



Oregon

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November 19, 2010

TO: Land Conservation and Development Commission
FROM: Bob Rindy, Senior Policy Analyst
SUBJECT: **Agenda Item 2, December 2, 2010, LCDC Meeting**

PUBLIC HEARING AND POSSIBLE ADOPTION OF HOUSEKEEPING AMENDMENTS TO ADMINISTRATIVE RULES

In updating its 2009-2011 Policy Agenda, the commission authorized the department to propose “housekeeping” amendments to LCDC rules. Housekeeping changes are minor and technical corrections, including grammatical and spelling errors; clarifications and updates in response to legislation, court and LUBA opinions; and corrections of citations in existing rules to numbering in amended rules, statutes, or goals.

Under this item the commission will hold a public hearing on proposed housekeeping amendments. After testimony, the department is recommending that the hearing be continued until the January meeting, except with respect to two subjects discussed in this report – the commission’s procedural rules (division 1) and acknowledgement rules (division 3). The department recommends that the commission complete these two topics and adopt the proposed amendments.

The department’s notice provided for housekeeping amendments to rules in the following divisions: OAR 660, divisions 1, 3, 4, 6, 11, 18, 21, 23, 25, 27, 30, and 33. These rule divisions pertain to administrative procedures, acknowledgement review, goal exceptions, forest lands, public facilities planning, plan and land use regulation review, urban reserves, state agency coordination and exclusive farm uses. The department has attached rules in these divisions. However, not all these attachments are complete with respect to proposed amendments, and some do not indicate any amendments at this time. The department intends to provide a final list of rules for amendment in advance of the continued public hearing scheduled for January 2011.

The commission may also consider other amendments to these rules based on testimony and comments received during the public comment period. Notices and the meeting agenda are available on the DLCD website at <http://www.lcd.state.or.us/>.

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

I. BACKGROUND

In general, LCDC conducts a “housekeeping” project to correct and update administrative rules approximately every two years. The intent of this rulemaking is to make minor and technical corrections to clarify and update rules, including amendments in response to recent legislation, court and LUBA opinions, to synchronize citations in existing rules with numbering in amended statutes and rules, and to correct spelling and other errors. When the commission makes amendments to rules for the purposes described above it generally does not appoint a rules advisory committee since the amendments would not change the intent of the rules.

II. PROPOSED RULE AMENDMENTS

Below is a brief summary of proposed rule amendment and reasons for the amendment. Not all the potential rule amendments proposed for adoption in January are described here. For now, the following rule amendments are proposed:

Division 1 Administrative Procedures: This division includes a reference to the 2001 Attorney General’s adopted Administrative Procedures under ORS 183.341. The current version of administrative procedures was adopted by the Attorney General in January of 2010. As such, procedural rules in division 1 should be amended to refer to the current version.

Also, OAR 660-001-0000(1)(b) and (c) regarding public notice, in the current rules, provides only for postal mailing of notices. The department proposes expanding these references to allow distribution of notices by web-site and e-mail.

With respect to the amendments to division 1 currently shown in Attachment A, the department is recommending that LCDC close the public hearing and adopt the proposed amendments, rather than wait until the continued public hearing in January. The amended rules would become effective upon filing.

Division 3 Acknowledgment Rules: The department proposes clarification of these rules to make clear that LCDC may adopt a “partial acknowledgement” of a local plan under the “acknowledgement review process” (applicable to first-time acknowledgements of plans for new cities such as La Pine and Damascus). This change is proposed to rules under OAR 660-003-0025(7), which provides that LCDC may take one of four actions in response to an acknowledgment proposal. The department proposes that this provision be amended to clarify that LCDC may take a combination of these four actions, including partial acknowledgement of the local plan and implementing ordinances, as provided in ORS 197.251.

With respect to these amendments to division 3, the department is recommending that LCDC close the public hearing and adopt the proposed amendments shown in Attachment B, rather than wait until the second public hearing in January, since both the cities of La Pine and Damascus are currently in acknowledgement review.

