acre category.
- 50-100 acre queries for multi-tenant business parks equaled queries by general manufacturing users over the ten-year period.

Results not only indicate a significant amount of query activity by technology manufacturers and warehouse/distribution uses, but also a significant amount of query activity fielded by private brokers above and beyond public agency lead process involvement.

- Nearly half of all large-site technology manufacturing queries fielded by regional brokers had no public lead.
- 94% of all general manufacturing large site queries were handled solely by brokers with no public lead involvement.
- 84% of all large-site warehouse/distribution queries had no public lead involvement.
- Campus/institutional and multi-tenant industrial park queries had practically no public lead involvement over the last ten years.

For queries that did not result in a realized transaction and therefore successful business/development recruitment, there is far from certainty about final query outcomes.

- The final outcome of over 72% of unsuccessful large site queries was reported as uncertain by brokers surveyed.
- Uncertain outcome was most common for technology manufacturer queries, probably due in large part to the confidential nature of queries which were most commonly via public lead.
- Industrial brokers reported that to their knowledge, 24% of unsuccessful 100+ acre site queries did not locate in the Portland metro area due to suitable site unavailability and located in another market.
- For the 50-100 acre industrial site, brokers indicated knowledge that almost 12% of unsuccessful queries met the same fate – no local, suitable site and location in a competitive market.
- Applying the site unavailability rate to estimated potential queries annually, the Portland metro region is losing an average of nearly one 100+ acre query annually explicitly to site unavailability problems, half likely high-tech manufacturers.
- Applying the site unavailability rate to estimated potential queries annually, the Portland metro region is losing an average of at least one 50-100 acre query annually explicitly to site unavailability problems, 75% of them warehouse/distribution users.
- Because brokers are usually only involved in the process of fielding potential locations in their home market, the final outcome of a site query is far more frequently uncertain to the broker involved. Accordingly, the outcome for the majority of unsuccessful queries cannot be verified by brokers but site unavailability is still probable in some cases.

Additional Survey Respondent Comments

In addition to specific query counts for tabulation, survey respondents also made comments on topics related to survey questions. Comments are directly quoted below.

“50+ acre land requests are a large requirement in our market.”



“An element missing in your survey is the cost of land. I have had numerous inquiries from national developers looking for opportunities in the Northwest but they cannot accept our land costs and therefore go elsewhere. This activity is not accounted for in my survey.”

“Many of our campus, manufacturing, distribution and business park land sales have been 20 – 40 acres because the scope of their operations didn’t require additional acreage for expansion or it was accomplished in the original acquisition.”

“Because of our success in the smaller properties and with reasonable future demand – it is likely to put pressure on the larger available site inventory.”

“We already have a finite land universe and if the market had been better/economy stronger - or our pricing wasn’t at its current level – considered high by many reviewing Oregon as a site location - We would be done.”



MEMORANDUM

DATE: January 25, 2010

TO: Patrick Ribellia, Esq., Planning Director, CITY OF HILLSBORO

FROM: Bill Reid, Principal
JOHNSON REID, LLC

SUBJECT: Competitive Markets & Market Factor Approach to Large Industrial Site Provision

JOHNSON REID was retained by the City of Hillsboro to document the importance and need for large-site industrial “market choice” supply for successful economic development. The term “market choice” employed here is defined as the minimum site count or gross acreage of development-ready large industrial sites/parcels that ensure adequate choice for prospective industries and firms to consider for successful site selection and recruitment.

To this end, JOHNSON REID interviewed economic development professionals in a nationwide survey of market areas which have similar targeted industry recruitment to identify specific strategy and economic development policy underpinnings for other, competitive regions. The objective of this case study analysis is to understand the approach to land provision for economic development in other markets and how the availability or scarcity of large industrial sites impacts their business recruitment and marketability in business' location decisions.

In short, our findings reinforce the idea that the Portland metro area is basically unique in taking a detailed, micro-view of individual site need location, specific industry need planning, timing and land urbanization and development justification. Alternatively, nearly all markets that are frequently viewed as models or competitors, including North Carolina and Austin, Texas, regard large industrial site strategy as an issue of providing significant, prospective supply and choice based not on any study, best practice or empirical approach, but rather regional or jurisdictional economic goals and objectives and market/land owner coordination.

The sole exception, Seattle/King County, does not pursue larger manufacturers but focuses on research-based companies enabled, admittedly, by that market’s unique feature of two high-profile research and development institutions: Fred Hutchison Cancer Research Center and the University of Washington.

We first provide an overview of consensus economic development and recruitment strategy among nationwide competitors with detailed summary of large industrial site supply approach. Consensus findings are followed by individual summaries of each competitive market area profiled.

CONSENSUS SUMMARY OF FINDINGS

Table 1 highlights the five market areas that were evaluated in our case study. These regions were selected to reflect similar livability characteristics, and represent regions that are known to compete with Hillsboro in the recruitment of Hillsboro's target industries, namely High-Tech manufacturing and Renewable Energy Manufacturing.

TABLE 1

Market Area
Austin, Texas
Albuquerque, New Mexico
Seattle, Washington
Raleigh-Durham, North Carolina
Colorado Springs, Colorado



Organization of Economic Development

For the most part, the approach to economic development, and particularly large sites and employer recruitment in our case study markets are similar. Typically, a market has a regional economic development lead, which most commonly is a private, non-profit Economic Development Corporation or a division of the regional Chambers of Commerce. The Economic Development Corporation is the lead in business recruitment and site location management, in coordination with local land brokers.

Localized jurisdictions typically get involved in the process of assembling incentive packages in coordination with respective state or other regional agencies. Our finding is that economic development is organized by this structure in part as a response to public economic development office restrictions on trade show travel, and other standard business recruitment expenses, as well as maintaining confidentiality of potential recruitment efforts.

Land Availability Strategy

Our finding is that competing market areas are faced with a far less rigorous land use planning process and that maintaining availability of sites is most commonly a function of market factors and physical land characteristics. While most regions have allocated resources to developing target industry identification strategies and strategies for local business development, we find that case study markets are neither faced with mandated site count minimums for adequate “choice” nor maximum restrictions on the number of sites in their inventory.

