



Oregon

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July 25, 2007

TO: Land Conservation and Development Commission

FROM: Bob Rindy, Policy Analyst



SUBJECT: Agenda Item 5; August 9, 2007, LCDC Meeting.

Initiation of Rulemaking Regarding Metro Urban and Rural Reserves

This agenda item is intended for initiation of an effort to draft and ultimately adopt new land use rules for urban reserves and rural reserves in the Metro region. Rules on these topics are required by new legislation: Senate Bill 1011 enacted by the 2007 legislature (see Attachment A). Under this item, the Commission will also appoint a Rulemaking Workgroup to assist the Commission and the department in drafting the required rules. The department has included a list of individuals recommended for the Commission's consideration. Also under this item, the Commission will hear testimony from the public on topics related to the rulemaking and SB 1011, including testimony concerning workgroup membership.

This item is preceded by Item 4 on the Commission's August meeting agenda. That item is a report from Metro describing issues and concerns leading to this legislation. Metro may also report on issues identified by an ad hoc committee on the rulemaking that will have met twice since the passage of the bill. That committee, or Metro, based on the suggestions of the committee, may eventually provide LCDC's work group with suggested draft rules to implement the legislation.

For additional information on this item, please contact Bob Rindy at 503-373-0050 ext. 229, or by email bob.rindy@state.or.us.

Background

Senate Bill 1011, enacted by the 2007 legislature, authorizes Metro area counties and the Metropolitan service districts to designate rural reserves not included in urban growth boundaries or rural communities. Under the statute, rural reserves cannot be included within an UGB or re-designated as urban reserve for a period of 40 – 50 years following designation. The bill also provides a process for designation of urban reserves in the Metro area, but the urban reserve process for Metro is different than that provided under LCDC rules at OAR 660, division 21 (see Attachment B).

The "preamble" to the bill provides the reasons and general policy direction of this statute. It declares that "Long-range planning for population and employment growth by

local governments can offer greater certainty for ... the agricultural and forest industries, by offering long-term protection of large blocks of land with the characteristics necessary to maintain their viability; and for ... commerce, other industries, other private landowners and providers of public services, by determining the more and less likely locations of future expansion of urban growth boundaries and urban development.”

This preamble also declares that “State planning laws must support and facilitate long-range planning to provide this greater certainty.” To this end, the legislation directs that “The Land Conservation and Development Commission shall adopt the goals or rules required by section 3 of this 2007 Act and by the amendments to ORS 195.145 by section 6 of this 2007 Act not later than January 31, 2008.” Those sections of the act require LCDC rules regarding Metro are urban reserves and rural reserves.¹

Section 3 of the legislation provides that the decision to designate urban and rural reserves is not mandatory, i.e., Metro and a metro area county government would choose whether or not to declare these reserves. However, if reserves are designated, a county and Metro must consider the designation and establishment of rural and urban reserves simultaneously. The reserves must be designated by an agreement, and “such agreement must provide for a coordinated and concurrent process for adoption by the county of comprehensive plan provisions and by the district of regional framework plan provisions to implement the agreement.”

Currently, LCDC must approve the designation of urban reserves (i.e., urban reserves are not subject to the standard post-acknowledgement plan amendment process, including appeal to LUBA. SB 1011 amends that statute (ORS 197.626), such that a “metropolitan service district that ... amends the district’s regional framework plan or land use regulations implementing the plan to establish urban reserves ... or a county that amends the county’s comprehensive plan or land use regulations implementing the plan to establish rural reserves ... shall submit the amendment or designation to the Land Conservation and Development Commission in the manner provided for periodic review ...”. This anticipates that LCDC would review Metro’s urban reserves and counties’ rural reserves in the same periodic preview process.

Finally, the statute provides that designation and protection of rural reserves or urban reserves pursuant is not a basis for a claim for compensation under Measure 37 “unless the designation and protection of rural reserves or urban reserves “imposes a new restriction on the use of private real property ... and does not impair the rights and immunities provided under ORS 30.930 to 30.947.”

Urban Reserves: LCDC rules adopted in 1993, and state laws enacted subsequent to LCDC rules, provide for urban reserve areas statewide, including procedures and

¹ However, it should be noted that other sections of this statute may also suggest the need for LCDC rule amendments, such as amendments to urban reserve rules applicable to other areas outside of Metro. If so, the department does not interpret the statute to limit the Commission’s rulemaking authority should the workgroup or the department decide there is a need to propose such rules.

standards for designating urban reserve areas. SB 1011 leaves this current process in place, but establishes a new alternative for the metropolitan region. The statute requires new LCDC rules in order to describe a different process and a different set of factors under which the Metro region may designate urban reserves. "Urban reserves" are defined in SB 1011 as "lands outside an urban growth boundary that will provide for (a) future expansion over a long-term period; and (b) [T]he cost-effective provision of public facilities and services within the area when the lands are included within the urban growth boundary."

Urban reserves designated by Metro and a Metro area county "must be planned to accommodate population and employment growth for at least 20 years, and not more than 30 years, after the 20-year period for the Metro UGB determined at the next mandated update (2009 as a result of the two-year extension granted in HB 2051). The designation of urban reserves must be based upon "factors" including, but not limited to, whether land proposed for designation as urban reserves, "alone or in conjunction with land inside the urban growth boundary:

- (a) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments;
- (a) Includes sufficient development capacity to support a healthy urban economy;
- (b) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;
- (c) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;
- (d) Can be designed to preserve and enhance natural ecological systems; and
- (e) Includes sufficient land suitable for a range of housing types."

Rural Reserves: There is no precedent for local governments to designate long-term rural reserves under the Oregon land use program. Throughout the history of the program, urban growth boundaries (UGBs) were the primary tool to protect farm and forest land, and to separate urban and rural land. UGBs, in conjunction with Goals 3 and 4, protect farm and forest land, but it has been clear that UGB expansion will, over time, consume a certain amount of such land, especially in the Metro regions. Under SB 1011, "Rural reserves" are defined as "land reserved to provide long-term protection for agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains." The statute clearly indicates that "rural reserves" are intended "to provide long-term protection of the agricultural industry."

SB 1011 requires that land designated as a rural reserve may be designated (i.e., it is not necessarily mandated) through an intergovernmental agreement between a county and Metro. However, as indicated above, the statute requires that rural reserve land: (a) must be outside an urban growth boundary; (b) may not be designated as an urban reserve during the planning period for urban reserves (see above); and (c) cannot be included within an urban growth boundary during the planning period for urban reserves. In other words, urban reserves are anticipated to protect the farm and forest land inside the reserve

for at least 40 to 50 years. When designating rural reserves, a county and Metro are required to select land based on consideration of “factors” in the statute, including, but not limited to, whether land proposed for rural reserves is:

- (a) Land situated in an area that is “potentially subject to urbanization” during the urban reserve planning period described above, as indicated by proximity to the urban growth boundary, and as indicated by proximity to “properties with fair market values that significantly exceed agricultural values;”
- (b) Land “capable of sustaining long-term agricultural operations;”
- (c) Land that “has suitable soils and available water where needed to sustain long-term agricultural operations;”
- (d) Land suitable to sustain long-term agricultural operations, taking into account:
 - The existence of a large block of agricultural or other resource land with a concentration or cluster of farms;
 - The adjacent land use pattern, including its location in relation to adjacent nonfarm uses and the existence of buffers between agricultural operations and nonfarm uses;
 - The agricultural land use pattern, including parcelization, tenure and ownership patterns; and
 - The sufficiency of agricultural infrastructure in the area.