III. SUMMARY OF REQUIRED LCDC RULEMAKING CRITERIA AND PROCEDURES

The commission’s procedures for rulemaking include ORS Chapter 183 and are specified in LCDC’s 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 19, [and]

(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.”

IV. NOTICE OF RULEMAKING

The department issued formal rulemaking notice for publication in the November 2010 Secretary of State’s Bulletin, and has mailed notices to interested parties (See Attachment C).

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

*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 has followed the above guidelines with respect to the housekeeping rulemaking. We note that the CIG authorizes LCDC to “*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.*” In this case (and in all previous LCDC “housekeeping” rulemaking), a workgroup was not appointed because the rulemaking is policy neutral and minor and technical.

V. RECOMMENDATION

The department recommends the commission hold a public hearing on the proposed amendments described in this report. The department recommends that the commission continue the public hearing for this rulemaking until the commission’s January 12-13, 2011 meeting, except with respect to provisions of divisions 1 and 3 described in this report. For housekeeping amendments to divisions 4, 6, 11, 18, 21, 23, 25, 27, 30, and 33, the department recommends that the commission continue the public hearing to its meeting in January 2011.

ATTACHMENTS

- A. Proposed amendments to OAR 660, division 1**
- B. Proposed amendments to OAR 660, division 3**
- C. Notices of rulemaking**

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 1

PROCEDURAL RULES

1 **660-001-0000**

2 **Notice of Proposed Rule**

3
4 (1) Except as provided in OAR 660-001-0000(2) and ORS 183.335(7), prior to
5 the adoption, amendment, or repeal of any permanent rule, the Department of Land
6 Conservation and Development shall give notice of the proposed adoption, amendment,
7 or repeal:

8 (a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days
9 prior to the effective date of the rule;

10 (b) By mailing a copy of the notice and proposed rule(s) to persons on the
11 Department of Land Conservation and Development's mailing list established pursuant to
12 ORS 183.335(8) at least 28 days before the effective date of the rule, **including**
13 **electronic notices if allowed by law;**

14 (c) By mailing a copy of the notice, **including electronic mailing and**
15 **publication on the department website, of notices** to the persons, groups of persons,
16 organizations, and associations who the department considers to be interested in such
17 adoption;

18 (d) By mailing or furnishing a copy of the notice to the Associated Press and
19 Capitol Press Room;

20 (e) By mailing a copy of the notice to the legislators specified in ORS
21 183.335(15) at least 49 days before the effective date of the rule;

22 (f) The department, at its discretion, may purchase a display ad in a newspaper of
23 statewide circulation to publicize the rulemaking; and

24 (g) In instances where the rulemaking adopts, amends or repeals a statewide
25 planning goal, the department shall provide additional notice as required by statute.

26 (2) The Commission may adopt, amend or suspend any rule by temporary rule
27 without prior notice or hearing or upon any abbreviated notice and hearing that it finds
28 practicable pursuant to ORS 183.335(5). At the time the Commission adopts, amends or
29 suspends any rule under this section, it shall:

30 (a) Prepare and adopt the statements and rule documents required by ORS
31 183.335(5)(a) to (e) which includes the Commission's statement of its findings "that its
32 failure to act promptly will result in serious prejudice to the public interest or the parties
33 concerned and the specific reasons for its findings of prejudice;" and

34 (b) Include in the notice of adoption of any temporary rule a statement explaining
35 the opportunity for judicial review of the validity of the rule as provided in ORS 183.400.

36
37 Stat. Auth.: ORS 183

38 Stats. Implemented: ORS 183

1 Hist.: LCD 7-1976, f. & ef. 6-4-76; LCDC 1-1995, f. & cert. ef. 1-4-95; LCCD 2-2004, f.
2 & cert. ef. 5-7-04

3
4 **660-001-0005**

5 **Model Rules of Procedure**

6 (1) Pursuant to the provisions of ORS 183.341, the Land Conservation and
7 Development Commission adopts the Attorney General's Model Rules and Uniform
8 Rules of Procedure under the Administrative Procedure Act, effective [~~October 3, 2001~~]
9 **December 6, 2010**, except for **that portion of** OAR 137-003-0092(2) regarding the
10 [amount of time required] **number of calendar days allowed** to act on a stay request.

