



Oregon

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TO: Land Conservation and Development Commission (LCDC)

FROM: Richard Whitman, Director

SUBJECT: **Agenda Item 6, March 17-19, 2010, LCDC meeting**

Discussion and Approval of the Department's Proposed 2011 Legislative Concepts

I. AGENDA ITEM SUMMARY

This item includes a public hearing and commission review and approval of 2011 legislative concepts to be proposed by the department. Under this item, the commission may direct the department to file specific legislative concepts for the 2011 Legislative Session. State agency legislative concepts must be submitted to DAS on or before April 9, 2010.

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II. RECOMMENDED ACTION

Following public testimony, the department recommends that the commission authorize the department to submit the approved 2011 legislative concepts to the Department of Administrative Services by April 9, 2010.

III. DESCRIPTION

The commission began discussion of legislative concepts at its January meeting in Salem. Based on this preliminary discussion and further internal department discussion, the department has prepared a preliminary list of ideas for the 2011 legislative session for commission review and approval. The department has had very limited time to confer with interested partners concerning these ideas, and will continue to do so as the concepts are refined.

State agency legislative concept proposals for each regular legislative session must be filed with the Department of Administrative Services (DAS) almost a year prior. This year, the deadline is April 9, 2010. After concepts are submitted, along with fiscal estimates associated with each concept, the Governor's Office and DAS will determine which proposals DLCD may carry forward. In general, DAS approval or denial occurs in June. For approved concepts, legislative counsel drafting will occur in the late fall of 2010. All agency concepts become "the Governor's

concepts” when formally filed for consideration by the 2011 legislature. If any proposed legislative concepts have fiscal implications, DAS also requires that the department’s 2011 budget request address these impacts. Legislative concepts must be identified as “major or minor program changes” or as “housekeeping.” All additional substantive information related to any “placeholder” concepts is due to DAS no later than July 14, 2010.

Some of the proposed concepts described in this report will have DLCD budget implications, but that has not been determined at this time. The department is also in the process of preparing its 2011-2013 budget request, but the deadlines for submittal of that request are later than the deadline for legislative concepts. As such, all the fiscal implications of the concepts described in this report are not included here, but will be included in a report to the commission at a later time along with the department’s proposed budget request.

The department considered many legislative concept ideas over the past few months and described ideas for legislative concepts at the commission’s January meeting. At that time, the department’s list included several preliminary ideas for concepts. Based on LCDC input and further discussion with agencies and other interests, the department has reduced the list to 7 proposed legislative concepts, described below.

The department will continue to solicit input from outside sources, including the Local Officials Advisory Committee (which is expected to meet in early April) and the Citizen Involvement Advisory Committee. The department will update the commission on input received after the mailing of this report.

IV. PROPOSED 2011 DLCD LEGISLATIVE CONCEPTS

1. Housekeeping to streamline and improve the post-acknowledgement plan amendment (PAPA) processes. Under this concept, the department would propose amendments to the current PAPA process to save time and cost, improve compliance with state law, and streamline the procedures where possible. The proposed changes may include minor process amendments, such as authorizing electronic notice (to DLCD) of PAPA’s in place of paper copies, and requiring that the “copy of the adopted text of the comprehensive plan provision or land use regulation” that must be submitted to the department after adoption must include a signed ordinance. More substantial are two possible procedural changes related to PAPA notices. The first is plan amendments to conform local ordinances with changes in state law that would otherwise apply directly to local land use decisions under ORS 197.646. Local governments would be allowed to adopt conforming changes to local ordinances without holding a public hearing, so long as the only effect of the changes is to adopt a new state statutory requirement. This concept was used in two recent bills on a trial basis, and appears to be functioning as intended. The two bills are SB 1036 (2010 – Guest Ranches) and HB 3099 (2009 – Uses on EFU Lands).