In other words, large industrial site scarcity is not an artificial product of regulatory environment and, when potential site supply is reduced, regional economic development policy seeks site supply replacement/refreshment to maintain sizeable supply stock, though “sizeable” varies from market to market. Availability of alternative locations in our case study, where physical land characteristics permitted, are seen as benefited by a diversity of marketable site alternatives.

When asked how this site marketability played into their success in recruiting large employers, the overwhelming consensus was *significant*.

- According to Denis Houston, Director of Retention and Expansion for Albuquerque Economic Development Inc. "Having a diversity of sites is exceedingly important. At this stage in location selection, having the diversity [for firms] to shop multiple sites with different characteristics will "keep us in the game" as opposed to firms going elsewhere."
- This theme was echoed by Dave White, Executive Vice President of Marketing for Colorado Springs Economic Development Corp, "Site marketability and options are essential. The ability to offer a suitable site on a fast time frame is critical, without it you are not in the game."
- Conversely, Steve Gerritson, Business Development Manager for Enterprise Seattle expressed different approach with Seattle's limited physical land supply, "we're not really in the game for manufacturing. We don't have the sites... And what I do have does not pencil for those manufacturers." In the case of Seattle, education institutions and workforce that allows them to compete for research oriented firm were cited as strengths.

Land Availability

To demonstrate the issue of site availability and marketability in competing markets, on the following is a brief summary of respondents' estimate of their large industrial site inventory available.



Raleigh, North Carolina

- Raleigh has a site certification program at the state and county levels.
- Raleigh reported presently having industrial large, individual sites of 60, 66, and 130 acres.
- In addition, two “super sites” of 472 and 998 acres, respectively, were reported.
- Super sites are intended for much larger potential users, but can be subdivided as a park.

Albuquerque, New Mexico

- Albuquerque has more land available than any area in the case study.
- The majority of their land is concentrated around sites within two master planned areas, Mesa del Sol and SunCal.
- The first, Mesa del Sol, is among the largest master planned developments in the country covering nearly 20 square miles for employment and residential uses. The second master planned area is a SunCal project with an estimated 6,500 acres of combined employment and residential uses.
- Albuquerque Economic Development Inc. estimates they have between 8-10 parcels around 100 acres that are development-ready, or shovel-ready within 180 days, with an additional 2-3 vacant buildings in the 200,000 square foot range that have gotten attention as retrofits.

Colorado Springs, Colorado

- Colorado Springs has a significant amount of vacant land to the east of the City center. The Colorado Springs Economic Development Corp. estimates they have around 35 50-100 acre sites with roughly 20 development-ready.
- They recently made a push to identify potential sites with rail access, now well above 500 acres.

Seattle, Washington

- Representatives from Enterprise Seattle indicated they do not have a significant number of large sites, with “many” 20-30 acre sites but “few, if any” sites above 50 acres.
- They do not view this as problematic as economic development efforts in that market are focused on research-oriented firms that require smaller sites than manufacturers.

Austin, Texas

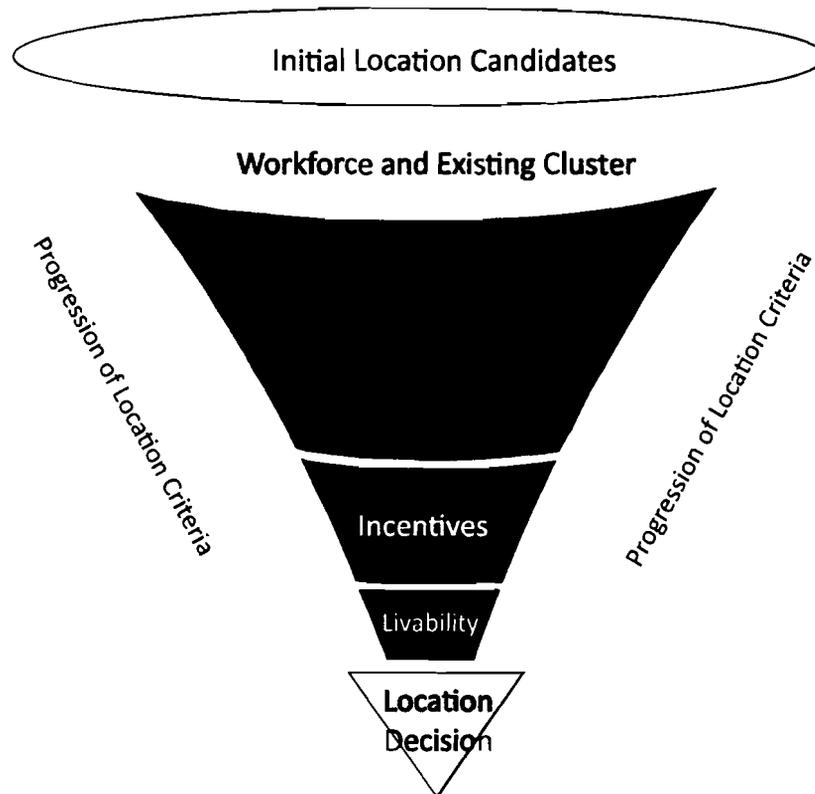
- Similar to Albuquerque, Austin has a significant amount of land available in master planned communities and various tech/industrial parks in production.
- Our survey of their inventory database found the equivalent of 520 acres available in their “featured property profile” including the Texas Clean Energy Park, a 140-acre park dedicated to the agglomeration of clean energy businesses.
- In the general database we identified well over 1,000 acres of large lot sites including 5-6 properties in the 100-to-185 acre range and a 315-acre super site.



Process of Location Selection and Criteria

During our case study interviews, a central theme emerged time and again that became a consensus view of how firms review sites in a market, select locations and where various selection criteria fall in the process. We have organized this process into the figure below.

FIGURE 1: BUSINESS LOCATION DECISION PROCESS



Initial Location Candidates

Firms begin with basket of potential locations based on their preliminary understanding of these and other location characteristics. Selection process frequently starts with 10-15 location “candidates”. In other words, for particular industries or individual businesses, locations are “on the radar” because they are broadly known to have a mix or variety of favorable conditions.

Workforce & Industry Criteria

The first and most important selection criterion is the presence of an appropriately trained workforce and industry network for that firm. For some firms or industries, this could be the impact of a major educational institution, existing well-trained workforce, cluster of interrelated businesses or vendors, or most frequently a combination. Firms then eliminate location candidates that do not satisfy this basic criterion. This is often an internal process in the very preliminary phases of the site search process.

