



# Oregon

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**TO:** Land Conservation and Development Commission

**FROM:** Michael Morrissey and Bob Rindy, Policy Analysts

**SUBJECT:** Agenda Item 7, April 17, 2009, LCDC Meeting

## **Preliminary Discussion of LCDC 2009-2011 Policy and Rulemaking Agenda**

This item is intended as an opening discussion of a potential 2009-011 Policy and Rulemaking Agenda. The commission historically approves its biennial Policy Agenda in the late summer or early fall, although sometimes the commission has approved its agenda even later. The department has proposed this item in order to begin the policy agenda discussion earlier than in the past, in order to gain additional time to work on the agenda.

The commission's current (2007-2009) policy agenda is included as Attachment A to this report, and is also available online at

[http://www.lcd.state.or.us/LCD/lcdc.shtml#2007\\_09\\_Policy\\_Agenda](http://www.lcd.state.or.us/LCD/lcdc.shtml#2007_09_Policy_Agenda).

The current policy agenda has been successfully completed.

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### **A. Overview of LCDC's Policy and Rulemaking Agenda**

As part of its overall statutory authority (see ORS 197.040), the Land Conservation and Development Commission (LCDC) is required to "adopt rules and ... any statewide land use policies that it considers necessary to carry out" land use statutes. The commission is also required to "review decisions of the ... [courts] to determine if goal or rule amendments are necessary." As part of this charge, the commission is also required to "adopt, amend, or revise goals consistent with regional, county and city concerns." While past Commission Policy Agendas have tended to focus on rulemaking projects, many other types of non-regulatory initiatives are often included. The commission should also consider its Guidelines for Citizen Involvement in Goal and Policy making.

**B. Ideas for Additional Policy and Rulemaking Projects**

The compilation below includes ideas for policy projects from previous LCDC and DLCD policy agendas (especially from reports leading up to those agendas, including ideas that were not pursued) and ideas that have more recently surfaced from staff or local governments. A brief summary of the status of each item is listed, although updates are likely after the legislative session concludes.

The ideas below are not listed in any particular priority. While all of the ideas below are important and merit serious consideration, the department currently has limited staff resources for policy work.

**LEGISLATIVE OR COURT MANDATES**

Issue + source	Summary	Status
RLUIPA (Religion Land Use and Institutionalized Persons Act ) and Specified Uses	LCDC EFU rules regarding churches on farmland need to be revised to be consistent with a recent LUBA opinion.	A recent LUBA decision has invalidated LCDC farm land rules limiting churches in certain areas.
Territorial Sea Plan and Related Issues	DLCD has been tasked by the Governor with preparing a plan for wave energy in the territorial sea, and to provide it to the commission by Dec. 1, 2009 for adoption as part of the Territorial Sea Plan	LCDC approved a rule advisory committee and coastal staff is working with a subcommittee of the Ocean Policy Advisory Council on initial policy elements of the plan. Coastal federal funds have NOAA approval to support work (with local fishing groups) to map nearshore fisheries. The Dept. has contracted with OCZMA to work through Ecotrust to carry out the mapping over the next 6 months or so.
Goal 10 Housing Policy Review (August 2007 LCDC Policy agenda) Sites for Affordable Housing (March 2008 LCDC Policy Agenda)	Department required to report to 2009 legislature regarding streamlining of UGB expansion rules, if any, for provision of affordable housing, including manufactured home parks.	Workgroup recommends commission pursue new rules to strengthen Goal 10 and promote more affordable housing.
Review of ORS Chapter 215 and Rural Lands	HB 3099	Broad examination of alternative approaches needed.

