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Item 6

March 17, 2010

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

EXHIBIT: 10 AGENDA ITEM: 6  
 LAND CONSERVATION & DEVELOPMENT  
 COMMISSION  
 DATE: 3-18-10  
 PAGES: 3  
 SUBMITTED BY: 1000 Friends

Dear Commissioners,

Thank you for this opportunity to comment on the Department's proposed legislative agenda. This testimony will focus exclusively on the legislative concept item relating to expansion of the Transferable Development Rights pilot program. 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.

The proposal from the department is as follows:

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 DLCDC. 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."

1000 Friends of Oregon strongly supports the use of Transfer of Development Credits as an adjunct to statewide land use planning. We were integral in the enactment of both HB 2228, at issue here, and SB 761, generic TDR authorization. We disagree with the department's proposal because it offers up farm and forest land protection as the price of a more active TDR pilot program. We believe that TDRs should complement Oregon's smart growth planning program, not undermine it.

Outreach: The department's outreach effort concluded that the current pilot project program would have few takers because rural development options are constrained. We would like to know more about whom the department has contacted. From the context, it appears that the department contacted primarily those interested in rural development opportunities. We would urge the department to contact neighbors of potential development, farmers and foresters who hope to stay in the business and members of the public with no stake in the outcome. Had 1000 Friends been consulted, we would have urged a full and public "360-review" by stakeholders that might have resulted in a



different conclusion. The proposal presents a significant land use policy question, not a technical change in an arcane law. It deserves more careful debate than the paragraph above. We, along with others, would be happy to engage in that debate with the Department.

Impacts of the Proposal: The language “to allow wider range ‘receiving areas’ for transferred rights” means that the Department is asking you to approve allowing more residential development on rural land than current law allows. This may include farm and forest land, as no limits are provided. The proposal also asks you to approve lower density development in rural areas than current law allows. This means that the development may occupy a large footprint and require county-provided services over a larger area. Since each pilot project may be up to 10,000 acres, these projects could overwhelm nearby urban areas and compete with those areas’ housing markets. This is not a step in the right direction and is counter to the Department’s efforts elsewhere.

As we know from studies across the nation, the cost of providing services to rural communities outruns the increase in property taxes. During this time of fiscal challenge, added rural development will be another cost foisted on counties – this time with the blessing of the state agency responsible for implementing cost-effective rules for new development.

Landowners likely to develop under this pilot program are not the individuals affected by Measure 49, but those with enough financial resources to designate large areas, purchase many TDRs, and then develop large rural subdivisions with urban levels of service. Timber companies with large forest holdings are turning to development instead of timber production and current law allows them more latitude to do this on forest land than is allowed on farmland. Aiding their conversion of timberland through this state pilot program exacerbates this problem. If you allow the department to move forward on pilot projects to develop rural lands, the odds are that this development will either (a) fail because there is so little demand for rural housing – the weakest housing sector, or (b) increase the value of land in the area, making it more difficult for area farmers and foresters to retain, expand or modify their operations to stay in business. Success also means more driving by residents and those who serve the new rural development.

The proposal before you runs counter to other policies, including the MPO work reflected in SB 1059, passed by the legislature last month. As you know, the policy behind this legislation is to develop and apply effective tools for reducing the number of miles people drive their cars. Once fully implemented, the results will be greater livability in these ways: more Oregonians will have an alternative to driving their cars, our urban areas will be even more desirable places to live; more people will be able to walk to meet their daily needs; our natural, rural and scenic areas will be better protected; greenhouse gases will be reduced; and the nation’s dependence on foreign oil will be lessened. The TDR proposal before you is consistent with none of these benefits.

Purposes of the TDR pilot projects: Current law provides for up to three TDR pilot projects, each of up to 10,000 acres. A pilot project suggests that this state-selected experiment is a test run before applying the provisions statewide. Yet what will we learn if the program only tests whether a TDR program works when it weakens current law? The argument may be made that Oregon lags behind other states with TDR programs and therefore our laws should be changed to have a stronger TDR program. Those states with stronger TDR programs have them because they lack Oregon’s visionary planning program. Those states and the land trusts in them are forced to protect land parcel by parcel through the TDR program and, as a result, protect far less farm and forest land than Oregon does. We do not believe that a TDR pilot program is worth the price of more rural residential development and weaker farm and forest land protections.