Operating Costs and Site Availability

After locations with suitable workforce and industry characteristics are established, firms begin to evaluate their cost of doing business at each location. This is the stage in the location process that economic development recruiters refer to when they are “in the game”. Firms evaluate utility rates, standard wages, and tax structure,



among countless other factors. In this process firms begin to look for sites that fit their operating needs. Large industrial sites are unique, and no site is ever "perfect". It is in this stage that case study respondents indicated that having sites is essential to progressing to the next stage of the process. As put by Adrienne Cole, Director of Raleigh Economic Development, "This is a game of not being eliminated. Having a choice of suitable sites keeps you in the game longer, gets you to the next stage."

Incentives & Livability

At this stage, firms have narrowed their candidates down to a small list of potential locations, and most likely have potential sites identified. It is here where a location's ability to provide financial incentives as necessary can win the decision. Tools available to some jurisdictions usually range from property tax incentives to credits for high wage job creation, to discretionary funds.

According to our case study respondents, livability of a community comes into play in this stage again in an "all else equal" preference situation. Effectively, all communities that were initially "on the radar" have a generally high livability standard that, in conjunction with all other criteria, got them on the radar in the first place. Livability typically factors again at the end of the process, in instances where other business-related factors remain roughly equal, such that decision makers' preference for a particular community quality of life may "break the tie."

INDIVIDUAL SUMMARIES

AUSTIN, TEXAS

- The Economic Development Lead is the Chamber of Commerce. The Chamber manages the site inventory and does initial recruiting. The City gets involved when the Chamber has a recruiting target that is interested in the region. The City will partner with the State to put together incentive packages as necessary.
- Targeted Industries include: Clean energy, bio-tech, corporate headquarters, digital media, (video) gaming, and nanotech. The City's primary competitive advantage is workforce. The combination of the University of Texas and an existing high-tech semiconductor cluster is the source. Otherwise cost of business and livability are factors.
- Austin sees itself competing largely with Raleigh and the Tennessee Valley, although nearly every other respondent noted Austin as a major competitor.
- There is no mandate or strategy in Austin requiring or limiting site availability. Zoning limitations on land in Austin were the most relaxed in the survey.
- The region focuses on workforce and infrastructure investment. The region has the most diverse set of incentive tools in the case study.

Contact:

CITY OF AUSTIN, ECONOMIC GROWTH AND REDEVELOPMENT SERVICES OFFICE
Brian Gildea, Director
512-974.6381

AUSTIN CHAMBER OF COMMERCE
Dave Porter, Senior Vice President of Economic Development
512.322.5650



ALBUQUERQUE, NEW MEXICO

- Industry recruitment efforts are driven by the private economic development corporation Albuquerque Economic Development. Public jurisdiction administrative restrictions on travel and other recruiting expenses indicate a private corporation approach to avoid such restrictions. The City gets involved in the process when putting together incentive plans and working with the state.
- Targeted Industries include: Film industry, renewable energy, and high-tech manufacturing. Their advantages are driven by the presence of National Laboratories in Los Alamos, Air Force, Department of Defense, and other federal research investments. The cluster has generated many private spin-offs and vendors related to government programs. Federal funding is a huge part of driving the cluster. They have three Science and Tech campuses. Otherwise they promote livability and favorable utility/tax rates relative to what they see as major market competitors in Phoenix and Denver. The New Mexico Governor even has a discretionary fund to strategically disburse targeted incentives.
- Albuquerque landed Schott Solar in 2008 which took required 80 acres.
- Albuquerque does not have a mandate or program for land inventory because land supply is ample. Much of the recruiting efforts are driven in the direction of two master planned sites, Mesa del Sol and SunCal.
- According to Albuquerque Economic Development Inc. having a diversity of sites is exceedingly important. They find that firms will begin shopping areas based on workforce criteria and operating costs, and then move into site characteristics. At this stage in site selection they find that having the diversity to shop multiple sites with different characteristics will "keep them in the game" as opposed to looking elsewhere with similar workforce, cost, and livability criteria.
- Albuquerque competes primarily with Austin, Salt Lake, Phoenix, and Oregon on high-tech.

Contact:

CITY OF ALBUQUERQUE, ECONOMIC DEVELOPMENT DEPARTMENT
Chris Chavez, Business Development Manager
505.768.3270

ALBUQUERQUE ECONOMIC DEVELOPMENT INC.
Denis Houston, Director of Retention and Expansion
505.821.8218
Bob Walton, Vice President of Business Development
505.246.6207

RALEIGH, NORTH CAROLINA

- "Raleigh Economic Development" is a division of the Chamber of Commerce that partners with the local jurisdictions and Wake County. They are the economic development lead in the market in charge of recruiting. They are contracted through the city to allow for better use of private and public funding pools and for confidentiality. The City and State become involved in the later incentive process.
- Targeted Industries include: Photonics, IT communication equipment, advanced medical care, corporate headquarters, bio-tech, video gaming and entertainment, renewable energy, nonwoven textiles, defense, and aeronautical engineering.



- The Raleigh 2030 Plan adopted in 2009 outlines the need to resist the conversion of large employment sites into residential and other uses. It has targeted areas of growth and encourages the certification of sites through either the State or the County site certification programs. While the region has goals to encourage economic development in target industries, the land use system does not set mandates or requirements on the number of particular sites that need to be available. The availability of land in the region has allowed the market to supply multiple marketing options.
- The recruitment process for them begins when firms start with a large number of potential locations on the basis of workforce, livability, etc. and then start to look at operating cost advantages to narrow the list. After the list of geographies is narrowed down, site availability and characteristics are weighed. According to Raleigh, this the critical point in the process where if site availability and selection is not available, recruitment potential is lost as firms keep moving through the candidates looking at incentives and comparing sites in other markets.
- Raleigh competes primarily with Austin, Tennessee Valley, Orlando, Charlotte, Richmond, and Atlanta but less so now than historically.