## COMMISSION/DEPARTMENT CURRENT LEGISLATIVE PROPOSALS

Issue + source	Summary	Status
Goal 8 Destination Resorts	As requested by the commission in April 2008, the department drafted legislation to provide more flexibility to the commission in setting standards for siting destination resorts.	Pending legislation (HB 2227)
Non-Resource Lands Rules (proposed in August 2007 and March 2008 LCDC Policy Agenda, and in earlier proposed agendas)	Currently no formal statewide rules or other standards exist to guide local governments in planning and zoning “non-resource land”—land outside of UGB’s and unincorporated communities that do not qualify as farm or forest land under Goal 3 or 4. Several counties have adopted non-resource lands.	Some standards are currently being considered in HB 2229, resulting from Big Look Task Force recommendations. Current proposals could result in a statutory definition of non-resource lands, and a more formal process for counties to designate them, with some level of department rulemaking.
Regional Problem Solving	Many concerns have been raised about unclear requirements as the department and local governments attempt to implement this statute.	Pending legislation is being considered in HB 2229; this could result in more clarity for RPS.
Transfer of Development Credits (this system is used by other states but not widely used in Oregon)	The Oregon Land use system does not generally employ “voluntary, market” methods for transferring potential development rights from one area intended for preservation to another “receiving area” where development is more appropriate.	Subject of Agency Bill HB 2228 and at least two other bills. HB 2229 (DLCD) bill focuses on pilot projects, but other legislation provides a broad authorization for TDC’s without pilot projects.
State Agency Coordination (SAC) Coordination & Update	The department last updated rules and state agency agreements in 1990. LUBA decisions since then have created issues with Land Use Compatibility Statements (LUCS) used by agencies to ensure conformance of state agency decisions and local plans.	HB 2230, DLCD’s bill on this topic, has passed the House and awaits action in the Senate. It authorizes the agency to update the SAC process and revise related rules (OAR 660, divisions 30, 31).

### OTHER POTENTIAL LEGISLATION

Issue + source	Summary	Status
Energy Facilities in Rural Areas		Pending legislation.
Measure 49	SB 945 allows some M49 claimants (in the range of 400) to be eligible for processing who are not now eligible.	SB 945 being considered in Senate Judiciary.
School Siting and UGB Amendments (March 2008 LCDC Policy Agenda)	There is continuing pressure to expand UGBs to accommodate school sites, including outside UGBs on farmland. Issues involve the location and size of the proposed sites, and UGB procedures to ensure sufficient land supply inside UGBs to accommodate schools.	Two bills in the 2009 legislature attempt to address school siting, HB 2946 and SB 276. It is unclear whether they will pass. There has been discussion in the past regarding possible LCDC rules to resolve some of these issues.

### OTHER ISSUES OF CONCERN

Issue + source	Summary	Status
Public Facility Planning and Finance	Cities continue to struggle with financing public facilities for planned growth inside UGBs. This concern is increasing as the state preempts local finance options.	The Big Look Task Force suggested methods to address this, but those ideas may not go forward due to fiscal issues.
Alternative Energy Facilities Authorized on Farmland in LCDC Rules	The commission revised rules on this topic in the Summer of 2008, but additional associated issues were not resolved or have arisen since that rulemaking.	There is proposed legislation on these topics but its fate is uncertain at this time.
Climate Change (discussed April & Nov. 2008 - Two Divisions, Director's Action Plan)	Initially identified as work with Global Warming Commission & ODOT to reduce VMT & develop tools related to adaptation.	LCDC had briefings in April 2008 and January 2009 on climate change issues & link to land use planning. January 2009 commission meeting addressed a petition for a new statewide planning Goal 20 on Sea Level Rise. DLCD's Climate Change work group will brief the commission at the April 2009 meeting. DLCD Policy Package 103: Climate Change Adaption and Mitigation requesting funds for staff and grants was not approved.