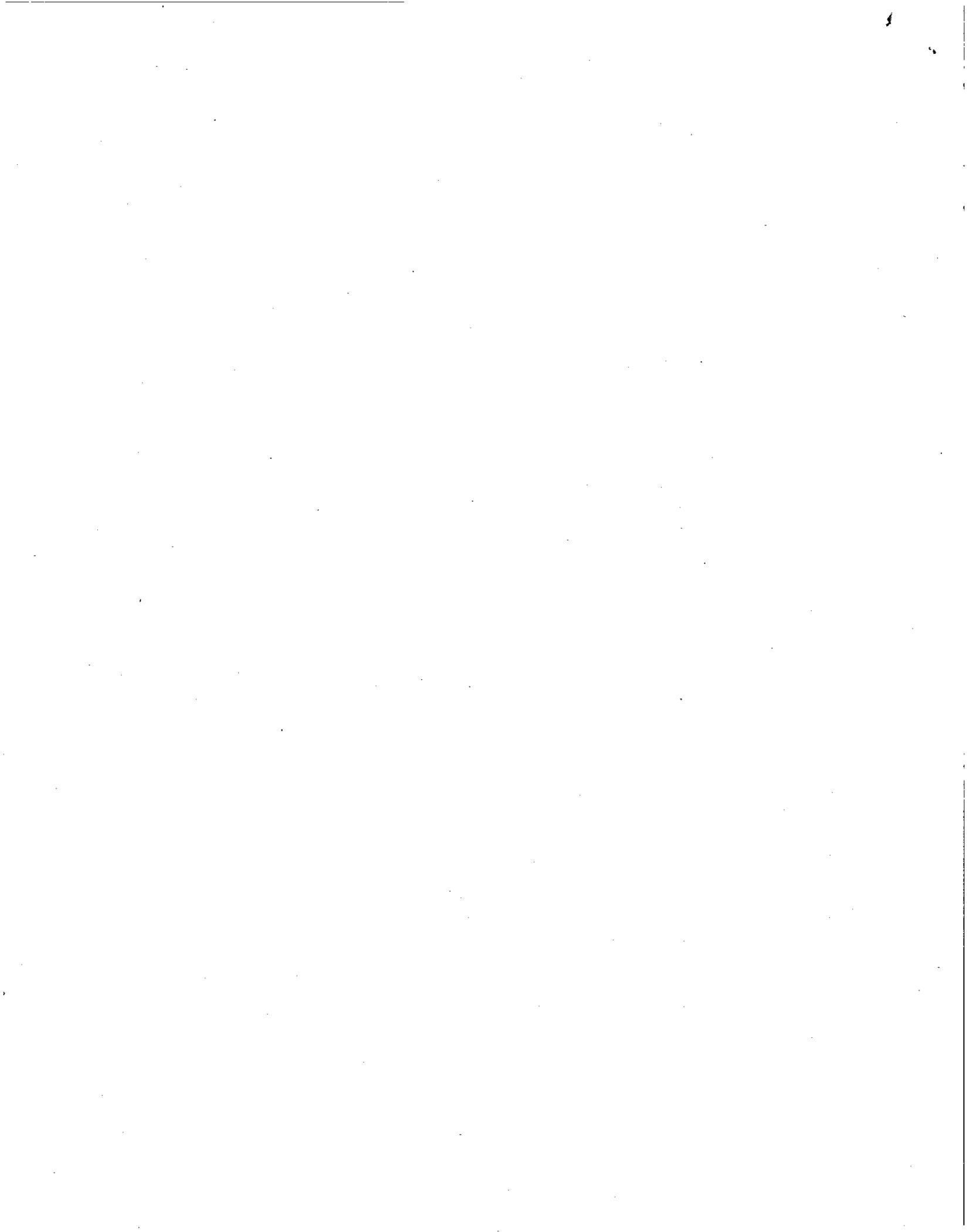
TDRs have a place in Oregon. They could be used more robustly under current law to connect rural and urban Oregonians. TDRs used in urban areas as a condition of expansion could be fueled by protection of area farm and forestlands, provide badly needed resources to urban areas and complete the circle of planning, making the benefits of compact urban development and resource land protections more tangible. This step has not yet been taken, but it will come. At that time we will see how well TDRs and UGBs can work together to improve life for rural and urban Oregonians.