These factors derive from work done for local governments in the region by the Oregon Department of Agriculture.

Rulemaking Schedule

SB 1011 takes effect immediately, and requires LCDC to adopt administrative rules for urban and rural reserves by January 31, 2008. The department recommends that LCDC hold its first hearing on the proposed rules at its November 28-30 meeting (in Corvallis). The Commission should schedule the adoption of the proposed rules at a meeting prior to January 31, 2008 (at the time of this report, LCDC has not determined its 2008 meeting schedule). The department also recommends that the Commission be prepared to discuss the progress of the rulemaking at its October meeting (in Enterprise). Finally, the department recommends that the Commission’s appointed rulemaking workgroup (see discussion below) begin work as soon as practicable, preferably in August, in order to complete the rulemaking under the proposed schedule. We note that an *ad hoc* group of interested parties has been assembled by Metro and has already begun discussion of rulemaking issues. It is anticipated that this work will accelerate the workgroup’s progress in meeting this schedule.

The Commission has adopted “Citizen Involvement Guidelines for Policy Development” (the CIG) in order “... to provide and promote clear procedures for public involvement in the development of Commission policy on land use,” which LCDC has committed to follow “to the extent practicable in the development of new or amended statewide planning goals and related administrative rules.” With respect to scheduling of rulemaking work, the CIG recommends that the Commission “consult with the CIAC on the scope of the proposed process or procedure to be followed in the development of any

new or amended goal, rule or policy.” However, the CIAC will not be meeting until August 16, so the department’s consultation with CIAC is not possible prior to the Commission’s action under this agenda item. The department will discuss this with the CIAC at its August meeting, and report back to the Commission as to any recommendations provided at that meeting. The CIAC has recommended that one of its members, Ann Glaze, be appointed to the workgroup.

The CIG also recommends that, as part of a rulemaking process, the department “shall, to the extent practicable:

- Prepare a schedule that clearly indicates opportunities for citizen involvement and comment, including tentative dates of meetings, public hearings and other time-related information;
- Post the schedule, and any subsequent meeting or notice announcements of public participation opportunities on the Department’s website, and provide copies via paper mail upon request; and
- Send notice of the website posting via an e-mail list of interested or potentially affected parties and media outlets statewide, and via paper mail upon request;
- Provide background information on the policy issues under discussion via posting on the Department’s website and, upon request, via paper mail. Such information may, as appropriate, include staff reports, an issue summary, statutory references, administrative rules, case law, or articles of interest relevant to the policy issue.”

The department will follow these guidelines as it proceeds with this rulemaking. A list of potentially affected parties is under development. However, at the time of this report, no detailed schedule has been determined other than the Commission’s schedule described above. The department will recommend that the workgroup determine its schedule at its first meeting. After that schedule is determined, it will be posted on the DLCD website, and DLCD will provide notice of that posting in the manner outlined by the CIG.

Appointment of Rulemaking Workgroup

The department is recommending that the Commission appoint a Rulemaking Workgroup to assist the Commission and the department in drafting the required rules. The department has included a list of individuals for the Commission’s consideration, below, including affected or interested individuals who, in the department’s estimation, represent a balance of the diverse interests in the region and have the necessary expertise to assist the department in drafting rules for the Commission’s consideration under the timelines established by the statute. The suggested individuals would represent Metro area cities, counties, and a range of other interests.

The Commission’s guidelines (the CIG) recommend that, in establishing workgroups for the development of new or amended rules the Commission may “... Appoint an advisory committee that includes citizens, local officials, tribal representatives, experts, and other affected or interested parties in order to provide advice and assistance to the Commission on a particular policy issue, prepare options or alternatives and perform other tasks as appropriate. Information about meetings and actions of the advisory committee shall be

made available in a variety of media, including the Department's website. The Commission shall indicate whether an advisory committee may make recommendations to the Commission through testimony of individual members, or make recommendations as a single body, including minority opinions."

Furthermore, the CIG indicates that, when establishing a workgroup, the Commission and the department, "shall:

- Clearly define the task or role of the committee or group, including the authority of an advisory committee to provide the Commission with recommendations independent from the Department staff;
- Assure that Department staff provides adequate support, within the limitations noted below;
- Require minutes of committee meetings to be prepared and drafts of proposed goals or rules be distributed prior to subsequent committee or workgroup meetings, when timelines permit, and within the limitations noted below;
- Assure the involvement of local government staff or elected officials and affected tribes, where warranted, with notice to local elected officials that employ local staff appointed to a committee or workgroup;
- Consider geographic representation in appointing committees or workgroups;
- Provide information to members of ... workgroups, and an opportunity for discussion, to ensure that there is a common understanding about (a) how recommendations will be developed; (b) opportunities to present minority opinions and individual opinions; (c) the time commitment necessary to attend workgroup meetings and related activities and to read background materials; (d) opportunities to discuss background and technical information with department staff; and (e) any potential liability or exposure to litigation as a result of serving on a committee or workgroup.
- In evaluating the particular interests to be represented on particular advisory committees or workgroups, the commission should consider appointment of a workgroup member not affiliated with any of the groups affected by or otherwise interested in the matter at hand. This member would be charged with determining and representing the very broad interests of citizens in general, rather than the interests of any particular person or group that may otherwise advocate for or against a policy proposal."

The Commission generally appoints an LCDC member to chair workgroups. It is recommended that the Commission determine a Commissioner to chair this group.

In suggesting a workgroup membership, the department generally favors a smaller group, especially given the very short timeline for this project. That is usually difficult, because a large number of interests will no doubt be affected by rules of this magnitude. However, workgroup meetings are open to the public, so it is usual for groups to send representatives even if they are not workgroup members, and the workgroup chair generally takes time during workgroup discussions to provide an opportunity for guests to address the workgroup. The department also suggests that workgroup members should

include land use planners because of the highly technical “land use” subject area of these rules. However, other experts, including a community development expert, should also be included. The department suggests the following workgroup membership:

- A representative from Metro;
- Representatives from each of the three counties in the region;
- A representative from each of three “larger” cities in the region, including Portland and a city on both the west and the east side of the region;
- A representative of a smaller city in the region outside Metro’s UGB (e.g., Sandy, Canby, Gaston, North Plains or Banks);
- Representatives of Metro Homebuilders, Commercial interests, Environmental Interests, 1000 Friends of Oregon, and the Farm Bureau;
- State agencies, including ODOT, the Department of Agriculture, and the Department of Forestry;
- A CIAC appointed member to represent the broad interests of citizens in general, rather than the interests of any particular person or group.