<p>Urban Reserves and the Hierarchy of Lands Added to UGBs</p>	<p>Designating Urban Reserves creates “first priority” land under the ORS 197.298 hierarchy, including high value farm or forest land. Cities may (and do) amend the UGB to include high value land before low value land. Furthermore, a city may at any time, amend the UR to include additional high value land and proceed to add that ahead of low value land in the previous UR.</p>	<p>Some legislation is proposed that may address this issue, but it is uncertain whether it will pass</p> <p>There have been discussions about trying to address this in the 2009-11 biennium, through amendments to the UR rules.</p>
<p>Dune Grading (Goal 18)</p>	<p>Initially proposed in 2007 Policy Agenda ideas.</p>	
<p>Update of Goal 5 Natural Resources, Rules, Especially Regarding Riparian Areas (proposed for August 2007 LCDC Policy Agenda but not adopted)</p>	<p>Division 23 rules implementing Goal 5 were adopted in 1995, concerning about 15 categories of natural or cultural resources. Some of these provisions may be out-of date, especially rules regarding riparian resources. Application of the rules in urban settings is clearer than in rural settings. However, these rules are all “triggered” by periodic review: counties and many cities are no longer required to initiate periodic review.</p>	<p>Recommendations for resource land inventories, such as those required by Goal 5, were part of the Big Look recommendation and included in HB 2229. Status is unclear at this time. Also, the efficacy of certain provisions in Goal 5 is questionable due to Measure 49.</p>
<p>Goal 6 Regarding Water Quality</p>	<p>Earlier policy reports have suggested rulemaking to supplement DEQ provisions for compliance with the Clean Water Act.</p>	<p>No action scheduled.</p>
<p>Goal 9 Economic Development Rulemaking Phase II</p>	<p>Earlier policy agenda’s have recommended a “Goal 9 Phase II” rulemaking effort to clarify the relationship among Metro and Metro jurisdictions regarding Goal 9 planning inventories, need estimates, and the “concept plans” currently required by Metro.</p>	<p>Express provisions for regional economic opportunity analyses were considered, but not included as part of the Goal 14 Phase II rulemaking.</p>
<p>Goal 11 Exception Process for Lands that are “Almost but not Quite” a Health Hazard</p>	<p>Some “housekeeping” clean up of these rules may be in order, due to concerns generated by Deschutes and Jackson counties applying these rules.</p>	<p>Pending legislation (HB 2750) is uncertain. It would override Goal 11 restrictions on sewer systems outside UGBs.</p>
<p>Land Use Appeal Fees</p>	<p>Evidence continues to surface about local governments charging extremely high appeal fees, especially for an appeal from the planning commission to the board or council.</p>	<p>A DLCD legislative concept was drafted but did not go forward.</p>

<p>Local Plans and Land Use Requirements only Triggered under Periodic Review (August 2007 and March 2008 LCDC Policy Agenda)</p>	<p>Elements of LCDC rules in divisions 8, 12, 13 and 23 (and some statutory provisions, and airport planning requirements) are only “triggered” by periodic review. Since periodic review has been narrowed to cities over 10,000, these pre-existing rules and statutes apply to very few local governments.</p>	<p>Resolving this by providing new triggers (such as date-certain requirements) is controversial.</p>
<p>Population Forecasts</p>	<p>Although LCDC has provided rules and safe harbors, the department continues to receive complaints that counties and Metro are not providing coordinated forecasts necessary for city UGB amendments. Additional tools to ensure timely coordinated forecasts may be necessary.</p>	
<p>Preserving Industrial Lands</p>	<p>Many interests, including ERT, are concerned with preserving industrial sites for industrial use. Industrial zoned land has been converted to other uses, especially commercial use.</p>	<p>Legislation was proposed in previous sessions, but did not pass. Some pending legislation may address the shortage of large industrial sites, but would not address the conversion issues.</p>
<p>Public Land Zoned Residential, and other land such as flood plains and steep slopes, is “generally” not considered “buildable land” in LCDC rules</p>	<p>The existing rule is often interpreted to allow such land to be excluded from buildable land inventories. This may inflate UGBs unnecessarily, since large portions of this land are ultimately developed.</p>	<p>Discussed during 2008 “housekeeping” rule amendments. LCDC decided not to address this due to considerable opposition.</p>
<p>Regional EOA’s for Large Scale Industrial Sites</p>	<p>Current rules allow regional EOA’s but do not provide any incentives (such as safe harbors).</p>	<p>Considered by 2008 UGB workgroup but no consensus was reached.</p>
<p>Segmented Review Issues, including Goal 14, 10 and Goal 2 Issues</p>	<p>Cities increasingly are adopting elements of the UGB process through the PAPA process. In many cases, this means a city will identify a need for housing but will not address it, in violation of Goals 10 and 2.</p>	<p>UGB rulemaking group tried to resolve this but didn’t get consensus. Possibly an easier answer is an amendment to the Goal 10 rule to reflect/bolster the 2001 McMinnville LUBA case, but for cities smaller than 25,000.</p>