11 **The number of calendar days allowed to act on a stay request shall be 75 days**
12 **rather than 30 days.**

13 (2) Pursuant to the provisions of ORS 183.457 and OAR 137-003-0008, the Land
14 Conservation and Development Commission authorizes parties and limited parties to
15 contested case proceedings to be represented by an authorized representative, subject to
16 the other requirements of ORS 183.457 and OAR 137-003-0008.

17
18 [ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is
19 available from the office of the Attorney General or the Land Conservation and
20 Development Department.]

21
22 Stat. Auth.: ORS 183 & ORS 197

23 Stats. Implemented: ORS 183.341 & ORS 183.457

24 Hist.: LCD 3, f. 1-9-75, ef. 2-11-75; Renumbered from 660-010-0005; LCD 5-1978, f. &
25 ef. 3-24-78; LCD 11-1981, f. & ef. 12-15-81; LCDC 8-1983, f. & ef. 11-23-83; LCDC 2-
26 1986, f. & ef. 4-25-86; LCDC 4-1988, f. & cert. ef. 9-29-88; LCDC 4-1990, f. & cert. ef.
27 8-14-90; LCDC 4-1992, f. & cert. ef. 7-30-92; LCDC 1-1995, f. & cert. ef. 1-4-95;
28 LCDC 1-1996, f. & cert. ef. 4-3-96; LCDD 1-1999, f. & cert. ef. 1-6-99; LCDD 2-2002,
29 f. & cert. ef. 9-23-02

30
31 **[660-001-0007**

32 **Request for Stay -- Agency Determination**

33 ~~(1) Unless otherwise agreed to by the agency and the parties, within a reasonable~~
34 ~~time following delivery or mailing to the agency of the Request for Stay, the agency~~
35 ~~shall:~~

36 ~~(a) Conduct such further proceedings as the parties mutually agree upon; or~~

37 ~~(b) Conduct a contested case hearing, which may be limited to hearing rebuttal~~
38 ~~testimony; or~~

39 ~~(c) Allow the petitioner within a time certain to submit affidavits to answer any of~~
40 ~~the intervenor's evidence.~~

41 ~~(2) Unless otherwise agreed to by the agency and the parties, within 75 days of~~
42 ~~the delivery or mailing to the agency of the Request for Stay, the agency shall:~~

43 ~~(a) Grant the stay request in writing and impose reasonable conditions including~~
44 ~~but not limited to requirements of a bond or other undertaking and that the petitioner file~~
45 ~~all documents necessary to bring the matter to issue before the Court of Appeals within a~~
46 ~~specified reasonable period of time; or~~

1 ~~(b) Deny the stay request in writing and explain that the petitioner failed to show~~
2 ~~irreparable injury or a colorable claim of error in the agency order; or~~

3 ~~(c) Deny the stay request in writing and specifically state why, notwithstanding~~
4 ~~the petitioner's showing of irreparable injury and a colorable claim of error in the agency~~
5 ~~order, to grant the stay would result in substantial public harm.~~

6 ~~(3) Nothing in OAR 137-003-0090 to 137-003-0091 prevents an agency from~~
7 ~~receiving evidence from agency staff concerning the public harm which may result if a~~
8 ~~stay request was granted. Such evidence shall be presented by affidavit.]~~

9
10 ~~[Stat. Auth.: ORS 183 & ORS 197~~

11 ~~Stats. Implemented: ORS 183, ORS 195, ORS 196, ORS 197 & OAR Ch. 137~~

12 ~~Hist.: LCDC 2-1985, f. & ef. 3-13-85]~~

13
14 **Director's Appeal of Land Use Decisions, Expedited**
15 **Land Divisions, or Limited Land Use Decisions**

16 **660-001-0201**

17 **Definitions**

18 The following definition, and the definitions in ORS 197.015 and 197.090(2)(e), apply to
19 rules 660-001-0210 through 660-001-0220: "Affected local government" means the local
20 government, as defined in ORS 197.015, that made or adopted the land use decision,
21 expedited land division or limited land use decision at issue in the director's request under
22 these rules.