Contact:

RALEIGH ECONOMIC DEVELOPMENT
Adrienne Cole, Director
919.644.7049

COLORADO SPRINGS, COLORADO

- Economic Development is headed by the Colorado Springs Economic Development Corporation, a private non-profit contracted with the City. They cover a broad geographic area including the City of Pueblo. The city and state get involved in the incentive and development process.
- There are four primary industry targets in Colorado Springs: Aerospace/defense, IT and software, sports/health fitness/life sciences (includes medical devices), and renewable energy. They specifically target "primary employers" as defined by firms that export greater than 50% of their products or services.
- The catalyst for the community's workforce cluster is largely military and government-driven. Colorado Springs is proximate to many military bases and establishments, including NORAD. They have a number of local and state-level incentives at their disposal, including an enterprise zone and local performance-based funding based on job creation.
- However, they feel that they are not as competitive in incentives as New Mexico and Texas. Lower taxes are probably their biggest incentive. They are highly competitive for wind energy. Colorado Springs is preparing to make a major wind energy recruitment announcement.
- There is no regional policy that they are beholden to with respect to land inventory. The market adequately provides ample opportunities. For example, a number of years ago they were severely lacking adequate large sites with rail access and were losing some recruitment opportunities as a result. They went out into the market and started identifying sites and contacting land owners to meet that need. The process concluded with the assembly of a 500-acre subdividable parcel with strong location and rail service.



- Site marketability and options are essential. "You have to have the sites." It was noted that firms need to turn these sites around fast and moving dirt in six months. "The ability to offer a suitable site on a fast time frame is critical, without it you are not in the game."
- Land scarcity is not viewed to be an issue. They have an abundance of flat, prairie land to the east. They estimate they have the equivalent of roughly 35 50-to-100 acre sites, half of which are development ready/serviced. In addition, they have a number of large, vacant existing structures that they have found to be highly marketable for retrofits to renewable energy firms. Primarily, they have a vacated Intel Fab that can be delivered at a "fire sale" basis, which has gotten a lot of interest from solar firms recently.
- Primary markets they compete with are:
 - For high-tech and renewable energy, Albuquerque, Austin, Phoenix, and Oregon
 - For Corporate Headquarters, Denver, Austin, and Dallas
 - For Data Centers, Omaha, Kansas City, and San Antonio

Contact:

COLORADO SPRINGS ECONOMIC DEVELOPMENT CORP.
Dave White, Vice President of Marketing
719.471.8183 x2835

SEATTLE, WASHINGTON

- Enterprise Seattle is a private non-profit economic development corporation. They are the regional economic development council in charge of recruiting and economic development in Seattle/King County. They work with the City and County economic development groups to place firms and businesses and grow existing businesses and industries in the region.
- Primary Target Industries include: bio-tech, renewable energy, aerospace, computer software. However, they are recruiting more research-oriented firms and not necessarily manufacturers.
- There is no formal strategy in the management of large lot inventory. They actually focus very little of their efforts in recruiting outside industries. He estimates they concentrate 70% to 80% efforts on local business development. They work with commercial brokers to be aware of the inventory of sites available in the region.
- They perceive themselves as having serious disadvantage nationally because Washington has a constitutional mandate that limits ability to produce incentive packages for business recruitment. This has played into their "grow organically" strategy.
- The Seattle region has very few sites in the 50-100 acre range. Actually, a 50-100 acre site would be "near impossible." 20 to 30-acre sites are achievable in marketable numbers. They are not really competing for large industrial users because they do not have the sites. For Seattle it is not only site size limitation but cost as well. He says large manufacturing oriented users are not looking at Seattle because they could not find sites on a functional cost basis. They shop more rural locations with cheaper available land and more favorable utility rates. Hillsboro, Austin, and Albuquerque were specifically identified as such examples.
- Primary markets they compete with are:
 - For Bio-Tech: Chicago, Boston, New Jersey
 - For Renewable Energy: Austin, San Diego, San Francisco
 - Others: Portland, Las Vegas, Denver



Contact:

CITY OF SEATTLE, OFFICE OF ECONOMIC DEVELOPMENT
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OregonLive.com

Everything Oregon

Portland must address the logistical and physical needs of potential employers

Published: Saturday, February 13, 2010, 6:03 PM



By

Guest Columnist



The Oregonian/2008 **By JERRY JOHNSON**

and BILL REID

Focusing on the "creative class" as a strategy has become an increasingly popular topic in economic development circles. Richard Florida has been the leading proponent of this sociology-based approach to economic development. Among the strategy's major advantages is that it is easy to understand and requires very little actual action. The basic message is that if you make public investments targeted to assure an attractive cultural and entertainment environment for a group of mobile, highly educated creative types, they will flock to the area and start creating jobs.

The problem with the selective correlations presented to support the theory is that the data don't always bear out the hypothesis. The city of Portland, arguably containing our largest cluster of "weirdness" in the area, has not been the center of job growth or economic development in the past decade. We may have emerged as the Branson, Mo., of indie rock and the darling of the Sunday edition of The New York Times, but it hasn't translated into tangible economic growth. Job growth, particularly growth in export jobs, has been concentrated in our significantly more normal suburbs.

Making the region attractive for a mobile and highly educated work force is an economic development strategy but should not be the strategy. Not all professions are "creative" class, which even under Florida's expansive definition is limited to 30 percent of the overall work force. Many of these creative types also work for firms that decide where to

locate based on more traditional criteria. Accommodating the physical and logistical needs of an employer remains relevant to economic development, even in "creative" fields.

Portland, Hillsboro, Gresham and others in the region have identified alternative, renewable energy industries as being of high economic development priority. Solar panel manufacturers and wind turbine firms have recently made significant investments in our region, with more anticipated in the near future. But competition with other regions across the country for these prized industries is fierce.

Who competes against the Portland metro area for innovative industries? Frequently, they are other highly educated, innovative and "weird" places that promote a high quality of life. Austin, Texas; Denver-Boulder, Colo.; and Raleigh-Durham, N.C., are but a few.

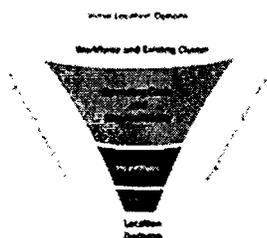
How do they compete? And perhaps more important, how does the Portland area stack up? To answer these questions, we recently interviewed senior economic development officials from the above-named competitors. We also included Albuquerque, N.M., which aggressively recruits solar manufacturers, and Seattle/King County, Wash.