<p>TPR Review        (August 2007 and        March 2008 LCDC        Policy Agenda)</p>	<p>Three items continue from 2007: goal exceptions, Metro RTP, and plan amendments and goal changes.</p>	<p>Meetings with Joint Oregon Transportation Commission and LCDC's Transportation Subcommittee have been inactive for the past year. Implementation of portions of the TPR that apply to plan amendments and zone changes still needs attention. Also TPR is identified for a role in climate change policy development.</p>
<p>Urban Area Expansion        in Columbia Gorge</p>	<p>Columbia Gorge Commission considering rules.</p>	<p>Needs coordination.</p>
<p>Urban Farming</p>	<p>Creating meaningful urban farm sites with cooperating cities.</p>	<p>Raised beds with irrigation systems have been constructed in four cities, with 17 more in process. A greenhouse and chicken coop have also been built in conjunction with raised beds. Planning for the goat cheese operation is well underway. Bees are problematic in some areas, as are neighbors with no sense of adventure.</p>

**Recommendation**

The department recommends that the commission review the list of items for consideration for the 2009-2011 biennium, and carry over the discussion of these ideas to its June commission meeting.

**Attachments**

- A. 2007-09 LCDC Policy Agenda Summary



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## LCDC Policy Agenda for 2007-2009



The Land Conservation and Development Commission (LCDC) is required by statute to adopt “statewide land use policies” including statewide goals and administrative rules “necessary to carry out ORS chapters 195, 196 and 197,” (Oregon’s statewide land use planning program). LCDC approves its biennial “policy agenda” – a list of planned policy and rulemaking initiatives – at the beginning of each biennium. In August and October 2007 LCDC considered a list of suggestions to amend, update, streamline and improve state land use policies and rules, and approved a 2007-09 Policy Agenda. LCDC received a progress report and adopted amendments to its Policy Agenda at its meeting in March 2008. The amended Policy and Rulemaking Agenda for the 2007-2009 biennium is as follows:

1. Adopt Metro Urban and Rural Reserves rules required by SB 1011 (2007). (*NOTE: this project was completed in January 2008.*)
2. With the UGB advisory workgroup appointed in 2004, pursue “Phase 2” of the ongoing rulemaking project to clarify and streamline the UGB amendment process. This phase will consider additional “safe harbors” for UGB expansion rules (OAR 660, div. 24). In addition, this rulemaking will consider rules addressing UGB expansions for purposes of adding future school sites.
3. Combine several legislatively mandated rule (and Goal) amendments and other minor and technical rule amendments into a “Housekeeping rulemaking project,” including the following (*Note: this rulemaking was completed in March, 2008*):
  - Amend agricultural lands rules (OAR 660, div 33) as required by HB 2210 (2007) to allow on-farm processing of farm crops into biofuel. Also amend these rules to respond to Supreme Court decision in *Wetherall v Douglas County*, 342 Or 666 (2007);
  - Amend forest lands rules (OAR 660, div 6) as per HB 2992 (2007) to allow land divisions less than the minimum lot size if one of the parcels is sold to a provider of public parks or open space;
  - Amend Goal 8 destination resort standards, required by SB 1044 (2007), to clarify the ratio of “units for residential sale to units of overnight lodging” in “Eastern Oregon” destination resorts;
  - Repeal Metro Subregional rules under OAR 660, division 26, in response to Court of Appeals decision invalidating these rules;
  - Amend the current “Post-acknowledgement Plan Amendment Rules” under division 18 to update, clarify, and to conform the rules to statutes enacted or amended since adoption of these rules. Also amend these rules to respond to *Medford Neighbors v Medford* (LUBA 2006-132);
  - Amend division 11, Goal 11 rural sewer and water rules, and related division 4 exception rules, to address a 2006 interpretation by LUBA (*Todd v Florence*; LUBA 2006-068) as to whether goal exceptions are allowed for extension of sewer systems;
  - Examine and report back to LCDC regarding the need to update and clarify OAR 660, division 3, rules for acknowledgement of comprehensive plans for newly incorporated cities.
4. In response to HB 2096 (2007) work with key interest groups to explore ways to encourage local governments to provide sites “dedicated to affordable housing and manufactured dwelling parks,” including new or amended LCDC rules for this purpose as a “pilot project” applicable to a few cities. (*Note: LCDC initiated this rulemaking and appointed a work group in March, 2008*). Also, prepare a report to the 2009 legislature as required by HB 2096 regarding the provision of sites for affordable housing development and manufactured dwelling parks in the state.

5. Energy Facilities in Rural Areas: Amend rules as necessary to streamline land use criteria for siting of wind and solar energy facilities on resource lands, in coordination with the Oregon Department of Energy. Review the acreage limitations in the current rules and determine if different sizes or criteria should be considered in the evaluation of wind and solar power generation facilities. This review should also determine whether any statutory changes are needed as well.
6. Adopt the current Measure 49 “temporary rules” as “permanent rules” prior to the expiration of the temporary rules in June 2008. In addition, the department may propose additional rules or rule amendments to help interpret Measure 49 (*Note: this rulemaking is scheduled for May 1, 2008*).
7. Continue work with the Joint Oregon Transportation Commission’s Subcommittee and LCDC’s Transportation Subcommittee to assess implementation of the TPR amendments and consider related issues, including:
  - Possible LCDC review of the Metro Regional Transportation Plan (RTP);
  - Implementation of portions of the TPR that apply to plan amendments and zone changes; and
  - Review status of projects involving goal exceptions.
8. Continue ongoing discussions with agencies, the Governor’s Office, and other stakeholders regarding:
  - Guidance to state and federal agencies and private entities with respect to the Territorial Sea Plan and
  - Goal 19 guidance on new uses such as wave energy generation facilities or ocean aquaculture.
9. Work with the Governor’s office in its inter-agency effort to develop strategic state policies for the long-term management of aggregate resources in Oregon in order to effectively respond to changing resource protection requirements, address public and stakeholder interests, and to ensure a stable long-term supply of affordable aggregate for roads, buildings, and other infrastructure.
10. Revise agency procedures, as necessary, to implement new Environmental Justice requirements in SB 420 (2007). Plan a joint meeting with the bill sponsors, the new Environmental Justice Task Force, and the Commission’s Citizen Involvement Advisory Committee. The bill requirements include:
  - Consider the effects of agency actions on environmental justice issues;
  - Engage in public outreach activities in communities affected by agency decisions;
  - Hold hearings at times and in locations convenient for people in communities affected by agency decisions; and
  - Create a “citizen advocate” position responsible for encouraging public participation and to ensure the agency considers environmental justice issues.
11. Schedule an informational LCDC hearing from the Department of Aviation (ODA) on airport planning issues. (*Note: this hearing was completed in March 2008, and the Department was instructed to assist ODA in its 2009 legislative concept regarding airport planning*).

For questions or additional information about LCDC’s 2007-09 Policy Agenda, contact Bob Rindy at 503-373-0050, Ext 229, or email at: [bob.rindy@state.or.us](mailto:bob.rindy@state.or.us)