23
24 Stat. Auth.: ORS 197.040(1)(c)

25 Stats. Implemented: ORS 184.633 & ORS 197.090

26 Hist.: LCDD 1-2000, f. & cert. ef. 1-24-00

27
28 **660-001-0210**

29 **Timing of Director's Request**

30
31 (1) If a meeting of the commission is scheduled to occur six or fewer days before
32 the close of the applicable appeal period, or the period for intervention in an appeal, the
33 director shall seek commission approval before appealing, or intervening in, a land use
34 decision, expedited land division or limited land use decision to the Land Use Board of
35 Appeals. If the next scheduled meeting of the commission does not occur or a quorum of
36 the commission is unavailable at the scheduled meeting, the department shall proceed as
37 provided in Section (2) of this rule.

38 (2) If there is no commission meeting scheduled to occur six or fewer days before
39 the close of the applicable appeal period, or the period for intervention in an appeal, the
40 director may file, or intervene in, the appeal and report the action to the commission and
41 request permission to pursue the appeal, or intervention, at the commission's next
42 scheduled meeting.

43
44 Stat. Auth.: ORS 197.040(1)(c)

45 Stats. Implemented: ORS 184.633 & ORS 197.090

46 Hist.: LCDD 1-2000, f. & cert. ef. 1-24-00

1
2 **660-001-0220**

3 **Notice**

4 (1) When the director seeks commission approval to file or pursue an appeal, or
5 an intervention in an appeal, of a land use decision, expedited land division or limited
6 land use decision, the department shall provide written notice to the applicant and the
7 affected local government. The notice shall:

8 (a) Identify the land use decision, expedited land division or limited land use
9 decision at issue;

10 (b) Give the date and location of the commission meeting at which the director
11 will seek commission approval to file or pursue an appeal, or an intervention in an
12 appeal, of the identified action;

13 (c) Inform the applicant and affected local government that each may provide
14 written and oral testimony to the commission concerning whether to approve the
15 director's request; and

16 (d) Include a list of the factors in OAR 660-001-0230(3), on which all testimony
17 and the commission's decision must be based.

18 (2) The notice shall be mailed or sent by some other means such as fax or e-mail
19 as soon as practicable after the department receives notice of the land use decision,
20 expedited land division or limited land use decision at issue.

21
22 Stat. Auth.: ORS 197.040(1)(c)

23 Stats. Implemented: ORS 184.633 & ORS 197.090

24 Hist.: LCDD 1-2000, f. & cert. ef. 1-24-00

25
26 **660-001-0230**

27 **Commission Hearing**

28 (1) Only the director, or department staff on the director's behalf, the applicant
29 and the affected local government may submit written or oral testimony concerning
30 whether the commission should approve the director's request to file or pursue an appeal,
31 or an intervention in an appeal, of a land use decision, expedited land division or limited
32 land use decision.

33 (2) Unless the director allows a closer deadline, written testimony must be
34 submitted at least five days before the commission meeting to be provided to commission
35 members in advance of the meeting. Written testimony shall be no more than five pages,
36 including any attachments, and must be received in the Department's Salem office to be
37 "submitted" by the deadline. If the time to submit written testimony under these rules
38 falls on a Saturday, Sunday, or state legal holiday, the time to perform the obligation shall
39 be shortened to the next day preceding that is not a Saturday, Sunday, or state legal
40 holiday.