The second element of this concept would be to address those situations where a local government makes significant changes to a proposed plan amendment after the initial notice to DLCD has been filed, and those situations where no 45-day notice or no adoption notice is filed at all. Currently, under ORS 197.610, failure to provide required notice will result in a remand to the local government. However, significant amendment of a proposal is allowed with no requirement for pre-hearing notice. The department is proposing legislation to create appropriate incentives and disincentives that will collectively motivate local government to provide timely and accurate notice of proposed plan amendments, while avoiding remand of local government decisions where notice of the proposal was effectively given.

2. Streamline the process for UGB amendments and urban reserves, reviewed by LCDC in the manner of periodic review. Under this concept, the department will propose various process changes to improve and streamline the agency's review of local UGB and urban reserve decisions. This may include both changes at the administrative level, to expedite agency review, and changes to the judicial review provisions applicable to these decisions. Many improvements can be made through rule amendments, but some changes are likely to require legislative action. The current specific elements of this concept are: (a) clarifying what the record consists of in such cases; (b) adding "raise it or waive it" requirements to such reviews; and (c) clarifying the scope and standard of review.
3. Farm/Forest reporting requirements, including procedures for evaluation and monitoring under ORS 197.065. Prior to each legislative session, LCDC must submit a written report to the appropriate legislative committee concerning several specific types of local government land use actions regarding farm and forest land, including: new and replacement dwellings, land divisions, and other farm and forest protection matters that the commission deems appropriate, based on information submitted by counties. Under this legislative concept, the department may propose housekeeping improvements to this process, including procedures for electronic reporting by counties, and better linkage to the Department of Forestry's systems that track changes in land use (as opposed to changes in what is allowed) on rural lands over time.
4. Improved reporting procedures for affordable housing. The commission's Affordable Housing Workgroup, which met from the spring of 2008 until January 2009, made recommendations for methods to encourage more affordable housing under the Oregon land use system. One proposal from that work group generated the department's 2009 affordable housing legislative concept (HB 2225), which did not pass. However, the work group proposed other ideas which were not developed further. Many of these could be implemented through rulemaking or legislation, with rulemaking the preferred route. However, for several reasons, not the least being the collapse of housing markets, this issue has not been advanced through the commission's 2009-2011 policy agenda. Ideas from the workgroup that were clearly legislative included:
 - Strengthen and clarify statutory requirements for "clear and objective" approval standards. Some specific statute changes were proposed to the workgroup.

- Provide an expedited process for appeals of affordable housing development proposals, both locally and at the state level, and apply a “reverse burden of proof” for affordable housing projects (apparently these are elements in California’s affordable housing toolkit).
- Require that all UGB expansions include some percentage of land dedicated to affordable housing.
- Require that all or some specified group of cities must adopt certain affordable housing measures, such as allowing accessory units outright in specified residential zones.
- Enact “inclusionary zoning-like” authorization that does not rely on housing price (i.e., that does not conflict with the current statute prohibiting housing price controls). For example, require that a percentage of larger housing projects must include dwelling units that do not exceed a certain square footage amount (e.g., 1000 square feet), or that such developments must include a percentage of duplexes.
- Require an “audit” of local ordinances to ensure compliance with housing statutes and/or require local governments to periodically report on housing affordability, and on local decisions in response to housing development proposals.

On this last bullet, the department notes that a reporting requirement already exists under ORS 197.178, but this requirement is not being implemented so far as the department is aware. The department suggests that the requirement could be modified to include more specific reporting on housing affordability, and/or strengthened and clarified to ensure the requirement is carried out. Currently, that statute requires local governments to compile and report annually to the department the following information for all building permit applications received:

- The number of applications received for residential development, including the residential density proposed in the application and the maximum allowed residential density for the subject zone;
 - The number of applications approved, including the approved density; and
 - The date each application was received and the date it was approved or denied.
5. Transfer of Development Rights. In 2009 two statutes were enacted providing for transfers of development rights, as a voluntary market-driven process to help conserve farm land, forest land, and other resource land. Under these new laws, rights may be transferred only to urban growth boundaries (UGBs), except under HB 2228 (2009) that established the Transfer of Development Rights Pilot Program to be administered by DLCD. That program allows transfers to exception areas adjacent to UGBs and to rural communities, with additional criteria that require receiving areas be zoned for at least 10 units per acre. HB 2228 authorized up to three pilot projects. Based on the department’s outreach efforts, it appears that the legislation’s restrictions on receiving areas (including density requirements) will substantially diminish the number and diversity of pilot project applications. As a legislative concept, the department would like to seek modifications to this legislation to allow additional pilot projects, to allow wider range “receiving areas” for transferred rights, and to modify density requirements for certain receiving areas.