Here's what we learned:

Our competitors take a multifaceted approach to economic development. For most, it includes innovative research institutions, marketable livability and amenities, and a considerable supply of shovel-ready, low-cost industrial land in a wide range of site sizes. Austin, for example, offers nearly 900 shovel-ready acres in sites ranging from 50 acres to 380 acres.

Other regions have noted success marketing "livability," which would include recreation, cultural offerings, amenities, quality of life, and "uniqueness" or "weirdness." On the other hand, nearly all noted that livability only becomes significant after the vast majority of potential business locations have been culled in a systematic "site location comparison process."

What does that mean? According to those other regions, businesses move through a site location decision-making process very much like the "funnel" diagram below.



View full size

Toward the top of the funnel are the broad pool of potential geographic regions where employers may choose to locate based on initial impressions. Firms were then described as going through a sequence of comparisons to gradually cull potential locations to a more manageable set of site alternatives.

Consensus among our competitors for alternative energy industries was this: Before the unique appeal and livability of a place are even seriously considered, a potential location had to be competitive on all of the fundamental business-cost issues in the funnel above "livability." The uniqueness or livability of a place then becomes more of a subjective factor in giving final advantage to a business site over the small, final pool of alternatives. But even then, "livability" is subjective. Professional sports offerings in Denver may be viewed as a more desirable employee and corporate amenity than light-rail transit and bike lane investment.

Lack of suitable sites

How competitive is the Portland region? Individual businesses are somewhat unique in their decision-making process, so it is difficult to say in a generalized way. But as part of the recent urban reserves discussion process, we surveyed the region's largest industrial brokers to understand whether or not the Portland region has been a contender for large new employers. The results were both surprising and disheartening.

We learned that since 2000, on average at least one large, new employer passed us over each year precisely because there were no suitable, shovel-ready industrial sites of at least 50 acres within our urban growth boundary. There were likely more -- significantly more -- but reasons for not selecting our region were kept confidential. A growing reputation for lack of suitable sites will only make the region less competitive for innovative industries.

So why is recruitment of firms, particularly alternative energy firms, important to our region? Can we not simply grow "organically" as small, innovative businesses? We find that the lesson of the above is this: Like our competitors, a multifaceted approach to economic development is important. Being "weird" but at the same time savvy to large business-cost and site needs are both important.

But unlike our innovative competitors, institutions of higher learning in our region are not as singularly focused on research, development and commercialization of technologies. This places far greater importance on recruitment of new, large businesses in the innovative sectors. As research by Joe Cortright and Heike Mayer has documented, the homegrown Tektronix and the out-of-state recruit Intel have served as virtual R&D educational institutions, with many former employees starting high-tech spinoffs that have been crucial to our region's economy. And new, large, innovative firms must continue to play a crucial role. These types of firms are unusually important for the Portland area, as we do not enjoy the major research universities found in these competitive areas.

The Portland area is an attractive place to live, and one in which we have chosen to raise our families. Nonetheless, ongoing economic growth and the associated employment opportunities and prosperity will be critical variables in this area's future attractiveness. We agree that no one can predict the industries of the future, but we would approach this unknown with flexibility with respect to marketable land supply, available space and adequate infrastructure in addition to an openness to new ideas.

Jerry Johnson and Bill Reid are principals with Johnson Reid.

**OregonLive.com**

Everything Oregon

Oregon's economic future: a tale of two economists

By Guest Columnist

February 11, 2010, 9:00AM

By Jack Roberts

While the Oregon Legislature is working to make the rest of us wonder how we ever got along without annual sessions, a quiet debate is beginning to stir outside the capital building over the best strategy for getting Oregon's economy back on track. So far the debate has been characterized by a nuanced contrast between the central messages of two professional economists. With a little imagination, however, one can foresee a full-scale battle over the economic future of our state.



Jack Roberts

In one corner is reigning champion Joe Cortright, president and economist for Impresa Inc., a Portland economic development firm. Cortright is Oregon's recognized guru on industry cluster development and a leading proponent of the idea that enhancing livability and making our state attractive to young members of the so-called "creative class" is a critical factor in attracting jobs and growing the economy.

In the opposite corner is challenger Tim Duy, an economics professor at the University of Oregon, director of the Oregon Economic Forum and owner of Tim Duy Economic Consulting LLC in Eugene. Duy is skeptical of cluster development theories, seeing clusters as a naturally occurring consequence of locational decisions by growing industries and their suppliers. He also questions the idea that livability and a strong "creative class" work force is the major determinant of new investment and job creation.

Duy, author of UO's Oregon Index of Leading Economic Indicators, has spent considerable time evaluating how and why Oregon lags behind the rest of the country in per-capita income and average wages. While Oregon has long ridden a steeper roller coaster than most states when it comes to unemployment and job growth, the greater job loss during recessions is often matched by faster growth when full recovery finally takes hold.

What has Duy concerned is that since the late 1970s a yawning gap has opened between incomes and wages in Oregon compared with the rest of the country, in good times and bad. The only interruption in this decline came during the boom years of the 1990s, although even then the gap simply stagnated for several years before growing again during the following decade.

An even greater indictment of the "creative class" theory is the data Duy has tracked comparing average income and wages in the greater Portland metropolitan area compared with urban areas such as Seattle, Denver and Minneapolis. Over the past 30 years there has been a growing gap here as well, suggesting that Portland's vaunted livability doesn't compete particularly well with other cities that combine livability with better jobs and career opportunities.

Duy does not so much reject the livability and "creative class" arguments of Cortright as suggest they alone are not sufficient. He looks at Oregon's business climate and sees a severe shortage of buildable industrial land, underinvestment in our transportation infrastructure and what often seems to be an unwelcoming if not hostile attitude toward business by many local governments and interest groups. Interestingly, Duy has not jumped on the anti-tax bandwagon, observing that even after the passage of Measures 66 and 67 Oregon overall is not a high-tax place to live or do business.

I'm not suggesting Cortright is complacent about Oregon's economic future or that he has ignored the issues Duy raises. But it's hard to imagine Cortright asking, as Duy has, "Can a region afford to set policies that make them undesirable to large firms?" or "Why does Portland get to be a green city but Seattle gets to be green and wealthy?"