Given these considerations, the department recommends the following individuals:

1. Randy Tucker, Metro
2. Brent Curtis, Washington County
3. Doug McLain, Clackamas County
4. Karen Schilling, Multnomah County
5. Pat Ribellia, City of Hillsboro
6. Jonathan Harker, City of Gresham
7. Gil Kelley, City of Portland
8. A planner for a city in the region outside Metro’s UGB²
9. Jim Johnson, Oregon Dept of Agriculture
10. Lainie Smith, ODOT Region 1
11. A Representative from the Oregon Dept of Forestry³
12. Mary Kyle McCurdy, 1000 Friends of Oregon
13. Jim McCauley, Metro Homebuilders
14. Dave Vanasche, Washington County Farm Bureau
15. Bev Bookin, CREEC (Commercial Real Estate Economic Coalition)
16. Jim Labbe, Audubon Society of Portland
17. Ann Glaze, CIAC

Rulemaking Criteria and Procedures

This item does not include formal consideration of a rule proposal. As such, formal rulemaking notice is not required at this point in the process. The department anticipates

² The department is discussing this with these cities and will recommend a name at the Commission meeting.

³ ODOF will recommend a staff member prior to or at the Commission meeting.

filing such notice prior to a hearing on proposed rules submitted for adoption by the workgroup.

The Commission's procedures for rulemaking derive from ORS Chapter 183 and are specified in procedural rules at OAR 660-001-0000. In general, prior to adoption of a rule, the Commission must hold a public hearing and provide an opportunity for interested parties to testify on the proposed rule. The Commission must deliberate in public and, if the commission makes a decision to adopt any or all of the proposals, a majority of the commission must affirm the motion to adopt.

The Commission is also guided by ORS 197.040, as follows:

"197.040 Duties of commission; rules.

(1) The Land Conservation and Development Commission shall: . . .

(b) In accordance with the provisions of ORS 183.310 to 183.550, adopt rules that it considers necessary to carry out ORS chapters 195, 196 and 197. Except as provided in subsection (3) of this section, in designing its administrative requirements, the commission shall:

(A) Allow for the diverse administrative and planning capabilities of local governments;

(B) Assess what economic and property interests will be, or are likely to be, affected by the proposed rule;

(C) Assess the likely degree of economic impact on identified property and economic interests; and

(D) Assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.

(c)(A) Adopt by rule in accordance with ORS 183.310 to 183.550 or by goal under ORS chapters 195, 196 and 197 any statewide land use policies that it considers necessary to carry out ORS chapters 195, 196 and 197.

(B) Adopt by rule in accordance with ORS 183.310 to 183.550 any procedures necessary to carry out ORS 215.402 (4)(b) and 227.160 (2)(b). . . .

(3) The requirements of subsection (1)(b) of this section shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by the proposed rule."

LCDC legal counsel, Steve Shipsey, will be present at the Commission meeting for further advice on rulemaking procedures and criteria.

Conclusion and Recommendation

The department recommends that the Commission initiate the rulemaking required by SB 1011 and appoint a workgroup to advise the department and the Commission in this rulemaking. The department recommends appointment of the workgroup members specified in this report. The department also recommends the Commission receive public testimony regarding this rulemaking and the proposed rulemaking workgroup.

Attachments

- A. Senate Bill 1011
- B. Current Urban Reserve Rules (OAR 660, division 21)
- C. LCDC Citizen Involvement Guidelines for Policy Development

Attachment A
Senate Bill 1011

Enrolled
Senate Bill 1011

Sponsored by COMMITTEE ON JUDICIARY

CHAPTER

AN ACT

Relating to land reserves; creating new provisions; amending ORS 195.145, 197.626 and 221.034; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in sections 1 to 4 of this 2007 Act:

(1) "Rural reserve" means land reserved to provide long-term protection for agriculture, forestry or important natural landscape features that limit urban development or help define appropriate natural boundaries of urbanization, including plant, fish and wildlife habitat, steep slopes and floodplains.

(2) "Urban reserve" means lands outside an urban growth boundary that will provide for:

(a) Future expansion over a long-term period; and

(b) The cost-effective provision of public facilities and services within the area when the lands are included within the urban growth boundary.

SECTION 2. The Legislative Assembly finds that:

(1) Long-range planning for population and employment growth by local governments can offer greater certainty for:

(a) The agricultural and forest industries, by offering long-term protection of large blocks of land with the characteristics necessary to maintain their viability; and

(b) Commerce, other industries, other private landowners and providers of public services, by determining the more and less likely locations of future expansion of urban growth boundaries and urban development.

(2) State planning laws must support and facilitate long-range planning to provide this greater certainty.

SECTION 3. (1) A county and a metropolitan service district established under ORS chapter 268 may enter into an intergovernmental agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652 to 197.658 to designate rural reserves pursuant to this section and urban reserves pursuant to ORS 195.145 (1)(b).

(2) Land designated as a rural reserve:

(a) Must be outside an urban growth boundary.

(b) May not be designated as an urban reserve during the urban reserve planning period described in ORS 195.145 (4).

(c) May not be included within an urban growth boundary during the period of time described in paragraph (b) of this subsection.

(3) When designating a rural reserve under this section to provide long-term protection to the agricultural industry, a county and a metropolitan service district shall base the des-

ignation on consideration of factors including, but not limited to, whether land proposed for designation as a rural reserve:

(a) Is situated in an area that is otherwise potentially subject to urbanization during the period described in subsection (2)(b) of this section, as indicated by proximity to the urban growth boundary and to properties with fair market values that significantly exceed agricultural values;

(b) Is capable of sustaining long-term agricultural operations;

(c) Has suitable soils and available water where needed to sustain long-term agricultural operations; and

(d) Is suitable to sustain long-term agricultural operations, taking into account:

(A) The existence of a large block of agricultural or other resource land with a concentration or cluster of farms;

(B) The adjacent land use pattern, including its location in relation to adjacent nonfarm uses and the existence of buffers between agricultural operations and nonfarm uses;

(C) The agricultural land use pattern, including parcelization, tenure and ownership patterns; and

(D) The sufficiency of agricultural infrastructure in the area.

(4) The Land Conservation and Development Commission shall, after consultation with the State Department of Agriculture, adopt by goal or by rule a process and criteria for designating rural reserves pursuant to this section.

SECTION 4. (1) A county and a metropolitan service district must consider simultaneously the designation and establishment of:

(a) Rural reserves pursuant to section 3 of this 2007 Act; and

(b) Urban reserves pursuant to ORS 195.145 (1)(b).