We respectfully request that you do not endorse the TDR pilot program legislative concept at this time. We stand ready to engage in a further discussion on this topic and would be happy to work toward a mutually acceptable alternative. Thank you for your attention to these views.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve McCoy', with a stylized, cursive flourish at the end.

Steve McCoy  
Staff Attorney





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March 15, 2010

To: Mr. John VanLandingham, Chairman, LCDC  
Members of the Land Conservation and Development Commission  
Richard Whitman, Director, DLCD

From: Linda Ludwig, Deputy Legislative Director

RE: Agenda Item 6, Proposed Legislative Concepts

Thank you for the opportunity to comment on the staff report for discussion and approval of the Department's proposed 2011 concepts. As most of the concepts are described in broad summary language, it is challenging to provide adequate feedback prior to any action the Commission might take at their March meeting.

It is our understanding that staff will be vetting the concepts with LOC and others for further discussion at the Commission's April and June meetings. We thank you for the opportunity for this to occur as early as possible, echoing the testimony LOC provided to the Commission in January – to work with cities and counties on the details of the concepts, because as described, they significantly impact local government. Additionally, we recommend that:

- The Local Officials Advisory Committee (LOAC) has an opportunity to review and comment on the concepts at their April 5, 2010 meeting, with a subsequent opportunity to comment to Commission members directly.
- As fiscal impacts are also required to be submitted to DAS by April 9, we request that as a courtesy, LOC/AOC have an opportunity to review the final concepts and draft language, with their corresponding fiscal impact estimate, prior to submission.

In terms of specific concepts, I've included some initial comments that follow, but suffice to say, cities would support changes that would reduce city costs and increase city efficiencies and would object to new requirements – especially those that would increase costs. Our current economic downturn, coupled with pre-existing diminishing local revenues, has had many city planning/community development departments reduce staff, thereby significantly reducing their ability to comply with new requirements – even those that might streamline state agency processes.

Concept #1, Streamline the PAPA process.

Two proposed methods to streamline – authorizing electronic notices in lieu of paper copies and allowing local governments to conform their ordinances to changes in state statutes without a hearing requirement – would reduce costs to local government and increase efficiencies.

We would be happy to discuss changing requirements for the 45-day notice provision, but as the concept described in the staff report has a lack of detail to evaluate, we cannot comment but to state that cities would likely be strongly opposed to a new requirement that would add an additional notice provision, and the ensuing fiscal costs.

Concept #2, Steamline the UGB/UR amendment process, in the manner of periodic review.

Again, the concept as outlined in the report is difficult to evaluate because of a lack of detail. Cities would likely support an expedited Court of Appeals review for appeals of LCDC orders, but the 2011-13 state budget problems may not. “Raise it or waive it” provisions and clarification of the record would be seen as additionally helpful.

Cities would oppose statutory changes that would restrict the sequential adoption of plan amendments for elements of an urban growth boundary expansion or an urban reserve designation, if included in a legislative concept – because of procedural issues and fiscal costs.

Concept #4, Affordable housing requirements.

Many of the concepts described would create new fiscal burdens for cities, and because of that, not supported, while others do not provide enough detail to be able to comment. Two policy issues that would likely draw opposition would be to require all UGB expansions to include a portion of land for affordable housing and to require cities to allow accessory units outright. There are however, a growing number of cities that would support lifting the inclusionary zoning preemption or an “inclusionary zoning-like” authorization based on something other than price, to be able to couple with other existing affordable housing incentives.

Concept #5, Transfer of development rights.

Cities have general concerns regarding policy objectives that would further density outside urban growth boundaries. LOC was silent during the legislative process that passed HB 2228, largely because the bill called for a small number of pilot programs, with reasonably restrictive requirements for receiving zones. Because of the concerns regarding increasing density outside UGBs mentioned above, LOC would likely not support modifications that would allow a wider range of receiving areas for transferred development rights or would increase the number of pilot projects.

Concept #6, Urban forum placeholder.

Cities have on-going concerns regarding current population forecast methodology and interpretations of the transportation planning rule; a discussion regarding statutory clarification for increased flexibility would be welcomed.

**From:** [johnvl@lclac.org](mailto:johnvl@lclac.org)  
**To:** "Nick Snead"; [Lisa Howard](#); [Bob Rindy](#)  
**Cc:** "Linda Ludwig"; "Greg Winterowd"  
**Subject:** RE: [OCPDA] LCDC proposed legislative concepts  
**Date:** Monday, March 15, 2010 6:20:43 PM

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Thanks, Nick.