This is not necessarily a partisan or ideological dispute, but it may yet become the most interesting debate in Oregon during this election year.

Jack Roberts was Oregon labor commissioner from 1995 to 2002 and now heads the Lane Metro Partnership.



**LEAGUE OF WOMEN VOTERS®
OF OREGON**

August 17, 2011

To: Land Conservation and Development Commission
John Van Landingham, Chair

Re: Agenda Item 7, 2011-13 Policy and Rulemaking Agenda

The League of Women Voters is a nonpartisan, grassroots political organization that encourages informed and active participation in government. The League supports our statewide land use planning program with local implementation. We believe that Goal 1 requires open access to the land use process and that all citizens have a stake in the development of their communities.

We participated in hearings on budget and policy legislation during the 2011 session and recognize the limited resources available to the department. We also recognize that the work load of Commissioners and ability of Oregon citizens to participate in major policy decisions should be considered in developing a work plan for this biennium. With these parameters in mind, we offer the following:

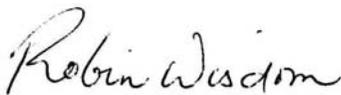
- 1) Assisting the economy of Oregon in returning to health should be a focus. Although we support rural Oregon, we know that the bulk of jobs will be created in urban areas. Therefore, a key priority should be **department support for the periodic review tasks that will modernize comprehensive plans and development codes in our cities**. That work takes aggressive citizen involvement, so help in engaging local communities in that work is critical for success. Such citizen participation encourages “ownership” in these documents that guide development in their community. Ownership encourages support, and that support can include financing the infrastructure needed to make a livable community.
- 2) Some might assume that, looking at our first priority, we believe that urban growth boundary decisions should also be a top priority; however, any expansion should be linked with **consideration of climate change and greenhouse gas reduction**. There may be good cases for some expansion of urban growth boundaries. But those decisions should be made by looking toward the future and not at the past. DLCDC, in conjunction with other natural resource agencies, provided a blue print of climate issues that need to be considered. That report should be revisited and actions regarding hazards and other work should be added to your work plan.
(http://www.oregon.gov/LCD/docs/ClimateChange/Framework_Summary.pdf)
HB 2001 (2009) and SB 1059 (2010) also require our Metropolitan Planning Organizations to begin work on strategies to reduce greenhouse gasses in the transportation sector. Again, we cannot make decisions on urban expansion without considering these new policies.

We see work on transfer of development rights as part of this broader climate change discussion. Because the health of our forests will reduce wildfires and reducing scattered development in our forests reduces the risks of wildfires, any work that will encourage successful use of that tool will link to this work.

- 3) It is unclear how many expedited site reviews will be requested by developers under **SB 766**. The Legislature and the Governor expect this work to be a priority. Because this is a new process and, again, because citizens need to be a part of the process for success, extra time should be allocated for processing the first projects.
- 4) In 2009, the Legislature passed HB 3369 requiring **the development of an Integrated Water Resources Strategy**. A Water Plan for Oregon is expected to be adopted by the Water Resources Commission for submission to the 2013 Legislature. DLCDC and LCDC both have a role to play in continuing development of such a plan, and staff time and Commission time should be set aside for same.
- 5) The League is completing a study of Coastal Issues for its members and the general public. As a result of the study, new positions will be adopted by League members. In the meantime, our positions related to support of all 19 statewide land use Goals allow us to support **revising the Territorial Sea Plan** to address emerging issues. We also understand the importance of any **federal “consistency” rulemaking**. These projects will also demand wide public engagement as they affect the entire Oregon coast. Also, decisions made under these actions will affect inlanders as well.
- 6) The list of “housekeeping” projects will need to be addressed due to legislative action. However, what may be seen as simple changes to processes may be seen by the general public as significant. And, although the legislature had public hearings on this legislation, most citizens of Oregon did not participate in those hearings. So adequate public involvement in any rule changes must be scheduled. Such involvement takes both staff time and resources, as well as Commission time.
- 7) Should the Commission decide to move forward with a pilot project under HB 2229 (2009), adequate staffing should be set aside for this project. Although assumed to be in only one county, the statewide implications of such work will not go unnoticed. Frankly, we cannot see where enough money was allocated to support both the department and a county’s work on such a project. We cannot see where this work during this biennium fosters the goal of a better Oregon economy to the extent that it should absorb your limited resources. Should the department and Commission choose to move forward on this project, the League asks to be included.

We ask that you consider our requests and look forward to learning about the suggestions of others as you work to adopt a work plan for 2011-13 and ask that you include the League in future discussions.

Thank you for the opportunity to discuss your Policy and Rulemaking Agenda for 2011-13.



Robin Wisdom
LWVOR President



Peggy Lynch
Natural Resources Coordinator

cc: Governor Kitzhaber
Richard Whitman, Natural Resources Policy Advisor
State Citizen Involvement Advisory Committee



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August 16, 2011

John Van Landingham, Chair
Oregon Land Conservation and Development Commission
635 Capitol Street NE, Suite 150
Salem, Oregon 97301

Re: LCDC Policy Agenda for 2011-13

Dear Chair Van Landingham and Commissioners:

The Oregon Chapter of the American Planning Association (OAPA) has over 950 members including professional land use planners along with members of local planning commissions and governing bodies, all of whom work to make Oregon a better place to live and work.

OAPA has reviewed the August 4, 2011 proposal from DLCD and offers the following comments.

The Urban Forum. We recommend the Commission keep the UGB and urban reserve policies under "The Urban Forum" and make them a priority on the Commission's policy agenda. The Forum provides the Commission and Department an opportunity to involve a broad group of stakeholders to address and resolve issues regarding UGBs and urban reserves in a coherent and efficient manner.

OAPA identified urbanization issues as one of our priorities for the 2011 legislative session. It has been over 25 years since most cities in Oregon adopted their comprehensive plans and urban growth boundaries. The Department's report estimates that between 15 and 25 decisions on UGBs or urban reserves will be submitted for acknowledgement during the current biennium. OAPA recommends and supports legislation and rulemaking that improve coordination between DLCD and local governments to ensure the process of urbanization can occur in a manner consistent with state law and with the vision of local communities.