(2) An agreement between a county and a metropolitan service district to establish rural reserves pursuant to section 3 of this 2007 Act and urban reserves pursuant to ORS 195.145 (1)(b) must provide for a coordinated and concurrent process for adoption by the county of comprehensive plan provisions and by the district of regional framework plan provisions to implement the agreement. A district may not designate urban reserves pursuant to ORS 195.145 (1)(b) in a county until the county and the district have entered into an agreement pursuant to ORS 195.145 (1)(b) that identifies the land to be designated by the district in the district's regional framework plan as urban reserves. A county may not designate rural reserves pursuant to section 3 of this 2007 Act until the county and the district have entered into an agreement pursuant to section 3 of this 2007 Act that identifies the land to be designated as rural reserves by the county in the county's comprehensive plan.

(3) A county and a metropolitan service district may not enter into an intergovernmental agreement to designate urban reserves in the county pursuant to ORS 195.145 (1)(b) unless the county and the district also agree to designate rural reserves in the county.

(4) Designation and protection of rural reserves pursuant to section 3 of this 2007 Act or urban reserves pursuant to ORS 195.145 (1)(b):

(a) Is not a basis for a claim for compensation under ORS 197.352 unless the designation and protection of rural reserves or urban reserves imposes a new restriction on the use of private real property.

(b) Does not impair the rights and immunities provided under ORS 30.930 to 30.947.

SECTION 5. (1) Sections 1 to 4 of this 2007 Act are added to and made a part of ORS chapter 195.

(2) ORS 195.145 is added to and made a part of sections 1 to 4 of this 2007 Act.

SECTION 6. ORS 195.145 is amended to read:

195.145. (1) To ensure that the supply of land available for urbanization is maintained[.];

(a) Local governments may cooperatively designate lands outside urban growth boundaries as *[urban reserve areas, subject to ORS 197.610 to 197.625.]* urban reserves subject to ORS 197.610 to 197.625.

(b) Alternatively, a metropolitan service district established under ORS chapter 268 and a county may enter into a written agreement pursuant to ORS 190.003 to 190.130, 195.025 or 197.652 to 197.658 to designate urban reserves. A process and criteria developed pursuant to this paragraph are an alternative to a process or criteria adopted pursuant to paragraph (a) of this subsection.

(2)(a) The Land Conservation and Development Commission may require a local government to designate an urban reserve [area] pursuant to subsection (1)(a) of this section during its periodic review in accordance with the conditions for periodic review under ORS 197.628.

(b) Notwithstanding paragraph (a) of this subsection, the commission may require a local government to designate an urban reserve [area] pursuant to subsection (1)(a) of this section outside of its periodic review if:

(A) The local government is located inside a Primary Metropolitan Statistical Area or a Metropolitan Statistical Area as designated by the Federal Census Bureau upon November 4, 1993; and

(B) The local government has been required to designate an urban reserve [area] by rule prior to November 4, 1993.

(3) In carrying out subsections (1) and (2) of this section:

(a) Within an urban reserve [area], neither the commission nor any local government shall prohibit the siting on a legal parcel of a single family dwelling that would otherwise have been allowed under law existing prior to designation as an urban reserve [area].

(b) The commission shall provide to local governments a list of options, rather than prescribing a single planning technique, to ensure the efficient transition from rural to urban use in urban reserve [areas].

[(4) For purposes of this section, "urban reserve area" means lands outside an urban growth boundary that will provide for:]

[(a) Future expansion over a long-term period; and]

[(b) The cost-effective provision of public facilities and service within the area when the lands are included within the urban growth boundary].

(4) Urban reserves designated by a metropolitan service district and a county pursuant to subsection (1)(b) of this section must be planned to accommodate population and employment growth for at least 20 years, and not more than 30 years, after the 20-year period for which the district has demonstrated a buildable land supply in the most recent inventory, determination and analysis performed under ORS 197.296.

(5) A district and a county shall base the designation of urban reserves under subsection (1)(b) of this section upon consideration of factors including, but not limited to, whether land proposed for designation as urban reserves, alone or in conjunction with land inside the urban growth boundary:

(a) Can be developed at urban densities in a way that makes efficient use of existing and future public infrastructure investments;

(b) Includes sufficient development capacity to support a healthy urban economy;

(c) Can be served by public schools and other urban-level public facilities and services efficiently and cost-effectively by appropriate and financially capable service providers;

(d) Can be designed to be walkable and served by a well-connected system of streets by appropriate service providers;

(e) Can be designed to preserve and enhance natural ecological systems; and

(f) Includes sufficient land suitable for a range of housing types.

(6) The commission shall adopt by goal or by rule a process and criteria for designating urban reserves pursuant to subsection (1)(b) of this section.

SECTION 7. ORS 197.626 is amended to read:

197.626. A metropolitan service district that amends its urban growth boundary to include more than 100 acres, or that amends the district's regional framework plan or land use regulations implementing the plan to establish urban reserves designated under ORS 197.145 (1)(b), a city with a population of 2,500 or more within its urban growth boundary that amends the urban growth

boundary to include more than 50 acres or that designates urban reserve [*areas*] under ORS 195.145, or a county that amends the county's comprehensive plan or land use regulations implementing the plan to establish rural reserves designated under section 3 of this 2007 Act, shall submit the amendment or designation to the Land Conservation and Development Commission in the manner provided for periodic review under ORS 197.628 to 197.650.

SECTION 8. ORS 221.034 is amended to read:

221.034. (1) As used in this section:

(a) "Neighboring city" means a city that has any part of its territory situated within three miles of the area proposed to be incorporated.

(b) "Rural unincorporated community" means a settlement with a boundary identified in an acknowledged comprehensive plan of a county and that:

(A) Is made up primarily of lands subject to an exception to statewide planning goals related to agricultural lands or forestlands;

(B) Either was identified in the acknowledged comprehensive plan of a county as a "rural community," "service center," "rural center," "resort community" or similar term before October 28, 1994, or is listed in the Department of Land Conservation and Development's "Survey of Oregon Unincorporated Communities" (January 30, 1997);

(C) Lies outside the urban growth boundary of a city or a metropolitan service district; and

(D) Is not incorporated as a city.

(c) "Urban reserve [*area*]" has the meaning given that term in [ORS 195.145] section 1 of this 2007 Act.

(d) "Urban services" has the meaning given that term in ORS 195.065.

(2) When any of the area proposed to be incorporated as a city lies within an urbanized area, but outside the urban growth boundary of a city or a metropolitan service district:

(a) The area proposed to be incorporated must also be located entirely within a designated rural unincorporated community and contiguous lands subject to an exception to statewide planning goals related to agricultural lands or forestlands.

(b) The petition required by ORS 221.031 must be accompanied by an affidavit, signed by a chief petitioner, stating that:

(A) Ten percent of the electors registered within the area proposed for incorporation favor the incorporation; and

(B) The chief petitioners have engaged the neighboring cities in discussions concerning the effects of the proposed incorporation, including discussions specifically relating to how those cities and the proposed city will allow for expansion of urban growth boundaries and, where applicable, for creation or expansion of urban [*reserve areas*] reserves.