41 (3) Written and oral testimony and the commission's decision to approve or deny
42 the director's request shall be based on one, or more, of the following factors:

43 (a) Whether the case will require interpretation of a statewide planning statute, goal, or
44 rule;

45 (b) Whether a ruling in the case will serve to clarify state planning law;

46 (c) Whether the case has important enforcement value;

- 1 (d) Whether the case concerns a significant natural, cultural, or economic
2 resource;
- 3 (e) Whether the case advances the objectives of the agency's Strategic Plan; or
4 (f) Whether there is a better way to accomplish the objective of the appeal, such
5 as dispute resolution, enforcement proceedings, or technical assistance.
- 6 (4) The Chair shall limit the amount of time each speaker may testify, and shall
7 exclude written or oral testimony not relevant to the factors in OAR 660-001-0230(3).
- 8 (5) Unless the Chair establishes a different order, oral testimony will be presented
9 in the following sequence:
- 10 (a) Director, and/or department staff;
11 (b) Applicant;
12 (c) Affected local government; and
13 (d) Director, and/or department staff.
- 14 (6) No rebuttal or response is permitted, although the commissioners may
15 question the director, department staff, the applicant, and the affected local government
16 regarding the factors during the commission's deliberations.

17
18 Stat. Auth.: ORS 197.040(1)(c)
19 Stats. Implemented: ORS 184.633 & ORS 197.090
20 Hist.: LCDD 1-2000, f. & cert. ef. 1-24-00

21 22 **Mediation and Dispute Resolution**

23 **660-001-0400**

24 **Confidentiality and Inadmissibility of Mediation Communications**

- 25 (1) The words and phrases used in this rule have the same meaning as given to
26 them in ORS 36.110 and 36.234.
- 27 (2) Nothing in this rule affects any confidentiality created by other law. Nothing
28 in this rule relieves a public body from complying with the Public Meetings Law, ORS
29 192.610 to 192.690. Whether or not they are confidential under this or other rules of the
30 agency, mediation communications are exempt from disclosure under the Public Records
31 Law to the extent provided in ORS 192.410 to 192.505.
- 32 (3) This rule applies only to mediations in which the agency is a party or is
33 mediating a dispute as to which the agency has regulatory authority. This rule does not
34 apply when the agency is acting as the "mediator" in a matter in which the agency also is
35 a party as defined in ORS 36.234.
- 36 (4) To the extent mediation communications would otherwise compromise
37 negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are
38 not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any
39 provisions to the contrary in section (9) of this rule.
- 40 (5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:
- 41 (a) Mediation of workplace interpersonal disputes involving the interpersonal
42 relationships between this agency's employees, officials or employees and officials,
43 unless a formal grievance under a labor contract, a tort claim notice or, a lawsuit has been
44 filed; or
- 45 (b) Mediation in which the person acting as the mediator will also act as the
46 hearings officer in a contested case involving some or all of the same matters; or