Farm/forest Mapping Effort Pilot Project (HB 2229). OAPA is supportive of this effort getting underway with the following understandings:

- The pilot project (and any subsequent work under HB 2229) will focus on technical fixes of mapping errors. This should not be an effort to revise the definition of exclusive farm use or forest land; and
- Land that is determined to be non-resource shall be planned to meet applicable Statewide Planning Goals and rules.

Regional Planning Efforts. By way of information, OAPA has asked the Governor's office, DLCD and ODOT to help convene an interim work group to identify legislative and other regulatory barriers to effective regional planning

and decision-making (outside Metro) and to suggest legislation and rule/regulation revisions to address them. We hope to bring you further information on this proposal prior to the October LCDC meeting.

Complementing this initiative, OAPA is also participating in the Oregon Sustainable Transportation Initiative (OSTI). In order to implement greenhouse gas reductions statewide it is apparent that better regional planning and decision-making systems need to be in place. Scenario planning to effectuate long term efficiencies in land use and transportation planning within all MPO areas is critical to meet the state's long term goals. Our initiative to identify barriers to the formation of effective regional decision-making processes is an important element to the implementation of this state program.

Thank you for your consideration of these important matters.

Sincerely,

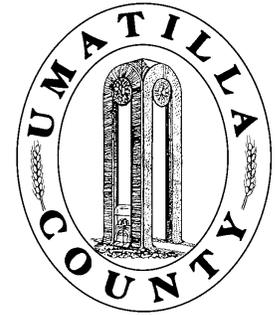
A handwritten signature in blue ink, appearing to read 'Jeannine Rustad', is positioned above the typed name.

Jeannine Rustad,
Chair
Legislative and Policy Affairs Committee

cc: OAPA Board
Bob Rindy
Michael Morissey

Umatilla County

Department of Land Use Planning



Director
Tamra Mabbott

August 16, 2011

**Land Use
Planning
Division:**
541-278-6252

John Van Landingham, Chair
Oregon Land Conservation and Development Commission
635 Capitol Street NE, Suite 150
Salem, Oregon 97301

**CODE
ENFORCEMENT**
541-278-6300

**Emergency
Management
Division:**

Re: LCDC Policy Agenda for 2011-13

**EMERGENCY
MANAGEMENT**
541-966-3700

Dear Chair Van Landingham and Commissioners:

**CHEMICAL
STOCKPILE
EMERGENCY
PREPAREDNESS
PROGRAM
(CSEPP)**
541-966-3700
1-877-367-2737

Your proposed 2011-13 Policy Agenda is very ambitious. Expanding the list may appear daunting. However, there is one important public policy matter that is absent and warrants the Commission's consideration. The issue is energy policy and land use planning. The suggestion is to appoint a committee or task force to review how Oregon's Comprehensive Planning Program is equipped to address energy and transmission development.

Some brief background for your consideration.

Renewable energy generation and transmission development in Oregon is occurring at a rapid pace and changing the landscape. And yet Oregon does not have a comprehensive Energy Plan. Oregon's Statewide Planning Program does not address energy in a comprehensive manner. Rather, in Oregon, the focus is on siting, rather than planning. There are a number of siting statutes and Administrative Rules that provide general guidance on permitting development. But there is no plan for a long term energy supply for Oregonians.

For the Land Conservation and Development Commission, there are many important public policy considerations relative to energy that should be addressed in a comprehensive review of energy and land use. Energy development is a complicated, interagency, multi-disciplinary concern. To illustrate, one aspect of energy development to consider is transmission line siting. An outline of transmission line siting considerations is attached for your consideration.

Oregon can expect to see a number of large transmission lines proposed in the near future. How will that impact the landscape? How will it impact agriculture and the environment? Is the land use program overshadowed by the "need" for transmission lines made by the Public Utility Commission? How does public

access in this part of the process compare to the standards in the land use process?

These are some of the questions a land use and energy task force could answer. For discussion purposes, the Commission could request the Land Use and Energy Task Force to do the following:

1. Identify the nexus between energy policy and land use policy.
2. Identify existing energy and transmission policies in Oregon. Identify the current role of the Land Use Program in implementing those policies.
3. Review Statewide Planning Goal 13 Energy Conservation and identify whether it should be amended to address energy supply and development.
4. Consider whether the state should play a role in developing regional transmission corridor plans.
5. Identify barriers to “supersizing” transmission lines which would allow larger projects and minimize the proliferation of numerous, smaller projects.

Thank you for your time and consideration. I would be happy to answer any questions.

Cordially,

Tamra J. Mabbott
Planning Director

Attachments

August 15, 2011 Overview

Transmission Line Siting in Oregon

I. Why are so many new transmission lines being proposed? The electric transmission system in the entire western United States is in need of upgrade and repair.¹ In terms of capacity, the existing system needs to expand in order to meet future loads (demand). For reliability purposes, the electrical grid needs enhancement in order to avoid the “brown outs.” For national security reasons, the system needs to be more robust in case a line is sabotaged. Additionally, in the past five years, with the incentives to construct renewable energy projects, there is a marked increase in demand for electric transmission capacity in order to route renewable energy from remote locations to the place where it is used (e.g. urban areas). Oregon will likely see five to eight major transmission line projects in the next 5 – 10 years. (See map “New Transmission Projects Being Planned.”)

II. What are the impacts of new transmission lines? What are the benefits?

New transmission lines create a number of impacts. Perhaps the most common complaint is the visual impact and concern about safety. Transmission lines also interfere with agricultural practices, natural resource and wildlife habitat and stream quality. Attachment 1 includes a list identified in Malheur County in response to a proposed interstate transmission line.

Electrical transmission lines are also an essential part of the economy; they are necessary in order to deliver electricity to businesses and homes. Transmission lines can bring new and welcome revenue to landowners.

III. The Regulatory Framework

In Oregon, large transmission lines are permitted by the Oregon Energy Facility Siting Council (EFSC). Smaller transmission lines, and local service lines, are permitted by the local government. Where EFSC has permitting jurisdiction, local plans and regulations are incorporated as part of the applicable criteria. Attachment 2 is a table that shows permitting jurisdiction in Oregon.