(c) The economic feasibility statement required by ORS 221.035 must:

(A) Indicate that the proposed city must plan for and provide urban services in a cost-effective manner at the minimum level adequate to meet current needs and projected growth;

(B) Contain a proposed permanent rate limit for operating taxes to provide revenues for urban services; and

(C) Indicate that the proposed city must plan for residential development at or above the same urban density planned for an existing city, within the county, that has a similar geographic area within the existing city's urban growth boundary or, for a proposed city within three miles of Metro's boundary, a minimum urban residential density in accordance with a statewide planning goal and rules pertaining to needed housing for cities within Metro's urban growth boundary.

(d) If the proposed city will be required to complete a public facility plan and a transportation systems plan, the proposed city must demonstrate the ability to provide urban services to meet current needs and projected growth. The proposed city may meet this requirement, in whole or in part, by establishing an agreement in principle with a city or a district, as defined in ORS 195.060, to provide the urban services.

(3) If the governing body of a neighboring city determines that the proposed incorporation adversely affects that city, the governing body may ask the county court with which the petition for

incorporation was filed to reject the petition and terminate the incorporation proceedings. The objections by the city to the incorporation shall be heard and considered by the county court at a public hearing held under ORS 221.040.

(4) If, at the hearing held under ORS 221.040, the county court finds that any of the requirements of subsection (2) of this section are not met or that the proposed incorporation will adversely affect a neighboring city, the county court shall provide by order for the termination of the incorporation proceedings. The order shall contain the findings of the county court relating to the proposed incorporation and the reasons for terminating the incorporation proceedings.

(5) In the manner provided in ORS 197.830 to 197.845, the Land Use Board of Appeals shall review, upon the petition of a party to the incorporation proceedings, the order of the county court under subsection (4) of this section.

SECTION 9. (1) Notwithstanding ORS 197.650, a Land Conservation and Development Commission order concerning the designation of urban reserves under ORS 195.145 (1)(b) or rural reserves under section 3 of this 2007 Act may be appealed to the Court of Appeals by the persons described in ORS 197.650.

(2) **Judicial review of orders described in subsection (1) of this section is as provided in this section.**

(3) **Jurisdiction for judicial review is conferred upon the Court of Appeals. A proceeding for judicial review may be instituted by filing a petition in the Court of Appeals. The petition must be filed within 21 days after the date the commission delivered or mailed the order upon which the petition is based.**

(4) **The filing of the petition, as set forth in subsection (3) of this section, and service of a petition on the persons who submitted oral or written testimony in the proceeding before the commission are jurisdictional and may not be waived or extended.**

(5) **The petition must state the nature of the order the petitioner seeks to have reviewed. Copies of the petition must be served by registered or certified mail upon the commission and the persons who submitted oral or written testimony in the proceeding before the commission.**

(6) **Within 21 days after service of the petition, the commission shall transmit to the Court of Appeals the original or a certified copy of the entire record of the proceeding under review. However, by stipulation of the parties to the review proceeding, the record may be shortened. The Court of Appeals may tax a party that unreasonably refuses to stipulate to limit the record for the additional costs. The Court of Appeals may require or permit subsequent corrections or additions to the record. Except as specifically provided in this subsection, the Court of Appeals may not tax the cost of the record to the petitioner or an intervening party. However, the Court of Appeals may tax the costs to a party that files a frivolous petition for judicial review.**

(7) **Petitions and briefs must be filed within time periods and in a manner established by the Court of Appeals by rule.**

(8) **The Court of Appeals shall:**

(a) **Hear oral argument within 49 days of the date of transmittal of the record unless the Court of Appeals determines that the ends of justice served by holding oral argument on a later day outweigh the best interests of the public and the parties. However, the Court of Appeals may not hold oral argument more than 49 days after the date of transmittal of the record because of general congestion of the court calendar or lack of diligent preparation or attention to the case by a member of the court or a party.**

(b) **Set forth in writing and provide to the parties a determination to hear oral argument more than 49 days from the date the record is transmitted, together with the reasons for the determination. The Court of Appeals shall schedule oral argument as soon as is practicable.**

(c) **Consider, in making a determination under paragraph (b) of this subsection:**

(A) Whether the case is so unusual or complex, due to the number of parties or the existence of novel questions of law, that 49 days is an unreasonable amount of time for the parties to brief the case and for the Court of Appeals to prepare for oral argument; and

(B) Whether the failure to hold oral argument at a later date likely would result in a miscarriage of justice.

(9) The court:

(a) Shall limit judicial review of an order reviewed under this section to the record.

(b) May not substitute its judgment for that of the Land Conservation and Development Commission as to an issue of fact.

(10) The Court of Appeals may affirm, reverse or remand an order reviewed under this section. The Court of Appeals shall reverse or remand the order only if the court finds the order is:

(a) Unlawful in substance or procedure. However, error in procedure is not cause for reversal or remand unless the Court of Appeals determines that substantial rights of the petitioner were prejudiced.

(b) Unconstitutional.

(c) Not supported by substantial evidence in the whole record as to facts found by the commission.

(11) The Court of Appeals shall issue a final order on the petition for judicial review with the greatest possible expediency.

(12) If the order of the commission is remanded by the Court of Appeals or the Supreme Court, the commission shall respond to the court's appellate judgment within 30 days.

SECTION 10. Notwithstanding ORS 195.145 (4), if urban reserves are designated by a metropolitan service district and a county pursuant to ORS 195.145 (1)(b) on or before December 31, 2009, the urban reserves must be planned to accommodate population and employment growth for at least 20 years, and not more than 30 years, after the 20-year period for which the district has demonstrated a buildable land supply in the next inventory, determination and analysis required under ORS 197.299 on or after the effective date of this 2007 Act.

SECTION 11. The Land Conservation and Development Commission shall adopt the goals or rules required by section 3 of this 2007 Act and by the amendments to ORS 195.145 by section 6 of this 2007 Act not later than January 31, 2008.

SECTION 12. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.

Passed by Senate May 9, 2007

Repassed by Senate June 13, 2007

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Secretary of Senate

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President of Senate

Passed by House June 11, 2007

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Speaker of House

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

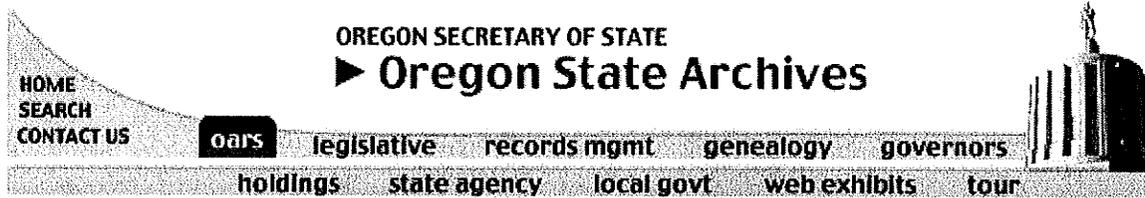
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Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State

Attachment B
Urban Reserve Rules
(OAR 660, division 21)



The Oregon Administrative Rules contain OARs filed through June 15, 2007

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 21

URBAN RESERVE AREAS

660-021-0000

Purpose

This division authorizes planning for areas outside urban growth boundaries to be reserved for eventual inclusion in an urban growth boundary and to be protected from patterns of development that would impede urbanization.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.145 & ORS 197.040

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0010

Definitions

For purposes of this division, the definitions contained in ORS 197.015 and the Statewide Planning Goals (OAR Chapter 660, Division 015) apply. In addition, the following definitions apply:

- (1) "Urban Reserve Area": Lands outside of an urban growth boundary identified as highest priority for inclusion in the urban growth boundary when the boundary is expanded in accordance with Goal 14.
- (2) "Resource Land": Land subject to the Statewide Planning Goals listed in OAR 660-004-0010(1)(a) through (f), except subsection (c).
- (3) "Nonresource Land": Land not subject to the Statewide Planning Goals listed in OAR 660-004-0010(1)(a) through (f) except subsection (c). Nothing in this definition is meant to imply that other goals do not apply to nonresource land.
- (4) "Exception Areas": Rural lands for which an exception to Statewide Planning Goals 3 and 4, as

defined in OAR 660-004-0005(1), have been acknowledged.