6. Urban forum placeholder: Department staff is engaging stakeholders in discussions to help determine the subject matter and scope of an “urban forum,” scheduled to take place later this year. This item was in the approved LCDC policy agenda, including key concepts for the forum such as public facility planning and finance, urban growth management policy review, and population forecasts. While the intention for the forum at this time is not to produce legislative recommendations for the 2011 session, this placeholder holds a spot open for such recommendations should consensus ideas emerge quickly.

7. Climate change adaptation planning placeholder: The department is discussing climate change adaptation with a large group of agencies. The governor has suggested that agencies coordinate in climate adaptation budget and legislative requests for the 2011 legislative session. Agencies are continuing to meet, and one possible outcome is a coordinated budget and/or legislative request from agencies advancing a statewide Climate Change Adaptation Framework. At the time of this report, it is unknown whether the coordinated request would include DLCD, to carry or participate in proposed legislation. Given this uncertainty, the department may propose a “placeholder” for such legislative concepts, in the event agencies in this workgroup propose concepts that concern DLCD.

V. OVERALL CONCLUSION AND RECOMMENDATION

Following public testimony, the department recommends that the commission authorize the department to submit the concepts described in this report to the Department of Administrative Services by April 9, 2010.

VI. ATTACHMENTS

- A. 2011 Legislative Concept Schedule

Legislative Concept Development Schedule

Prior to April 9, 2010	<ul style="list-style-type: none">• Develop concept in conjunction with state and local agencies and others that could be affected by the statute or program change.• Submit concept, detailed explanation, draft language, and Fiscal Impact Estimate to DAS.
April 9, 2010	LAST DAY to submit concepts to DAS.
April 9, 2010 to May 28, 2010	<ul style="list-style-type: none">• DAS legislative coordinator and BAM analyst(s) review concepts for policy and fiscal issues and contact agency if needed.• DAS sends concepts to Governor's Office with recommendation to approve or deny concept for drafting.• DAS notifies agency of final action.• DAS sends approved concepts to Legislative Counsel for drafting.
June 1, 2010	LAST DAY for DAS to submit approved concepts to Legislative Counsel for drafting.
June 1, 2010 to July 13, 2010	Agencies continue to work on placeholder concepts (additional substantive or administrative details for concepts submitted to DAS by April 9, 2010.)
July 14, 2010	LAST DAY to submit additional placeholder information to DAS.
July 14, 2010 to July 29, 2010	<ul style="list-style-type: none">• DAS legislative coordinator and BAM analyst(s) review additional information for policy and fiscal issues and contact agency if needed.• DAS sends additional information to Governor's Office for review.• DAS notifies agency of final action.• DAS sends approved placeholder information to Legislative Counsel.
July 30, 2010	LAST DAY for DAS to submit approved placeholder information to Legislative Counsel for drafting.
July 30, 2010 to December 1, 2010	Agencies continue to work with Legislative Counsel to finish bill drafting. Counsel will allow ONLY ONE REVISION after the first draft.
October 29, 2010 <u>OR</u> 14 calendar days from the date on the bill draft, whichever is sooner	LAST DAY to request revisions to first draft of legislative concepts. One revision opportunity per concept.
No Later than December 1, 2010	<ul style="list-style-type: none">• Legislative Counsel stops ALL drafting on agency concepts.• Final concepts, and updated fiscal impact estimates and "one-page" bill summaries due to DAS for final review and approval by DAS and the Governor's Office.• With approval from Governor, DAS pre-session files agency concepts.
December 15, 2010	LAST DAY to pre-session file bills for 2011 Legislative Session .
January 10, 2011	2011 Legislative Session begins.