Lisa, can you make copies of this and bring them to bend for the meeting?  
Thanks. John VL

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**From:** Nick Snead [mailto:[nsnead@ci.madras.or.us](mailto:nsnead@ci.madras.or.us)]  
**Sent:** Monday, March 15, 2010 9:32 AM  
**To:** [johnvl@lclac.org](mailto:johnvl@lclac.org)  
**Cc:** Linda Ludwig; Greg Winterowd  
**Subject:** RE: [OCPDA] LCDC proposed legislative concepts

Dear Chair VanLandingham,

Good morning! I am the Community Development Director for the City of Madras. I was given notice of the proposed LCDC legislative concepts that the LCDC will take action on at the March meeting in Bend. I do have some comments that I would like you to consider and they are as follows:

Streamlining PAPA process:

This is dramatically needed. I can't emphasize that enough. I do have one concern regarding the notice to DLCD of a PAPA when "a local government makes significant changes to a proposed plan amendment after the initial notice to DLCD has been filed." I believe the assumption is being made that "significant" changes made to a PAPA Notice after it is filed with DLCD is a problem and that cities and county's control this matter. This rule making effort to create incentives and/or disincentives for "accurate" PAPA notices is will not address the perceived problem that I presume was founded by DLCD staff. Simply put, no planner or local government official wants to incorrectly give notice to DLCD. We are required to navigate the PAPA public hearings process which, as you know, can change a proposal due to appointed and elected officials decisions. Therefore, the imposition that inaccurate PAPA notices are slowing down the PAPA approval process does not reflect the volatility of local government PAPA public hearings. To streamline the PAPA process by focusing on the actual notice to DLCD may not be as effective as presented. If any changes need to be made regarding the notice to DLCD of a PAPA, it is DLCD needs to be more flexible and understanding of the local public hearings process for PAPAs. Moreover, the PAPA notice is just that, a notice. My experience is that DLCD field representatives are far too busy to attend all of the public hearings which I am greatly sympathetic too. Flexibility and communication between local governments and DLCD will streamline the process. DLCD staff need to be flexible and recognize a PAPA proposal may change. Additionally, perhaps the requirement to provide DLCD staff the minutes from meetings would allow staff to be kept abreast of the local proceedings.

Streamlining UGB Amendments reviewed by LCDC in the manner of Periodic Review:

Again, this is dramatically needed. I count my blessings that I don't work for a City that has 25,000

people or more. Those that do, need some "guard rails" to the process and review. I commend you for taking this on. Please, take action on this matter and I strongly support the suggested changes to clarify what the record consists of in such cases; adding "raise it or waive it" requirements to such reviews; and clarifying the scope and standard of review.

Please consider these comments in your decision at the March LCDC meeting in Bend. I will be in attendance at the March meeting but if you should have any questions in advance, please contact me by phone at 541-323-2916 or by email at [nsnead@ci.madras.or.us](mailto:nsnead@ci.madras.or.us).

Thanks and have a nice day!

*"There are no short cuts to any place worth going"*  
-Beverly Sills-

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**From:** OCPDA@yahoogroups.com [mailto:OCPDA@yahoogroups.com] **On Behalf Of** Linda Ludwig  
**Sent:** Friday, March 12, 2010 2:08 PM  
**To:** OCPDA@yahoogroups.com  
**Subject:** [OCPDA] LCDC proposed legislative concepts

LCDC begins meeting next week in Bend on Wednesday, where they have scheduled a hearing for public comment, after which they will adopt their legislative concepts for 2011. I've attached the staff report, which only became available online this week-  
[http://www.oregon.gov/LCD/docs/rulemaking/031710/item6\\_draft\\_legislative\\_concepts.pdf](http://www.oregon.gov/LCD/docs/rulemaking/031710/item6_draft_legislative_concepts.pdf).

All of the proposed concepts listed will have fiscal and policy impacts on cities and counties- some significant. Most of the concepts have little detail, but as some would have detrimental impacts to cities, I'm sending the report out hurriedly, with the thought that someone may want to comment. If so inclined, comments should be emailed directly to commissioners by end of the day Monday, to receive them prior to the hearing.

**Linda C. Ludwig**  
Deputy Legislative Director  
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