(5) "Developable Land": Land that is not severely constrained by natural hazards, nor designated or zoned to protect natural resources, and that is either entirely vacant or has a portion of its area unoccupied by structures or roads.

(6) "Adjacent Land": Abutting land.

(7) "Nearby Land": Land that lies wholly or partially within a quarter mile of an urban growth boundary.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.145 & ORS 197.040

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0020

Authority to Establish Urban Reserve Areas

Cities and counties cooperatively, and the Metropolitan Service District for the Portland Metropolitan area urban growth boundary, may designate urban reserve areas under the requirements of this rule, in coordination with special districts listed in OAR 660-021-0050(2) and other affected local governments, including neighboring cities within two miles of the urban growth boundary. Where urban reserve areas are adopted or amended, they shall be shown on all applicable comprehensive plan and zoning maps, and plan policies and land use regulations shall be adopted to guide the management of these areas in accordance with the requirements of this division.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.145 & ORS 197.040

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0030

Determination of Urban Reserve Areas

(1) Urban reserve areas shall include an amount of land estimated to be at least a 10-year supply and no more than a 30-year supply of developable land beyond the 20-year time frame used to establish the urban growth boundary. Local governments designating urban reserves shall adopt findings specifying the particular number of years over which designated urban reserves are intended to provide a supply of land.

(2) Inclusion of land within an urban reserve area shall be based upon the locational factors of Goal 14 and a demonstration that there are no reasonable alternatives that will require less, or have less effect upon, resource land. Cities and counties cooperatively, and the Metropolitan Service District for the Portland Metropolitan Area Urban Growth Boundary, shall first study lands adjacent to, or nearby, the urban growth boundary for suitability for inclusion within urban reserve areas, as measured by the factors and criteria set forth in this section. Local governments shall then designate for inclusion within urban reserve areas that suitable lands which satisfies the priorities in section (3) of this rule.

(3) Land found suitable for an urban reserve may be included within an urban reserve area only according to the following priorities:

- (a) First priority goes to land adjacent to, or nearby, an urban growth boundary and identified in an acknowledged comprehensive plan as an exception area or nonresource land. First priority may include resource land that is completely surrounded by exception areas unless these are high value crop areas as defined in Goal 8 or prime or unique agricultural lands as defined by the United States Department of Agriculture;
- (b) If land of higher priority is inadequate to accommodate the amount of land estimated in section (1) of this rule, second priority goes to land designated as marginal land pursuant to ORS 197.247;
- (c) If land of higher priority is inadequate to accommodate the amount of land estimated in section (1) of this rule, third priority goes to land designated in an acknowledged comprehensive plan for agriculture or forestry, or both. Higher priority shall be given to land of lower capability as measured by the capability classification system or by cubic foot site class, whichever is appropriate for the current use.
- (4) Land of lower priority under section (3) of this rule may be included if land of higher priority is found to be inadequate to accommodate the amount of land estimated in section (1) of this rule for one or more of the following reasons:
- (a) Future urban services could not reasonably be provided to the higher priority area due to topographical or other physical constraints; or
- (b) Maximum efficiency of land uses within a proposed urban reserve area requires inclusion of lower priority lands in order to include or to provide services to higher priority lands.
- (5) Findings and conclusions concerning the results of the above consideration shall be adopted by the affected jurisdictions

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.040

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 7-1996, f. & cert. ef. 12-31-96; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0040

Urban Reserve Area Planning and Zoning

- (1) Until included in the urban growth boundary, lands in the urban reserve area shall continue to be planned and zoned for rural uses in accordance with the requirements of this section, but in a manner that ensures a range of opportunities for the orderly, economic and efficient provision of urban services when these lands are included in the urban growth boundary.
- (2) Urban reserve area land use regulations shall ensure that development and land divisions in exception areas and nonresource lands will not hinder the efficient transition to urban land uses and the orderly and efficient provision of urban services. These measures shall be adopted by the time the urban reserve area is designated, or in the case of those local governments with planning and zoning responsibility for lands in the vicinity of the Portland Metropolitan Area Urban Growth Boundary, by the time such local governments amend their comprehensive plan and zoning maps to implement urban reserve area designations made by the Portland Metropolitan Service District. The measures may include:

- (a) Prohibition on the creation of new parcels less than ten acres;
 - (b) Requirements for clustering as a condition of approval of new parcels;
 - (c) Requirements for preplatting of future lots or parcels;
 - (d) Requirements for written waivers of remonstrance against annexation to a provider of sewer, water or streets;
 - (e) Regulation of the siting of new development on existing lots for the purpose of ensuring the potential for future urban development and public facilities.
- (3) For exception areas and nonresource land in urban reserve areas, land use regulations shall prohibit zone amendments allowing more intensive uses, including higher residential density, than permitted by acknowledged zoning in effect as of the date of establishment of the urban reserve area. Such regulations shall remain in effect until such time as the land is included in the urban growth boundary.
- (4) Resource land that is included in urban reserve areas shall continue to be planned and zoned under the requirements of applicable Statewide Planning Goals.
- (5) Urban reserve area agreements consistent with applicable comprehensive plans and meeting the requirements of OAR 660-021-0050 shall be adopted for urban reserve areas.
- (6) Cities and counties are authorized to plan for the eventual provision of urban public facilities and services to urban reserve areas. However, this division is not intended to authorize urban levels of development or services in urban reserve areas prior to their inclusion in the urban growth boundary. This division is not intended to prevent any planning for, installation of, or connection to public facilities or services in urban reserve areas consistent with the statewide planning goals and with acknowledged comprehensive plans and land use regulations in effect on the applicable date of this division.
- (7) A local government shall not prohibit the siting of a single family dwelling on a legal parcel pursuant to urban reserve planning requirements if the single family dwelling would otherwise have been allowed under law existing prior to the designation of the parcel as part of an urban reserve area.