1 (c) Mediation in which the only parties are public bodies; or
2 (d) Mediation involving two or more public bodies and a private party if the laws,
3 rule, or policies governing mediation confidentiality for at least one of the public bodies
4 provide that mediation communications in the mediation are not confidential; or
5 (e) Mediation involving 15 or more parties if the agency has designated that
6 another mediation confidentiality rule adopted by the agency may apply to that
7 mediation.
8 (6) Disclosures by Mediator. A mediator may not disclose, or be compelled to
9 disclose, mediation communications in a mediation and, if disclosed, such
10 communications may not be introduced into evidence in any subsequent administrative,
11 judicial, or arbitration proceeding unless:
12 (a) All the parties to the mediation and the mediator agree in writing to the
13 disclosure; or
14 (b) The mediation communication may be disclosed or introduced into evidence
15 in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l), or (o)–(p) of
16 section (9) of this rule.
17 (7) Confidentiality and Inadmissibility of Mediation Communications. Except as
18 provided in sections (8)–(9) of this rule, mediation communications are confidential and
19 may not be disclosed to any other person, are not admissible in any subsequent
20 administrative, judicial, or arbitration proceeding and may not be disclosed during
21 testimony in, or during any discovery conducted as part of a subsequent proceeding, or
22 introduced as evidence by the parties or the mediator in any subsequent proceeding.
23 (8) Written Agreement. Section (7) of this rule does not apply to a mediation
24 unless the parties to the mediation agree in writing, as provided in this section, that the
25 mediation communications in the mediation will be confidential and/or nondiscoverable
26 and inadmissible. If the mediator is the employee of and acting on behalf of a state
27 agency, the mediator, or an authorized agency representative must also sign the
28 agreement. The parties' agreement to participate in a confidential mediation must be in
29 substantially the following form. This form may be used separately or incorporated into
30 an "agreement to mediate." [Form not included. See ED. NOTE.]
31 (9) Exceptions to confidentiality and inadmissibility:
32 (a) Any statements, memoranda, work products, documents and other materials,
33 otherwise subject to discovery that were not prepared specifically for use in the mediation
34 are not confidential and may be disclosed or introduced into evidence in a subsequent
35 proceeding;
36 (b) Any mediation communications that are public records, as defined in ORS
37 192.410(4), and were not specifically prepared for use in the mediation are not
38 confidential and may be disclosed or introduced into evidence in a subsequent proceeding
39 unless the substance of the communication is confidential or privileged under state or
40 federal law;
41 (c) A mediation communication is not confidential and may be disclosed by any
42 person receiving the communication to the extent that person reasonably believes that
43 disclosing the communication is necessary to prevent the commission of a crime that is
44 likely to result in death or bodily injury to any person. A mediation communication is not
45 confidential and may be disclosed in a subsequent proceeding to the extent its disclosure
46 may further the investigation or prosecution of a felony crime involving physical violence

1 to a person;

2 (d) Any mediation communication related to the conduct of a licensed
3 professional that is made to or in the presence of a person who, as a condition of his or
4 her professional license, is obligated to report such communication by law, or court rule,
5 is not confidential and may be disclosed to the extent necessary to make such a report;

6 (e) The parties to the mediation may agree in writing that all or part of the
7 mediation communications are not confidential or that all or part of the mediation
8 communications may be disclosed and may be introduced into evidence in a subsequent
9 proceeding unless the substance of the communication is confidential, privileged, or
10 otherwise prohibited from disclosure under state or federal law;

11 (f) A party to the mediation may disclose confidential mediation communications
12 to a person if the party's communication with that person is privileged under ORS chapter
13 40 or other provision of law. A party to the mediation may disclose confidential
14 mediation communications to a person for the purpose of obtaining advice concerning the
15 subject matter of the mediation, if all the parties agree;

16 (g) An employee of the agency may disclose confidential mediation
17 communications to another agency employee so long as the disclosure is necessary to
18 conduct authorized activities of the agency. An employee receiving a confidential
19 mediation communication under this subsection is bound by the same confidentiality
20 requirements as apply to the parties to the mediation;

21 (h) A written mediation communication may be disclosed or introduced as
22 evidence in a subsequent proceeding at the discretion of the party who prepared the
23 communication so long as the communication is not otherwise confidential under state or
24 federal law and does not contain confidential information from the mediator or another
25 party who does not agree to the disclosure;

26 (i) In any proceeding to enforce, modify, or set aside a mediation agreement, a
27 party to the mediation may disclose mediation communications and such communications
28 may be introduced as evidence to the extent necessary to prosecute or defend the matter.
29 At the request of a party, the court may seal any part of the record of the proceeding to
30 prevent further disclosure of mediation communications or agreements to persons other
31 than the parties to the agreement;

32 (j) In an action for damages or other relief between a party to the mediation and a
33 mediator or mediation program, mediation communications are not confidential and may
34 be disclosed and may be introduced as evidence to the extent necessary to prosecute or
35 defend the matter. At the request of a party, the court may seal any part of the record of
36 the proceeding to prevent further disclosure of the mediation communications or
37 agreements;