Several agencies are involved in permitting transmission lines. Depending upon the type and size of the transmission line, Oregon statutes and county zoning regulations will require different types of permits and processes. The attached table is a summary of applicable local and state laws and regulations that are considered for a new transmission line in Umatilla County. Land use permits are a small part of the overall regulatory scheme. Land use permit applications are made only after a lengthy process to consider the need for a transmission line.

¹ “Transmission Siting in the Western United States: Overview and Recommendations Prepared as Information to the Western Interstate Energy Board, August, 2009,” Holland & Hart.

The role of the Oregon Public Utility Commission (PUC) is to approve the investment or expenditure for a new project. This approval would be made as part of the PUC approval of an Integrated Resource Plan (IRP). Once the PUC approves the IRP, utilities then move forward with permitting. The PUC approval has a secondary implication in that it is used by the utility to demonstrate “need” for a project, in this instance, a transmission line. This is significant especially for projects that are reviewed under the jurisdiction of EFSC. Utilities demonstrate compliance with the EFSC “need” standard by showing the proposed project has been approved by the OPUC as part of the respective utilities IRP. The OPUC also oversees the operation and maintenance of transmission lines, at least those that are owned by utilities.

In addition to public utilities, electric cooperatives construct transmission lines. Additionally, although not common, a private company may build and operate a transmission line.

The federal government and federal laws are a significant part of the underlying regulatory framework. For large projects, when and if a state and/or county is not able to process a permit, the applicant may defer to the Federal Energy Regulatory Commission (FERC) which has authority to override local and state authority.

1. Loss of Property value.
This concern came up from the beginning however I don't know how it can be addressed. In some of the open range areas where the negative effects are minimal, rental income from the towers would be a benefit.
2. Disruption of irrigation practices both present and future.
The location of transmission lines can effect ditches, canals, drains, pumps, sprinkler systems that may need to be moved, modified or not used, at great expense not only to directly affected land owners but to others who are served by such facilities. This is a major concern in Malheur County.
3. Ability to control pests, such as weeds, insects, fungus, rodents, gophers etc.
Aerial spraying could be limited and more dangerous. Pilots may be forced to use less efficient flight patterns, making it more difficult to avoid flying over homes. Some fields may not be able to be sprayed at all. Abandoned field corners and areas around towers are potential areas for weed seeds, gophers and also a harbor for insects and diseases.
4. Recreation, Hunting opportunities.
This area is covered by ODF&W rules and regulations.
5. Potential safety concerns:
Arcing lines, stray voltage traveling through underground metal pipes, noise pollution to those with hearing problems and other health concerns were brought up. Local farmers said the aluminum irrigation pipes and other irrigation facilities used in the area of power lines appeared to deteriorate much more quickly.
6. Adverse impact to livestock.
Loss of milk production in dairy cattle is claimed by dairy owners. I believe there was a court case in southern Idaho regarding lower milk production in dairies near to transmission lines that was lost by Idaho Power. There are concerns beef, sheep and other livestock may be adversely effected.
7. Loss of view shed and degrading of county landmarks.
The present administrative rule provides protection only to those sites listed on the county's comprehensive plan Goal 5 resource inventory. The original B2H route proposed in Malheur County crossed the Malheur River Valley and passed on one side of Malheur Butte. This is the signature view for Malheur County and should be protected, however it would have been impracticable to designate the area a scenic view in the county comprehensive plan due to the agricultural development in the valley.
8. Disruption of G.P.S., radio, cell phone service, remote control devises and commercial radios.

9. Will the opening of corridor would establish path for other utilities to be placed without consent or compensation, pipe lines, fiber optic line and other power lines?

People are concerned that approval of a transmission line would crate a corridor for additional transmission projects. Keeping additional transmission facilities in the same corridor could be a benefit.

TRANSMISSION LINE PERMITTING JURISDICTION

3/19/2009 Draft

STATE OF OREGON			UMATILLA COUNTY
Agency	Energy Facility Siting Council (EFSC)	Public Utility Commission (PUC)	Planning Commission Or Admin Review
Jurisdiction	10 miles; 230Kv+; multi-jurisd	utility investments	<10 miles in length unless w/in 500 existing corridor
Timeline	8 months-2 years	?	150 days after application "complete" unless appealed to BOC, LUBA, etc
Cost/fees	Actual cost of review	?	\$500 initial +expenses request fee agreement
Agency Coordination	Yes	?	Yes via SAC and Land use review
Process	EFSC Review State Supreme Court if appealed One stop Permit	PUC hearing	Land Use Decision for EFU and GP Conditional Use Permit if towers are Conditional Use for other zones ex
Type of Permit	Certificate/License Binding contract signed by both parties. State defends appeal.	acknowledge IRP or Certificate of Public Convenience and Necessity	Land Use Permit
Standards	OAR 345-023		<200' towers UCDO 152.617(II)(7) same as ORS 215.283(1) >200 ' towers UCDO 152.616(T) same as ORS 2
Organizational Expertise	Yes		No
Retirement & Financial Assurance	Yes	Yes	Bond an obstacle for small projects
Need Standard	Yes OAR 345-023-0005	Yes*	No
Land Use	Yes, coordination w/county county and OAR.	no	Yes
Structural Standard OAR345-022-020	Seismic, public Health, Safety, Compliance with OBC*	no	No - refer to Buidling Codes and PU
Soil Protection OAR 345-22-022	Yes	no	
Protected Areas/ Scenic & Aesthetic		no	Yes, UCDO Goal 5 site protection
Fish & Wildlife	OAR 345-22-060		Yes, ODFW Recommendation

T & E	OAR 345-022-0060	no	
Public Health & Safety	?	Safety - Yes ORS 757-035**	Refer to PUC
Wetlands	Yes, coord. with DSL. DSL bound by Site Cert to issue permit.	no	Yes, via referral to DSL and condition
Stormwater	Yes, coordinate with DEQ bound by Site Cert to issue permit.	no	Yes, via referral to DEQ and Condition
Water Right	Yes, coord. with OWRD. OWRD bound by Site Cert to issue permit.	no	Yes, via referral to OWRD and condition
Cumulative Impacts	no	?	no

* OPUC determination of Need is required for EFSC Need requirement

** OPUC safety regulations apply to electric transmission lines beyond the step-up transformer on a windmill

See attached Regional Transmission Project Map