Stat. Auth.: ORS 183, ORS 197.040, ORS 197.050 & ORS 197.145

Stats. Implemented: ORS 197.145

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 5-1994, f. & cert. ef. 4-20-94; LCDD 2-1997(Temp), f. & cert. ef. 5-21-97; LCDD 3-1997, f. & cert. ef. 8-1-97; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0050

Urban Reserve Area Agreements

Urban reserve area planning shall include the adoption and maintenance of urban reserve agreements among cities, counties and special districts serving or projected to serve the designated urban reserve area. These agreements shall be adopted by each applicable jurisdiction and shall contain:

- (1) Designation of the local government responsible for building code administration and land use regulation in the urban reserve area, both at the time of reserve designation and upon inclusion of these

areas within the urban growth boundary.

(2) Designation of the local government or special district responsible for the following services: sewer, water, fire protection, parks, transportation and storm water. The agreement shall include maps indicating areas and levels of current rural service responsibility and areas projected for future urban service responsibility when included in the urban growth boundary.

(3) Terms and conditions under which service responsibility will be transferred or expanded for areas where the provider of the service is expected to change over time.

(4) Procedures for notification and review of land use actions to ensure involvement by all affected local governments and special districts.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.145 & ORS 197.040

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0060

Urban Growth Boundary Expansion

All lands within urban reserve areas established pursuant to this division shall be included within an urban growth boundary before inclusion of other lands, except where an identified need for a particular type of land cannot be met by lands within an established urban reserve area.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.145 & ORS 197.040

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0070

Adoption and Review of Urban Reserve Areas

(1) Designation and amendment of urban reserve areas shall follow the procedures in ORS 197.610 through 197.650.

(2) Disputes between jurisdictions regarding urban reserve area boundaries, planning and regulation, or urban reserve agreements may be mediated by the Department or Commission upon request by an affected local government or special district.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.145

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 2-1997(Temp), f. & cert. ef. 5-21-97; LCDD 3-1997, f. & cert. ef. 8-1-97; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0080

Applicability

The provisions of this rule are effective upon filing with the Secretary of State. The amendments to

OAR 660-021-0030 adopted by the commission on January 27, 2000, do not apply to the urban reserve designations made by the Portland Metropolitan Service District on March 6, 1997, or to any decision by the District on remand of those designations from the Land Use Board of Appeals or a court of competent jurisdiction, and the version of that rule effective on December 31, 1996, shall continue to apply to those designations.

Stat. Auth.: ORS 183, ORS 195 & ORS 197

Stats. Implemented: ORS 195.145

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDC 5-1994, f. & cert. ef. 4-20-94; LCDD 2-1997(Temp), f. & cert. ef. 5-21-97; LCDD 3-1997, f. & cert. ef. 8-1-97; LCDD 4-1997, f. & cert. ef. 12-23-97; LCDD 4-2000, f. & cert. ef. 3-22-00

660-021-0090

Implementation Schedule

(1) Local governments listed in OAR 660-021-0080(3) shall complete urban reserve area planning under the following schedule:

(a) Adopt final urban reserve area boundaries, including all mapping, planning, and land use regulation requirements specified in OAR 660-021-0040 within 24 months from the effective date of this rule; and

(b) Adopt urban reserve area agreements meeting OAR 660-021-0050 within one year from adoption of urban reserve areas.

(2) The Director may grant an extension to time lines under subsections (1)(a) or (b) of this rule if the Director determines that the local government has provided proof of good cause for failing to complete urban reserve requirements on time.

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.145 & ORS 197.040

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92

660-021-0100

Interim Protection of Potential Reserve Areas

(1) The following interim protection measures apply to all land use decisions concerning exception areas and nonresource lands within two miles of the urban growth boundary of Medford, and to those areas designated as an urban reserve by Metro (for the Portland area urban growth boundary) on March 6, 1997:

(a) Amendments of comprehensive plans or land use regulations are prohibited if they would allow an increase in the density of residential development relative to existing acknowledged plan and land use regulation provisions;

(b) Amendments of comprehensive plans or land use regulations are prohibited if they would allow additional commercial or industrial uses relative to existing acknowledged plan and land use regulation provisions, except that mineral and aggregate sites inventoried in an acknowledged plan may be rezoned to authorize mining activities;

(c) No subdivision or partition shall be permitted within two miles of the urban growth boundary of Medford; and

(d) No subdivision or partition creating a lot or parcel of less than 20 acres shall be permitted within those areas designated as urban reserves by Metro on March 6, 1997.

(2) Any local government reviewing a proposed land use decision that includes a decision under (1)(a)-(d) of this rule shall notify the department in writing of the proposal at least ten days prior to the close of the record on the decision.

(3) The provisions of this section are effective until the earlier of the following:

(a) December 31, 2000;

(b) When the commission adopts a rule under Goal 14 limiting the circumstances in which land divisions are allowed on rural exceptions lands; or

(c) For the Portland area urban growth boundary, when Metro's urban reserve designations are acknowledged, and all affected local governments have adopted the measures required under OAR 660-021-0040 and 0050 and those measures are acknowledged.

Stat. Auth.: ORS 183, ORS 195 & ORS 197

Stats. Implemented: ORS 195.145

Hist.: LCDC 2-1992, f. & cert. ef. 4-29-92; LCDD 4-1997, f. & cert. ef. 12-23-97; LCDD 4-2000, f. & cert. ef. 3-22-00

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Attachment C
Land Conservation and Development Commission
Citizen Involvement Guidelines for Policy Development

**LAND CONSERVATION AND DEVELOPMENT COMMISSION
CITIZEN INVOLVEMENT GUIDELINES FOR POLICY DEVELOPMENT**

Approved by LCDC on April 23, 2004

I. Purpose

The purpose of these guidelines is to provide and promote clear procedures for public involvement in the development of Commission policy on land use. The Commission values the involvement of the public and interested parties in all phases of planning, including development of Commission policy. These guidelines are intended to provide the Commission and the Department with practical guidance on public involvement during policy development, consistent with and in some cases beyond the legal requirements of the Attorney General's Model Rules of Procedure, state law, and the Commission's administrative rules.

The Commission and the Department shall follow these guidelines to the extent practicable in the development of new or amended statewide planning goals and related administrative rules, and in other significant policy development activities related to the statewide land use program.

II. Public Involvement Objectives in Development of Commission Policy

- To provide meaningful, timely, and accessible information to citizens and interested parties about policy development processes and activities of the Commission and the Department.
- To promote effective communication and working relationships among the Commission, the Department, citizens and interested parties in statewide planning issues.
- To facilitate submittal of testimony and comments to the Commission from citizens and interested parties and the response from the Commission to citizens and interested parties about issues of concern with regard to policy proposals.