38 (k) When a mediation is conducted as part of the negotiation of a collective
39 bargaining agreement, the following mediation communications are not confidential and
40 such communications may be introduced into evidence in a subsequent administrative,
41 judicial, or arbitration proceeding:

42 (A) A request for mediation; or

43 (B) A communication from the Employment Relations Board Conciliation
44 Service establishing the time and place of mediation; or

45 (C) A final offer submitted by the parties to the mediator pursuant to ORS
46 243.712; or

- 1 (D) A strike notice submitted to the Employment Relations Board.
- 2 (l) To the extent a mediation communication contains information the substance
3 of which is required to be disclosed by Oregon statute, other than ORS 192.410 to
4 192.505, that portion of the communication may be disclosed as required by statute;
- 5 (m) Written mediation communications prepared by or for the agency or its
6 attorney are not confidential and may be disclosed and may be introduced as evidence in
7 any subsequent administrative, judicial or arbitration proceeding to the extent the
8 communication does not contain confidential information from the mediator or another
9 party, except for those written mediation communications that are:
- 10 (A) Attorney-client privileged communications so long as they have been
11 disclosed to no one other than the mediator in the course of the mediation or to persons as
12 to whom disclosure of the communication would not waive the privilege; or
- 13 (B) Attorney work product prepared in anticipation of litigation or for trial; or
- 14 (C) Prepared exclusively for the mediator or in a caucus session and not given to
15 another party in the mediation other than a state agency; or
- 16 (D) Prepared in response to the written request of the mediator for specific
17 documents or information and given to another party in the mediation; or
- 18 (E) Settlement concepts or proposals, shared with the mediator or other parties.
- 19 (n) A mediation communication made to the agency may be disclosed and may be
20 admitted into evidence to the extent the Director of the Department of Land Conservation
21 and Development determines that disclosure of the communication is necessary to
22 prevent or mitigate a serious danger to the public's health or safety, and the
23 communication is not otherwise confidential or privileged under state or federal law;
- 24 (o) The terms of any mediation agreement are not confidential and may be
25 introduced as evidence in a subsequent proceeding, except to the extent the terms of the
26 agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has
27 ordered the terms to be confidential under ORS 17.095 or state or federal law requires the
28 terms to be confidential;
- 29 (p) The mediator may report the disposition of a mediation to the agency at the
30 conclusion of the mediation so long as the report does not disclose specific confidential
31 mediation communications. The agency or the mediator may use or disclose confidential
32 mediation communications for research, training or educational purposes, subject to the
33 provisions of ORS 36.232(4).
- 34 (10) When a mediation is subject to section (7) of this rule, the agency will
35 provide to all parties to the mediation and the mediator a copy of this rule or a citation to
36 the rule and an explanation of where a copy of the rule may be obtained. Violation of this
37 provision does not waive confidentiality or inadmissibility.

38
39 [ED. NOTE: The form referenced in this rule is(are) not printed in the OAR Compilation.
40 Copies are available from the agency.]

41
42 Stat. Auth.: ORS 36.224

43 Stats. Implemented: ORS 36.224, ORS 36.228, ORS 36.230 & ORS 36.232

44 Hist.: LCDD 1-1999, f. & cert. ef. 1-6-99

45
46 **660-001-0410**

1 **Confidentiality and Inadmissibility of Workplace Interpersonal Dispute Mediation**
2 **Communications**

3 (1) This rule applies to workplace interpersonal disputes, which are disputes
4 involving the interpersonal relationships between this agency's employees, officials, or
5 employees and officials. This rule does not apply to disputes involving the negotiation of
6 labor contracts or matters about which a formal grievance under a labor contract, a tort
7 claim notice or a lawsuit has been filed.

8 (2) The words and phrases used in this rule have the same meaning as given to
9 them in ORS 36.110 and 36.234.

10 (3) Nothing in this rule affects any confidentiality created by other law.

11 (4) To the extent mediation communications would otherwise compromise
12 negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are
13 not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any
14 provisions to the contrary in section (9) of this rule.