III. Public Participation and Outreach Methods

A. Citizen Involvement Guidelines

In order to guide the Commission and the Department in planning for and conducting procedures and activities that will result in a significant new or amended statewide land use policy, such as a new or amended statewide planning goal or an administrative rule, the Commission and the Department shall adhere to the following guidelines to the extent practicable:

1. Consult with the CIAC on the scope of the proposed process or procedure to be followed in the development of any new or amended goal, rule or policy;
2. Prepare a schedule of policy development activities that clearly indicates opportunities for citizen involvement and comment, including tentative dates of meetings, public hearings and other time-related information;
3. Post the schedule, and any subsequent meeting or notice announcements of public participation opportunities on the Department's website, and provide copies via paper mail upon request;

4. Send notice of the website posting via an e-mail list of interested or potentially affected parties and media outlets statewide, and via paper mail upon request; and
 5. Provide background information on the policy issues under discussion via posting on the Department's website and, upon request, via paper mail. Such information may, as appropriate, include staff reports, an issue summary, statutory references, administrative rules, case law, or articles of interest relevant to the policy issue.
 6. Develop a database of names of citizens interested in participating in LCDC land use policy development on general or on specific issues. The department shall maintain this database. In addition, information should be provided on the department's website to notify the public of opportunities to serve on advisory committees or workgroups."
- B. In establishing committees, workgroups, and processes for the development of new or amended goals, rules or policies, the Commission and the Department shall consider the complexity of the issues, diversity of interests among interested parties, availability of expertise, potential effects of resolution of the issue on local communities, tribes, citizens and interested parties, and the degree of expressed citizen interest. Depending on these considerations with respect to a particular policy issue, the Commission may:
1. Appoint an advisory committee that includes citizens, local officials, tribal representatives, experts, and other affected or interested parties in order to provide advice and assistance to the Commission on a particular policy issue, prepare options or alternatives and perform other tasks as appropriate. Information about meetings and actions of the advisory committee shall be made available in a variety of media, including the Department's website. The Commission shall indicate whether an advisory committee may make recommendations to the Commission through testimony of individual members, or make recommendations as a single body, including minority opinions.
 2. Authorize the Department to establish an advisory committee that includes affected parties, technical experts and other knowledgeable individuals in order to provide advice and assistance to the Director and the Department on a particular policy issue, prepare options or alternatives, and provide advice and information on the political, practical, technical, and scientific aspects of a potential new or amended policy. Such advisory committees to the Department are referred to as "workgroups" and their meetings shall be open to the public. While these meetings are not necessarily subject to the requirements of the Open Meetings Law, the Department shall strive to comply with the provisions of that law with respect to notice and other requirements. The Department shall report to the Commission when it appoints a workgroup in order to provide an opportunity for the Commission to consider and, if necessary, amend the group;
 3. Choose to not establish an advisory committee or workgroup, provided LCDC and the Department shall explain its reasons for not doing so, either in the public notice advertising the start of a goal, rule, or other policy making project or by means of Commission minutes.

- C. The Commission, when establishing an advisory committee, or the Department, when establishing a workgroup, shall:
1. Clearly define the task or role of the committee or group, including the authority of an advisory committee to provide the Commission with recommendations independent from the Department staff;
 2. Assure that Department staff provides adequate support, within the limitations noted below;
 3. Require minutes of committee meetings to be prepared and drafts of proposed goals or rules be distributed prior to subsequent committee or workgroup meetings, when timelines permit, and within the limitations noted below;
 4. Assure the involvement of local government staff or elected officials and affected tribes, where warranted, with notice to local elected officials that employ local staff appointed to a committee or workgroup; and
 5. Consider geographic representation in appointing committees or workgroups.
 6. Provide information to members of advisory committees and workgroups, and an opportunity for discussion, to ensure that there is a common understanding about (a) how recommendations will be developed; (b) opportunities to present minority opinions and individual opinions; (c) the time commitment necessary to attend workgroup meetings and related activities and to read background materials; (d) opportunities to discuss background and technical information with department staff; and (e) any potential liability or exposure to litigation as a result of serving on a committee or workgroup.
 7. In evaluating the particular interests to be represented on particular advisory committees or workgroups, the commission should consider appointment of a workgroup member not affiliated with any of the groups affected by or otherwise interested in the matter at hand. This member would be charged with determining and representing the very broad interests of citizens in general, rather than the interests of any particular person or group that may otherwise advocate for or against a policy proposal.
- D. The Commission shall encourage flexibility and innovative methods of engaging the public in its policy activities and shall seek the assistance and advice of citizens affected by or with an interest in the proposed policy issue. To this end the Commission may convene short-term technical panels or focus groups (real or virtual), hold conferences, conduct on-line surveys, and carry out other means of gathering information. Where a goal, rule or significant policy process primarily affects a certain region, and where advisory committee or workgroup meetings are confined to that region, notice and opportunities to comment shall also be made available to citizens and interested parties in other regions of the state. Where appropriate, the Commission shall consider collaborative rulemaking under ORS 183.502.
- E. The Commission is cognizant that the level of public involvement and outreach described in these guidelines will be difficult or impossible without adequate staff support from the Department, and that the scope of efforts to promote and facilitate public participation and outreach will be limited based on the adequacy of staff and funding resources.

- F. None of the activities described herein are intended to conflict with or replace any of the public notice or comment opportunities provided under state law or administrative rules.
- G. The Commission may waive or modify these guidelines, as necessary and reasonable, including emergency circumstances or when a rulemaking issue is not significant. When the commission chooses to waive or modify these guidelines, it shall explain its reasons for doing so.

IV. Communication with Citizens

A. Understandable Information

The Commission and the Department shall provide to citizens information that is essential to understanding the policy issues at hand and shall endeavor to make this information easily understood and readily accessible. The Commission and the Department shall identify Department staff or other experts who shall be available to answer questions and provide information to interested citizens.

B. Notice of Decisions

The Commission and the Department shall provide notice of decisions to citizens who have requested information and/or participated in the development of policy. This notice shall be by e-mail except paper mail when specifically requested. Notice shall direct citizens to the Department's website where the decision, background information, staff reports, rationale for the decision, and other information will be available.

C. Costs

Paper copies of items may be mailed upon request subject to fees that may be established by the Department to recover costs (the Commission has established copy fees under OAR 660-040-0005).

D. Appeal Information

Information on appeals procedures shall be available on the Department's website and shall be referenced, when appropriate, in notices to citizens, above.

E. Electronic Communication

While the Commission and the Department recognize that not all citizens presently have or desire direct home access to electronic communications or the agency website on the Internet, the Commission also recognizes the numerous advantages of electronic communication. The Commission is committed to using this medium as a primary means of communication and distribution of information of interest to citizens and shall encourage the Department to employ web-based communication technologies to provide a broad range of information to citizens and to facilitate communication between the Commission and citizens.

V. Applicability

These guidelines are effective April 26, 2004, and supercede the previously adopted Citizen Involvement Program adopted October 7, 1977 and Public Involvement Policy adopted May 4, 2001. The Department is directed to consult with CIAC with regard to new and ongoing projects, including advisory committees and workgroups appointed for those projects, at the earliest scheduled CIAC meetings. However, in the event the meeting schedule of those committees will not allow timely consultation on policy projects intended to begin in accordance with the schedule adopted by LCDC, the Department is directed to proceed with those projects and to consult with CIAC at the earliest opportunity.