15 (5) Disclosures by Mediator. A mediator may not disclose, or be compelled to
16 disclose, mediation communications in a mediation and, if disclosed, such
17 communications may not be introduced into evidence in any subsequent administrative,
18 judicial, or arbitration proceeding unless:

19 (a) All the parties to the mediation and the mediator agree in writing to the
20 disclosure; or

21 (b) The mediation communication may be disclosed or introduced into evidence
22 in a subsequent proceeding as provided in subsections (c) or (h)–(j) of section (7) of this
23 rule.

24 (6) Confidentiality and Inadmissibility of Mediation Communications. Except as
25 provided in section (7) of this rule, mediation communications in mediations involving
26 workplace interpersonal disputes are confidential and may not be disclosed to any other
27 person, are not admissible in any subsequent administrative, judicial, or arbitration
28 proceeding and may not be disclosed during testimony in, or during any discovery
29 conducted as part of a subsequent proceeding, or introduced into evidence by the parties
30 or the mediator in any subsequent proceeding so long as:

31 (a) The parties to the mediation and the agency have agreed in writing to the
32 confidentiality of the mediation; and

33 (b) The person agreeing to the confidentiality of the mediation on behalf of the
34 agency:

35 (A) Is neither a party to the dispute nor the mediator; and

36 (B) Is designated by the agency to authorize confidentiality for the mediation; and

37 (C) Is at the same or higher level in the agency than any of the parties to the
38 mediation or who is a person with responsibility for human resources or personnel
39 matters in the agency, unless the agency head or member of the governing board is one of
40 the persons involved in the interpersonal dispute, in which case the Governor or the
41 Governor's designee.

42 (7) Exceptions to confidentiality and inadmissibility:

43 (a) Any statements, memoranda, work products, documents, and other materials
44 otherwise subject to discovery that were not prepared specifically for use in the mediation
45 are not confidential and may be disclosed or introduced into evidence in a subsequent
46 proceeding;

1 (b) Any mediation communications that are public records, as defined in ORS
2 192.410(4), and were not specifically prepared for use in the mediation are not
3 confidential and may be disclosed or introduced into evidence in a subsequent proceeding
4 unless the substance of the communication is confidential or privileged under state or
5 federal law;

6 (c) A mediation communication is not confidential and may be disclosed by any
7 person receiving the communication to the extent that person reasonably believes that
8 disclosing the communication is necessary to prevent the commission of a crime that is
9 likely to result in death or bodily injury to any person. A mediation communication is not
10 confidential and may be disclosed in a subsequent proceeding to the extent its disclosure
11 may further the investigation or prosecution of a felony crime involving physical violence
12 to a person;

13 (d) The parties to the mediation may agree in writing that all or part of the
14 mediation communications are not confidential or that all or part of the mediation
15 communications may be disclosed and may be introduced into evidence in a subsequent
16 proceeding unless the substance of the communication is confidential, privileged, or
17 otherwise prohibited from disclosure under state or federal law;

18 (e) A party to the mediation may disclose confidential mediation communications
19 to a person if the party's communication with that person is privileged under ORS chapter
20 40 or other provision of law. A party to the mediation may disclose confidential
21 mediation communications to a person for the purpose of obtaining advice concerning the
22 subject matter of the mediation, if all the parties agree;

23 (f) A written mediation communication may be disclosed or introduced as
24 evidence in a subsequent proceeding at the discretion of the party who prepared the
25 communication so long as the communication is not otherwise confidential under state or
26 federal law and does not contain confidential information from the mediator or another
27 party who does not agree to the disclosure;

28 (g) In any proceeding to enforce, modify, or set aside a mediation agreement, a
29 party to the mediation may disclose mediation communications and such communications
30 may be introduced as evidence to the extent necessary to prosecute or defend the matter.
31 At the request of a party, the court may seal any part of the record of the proceeding to
32 prevent further disclosure of mediation communications or agreements to persons other
33 than the parties to the agreement;

34 (h) In an action for damages or other relief between a party to the mediation and a
35 mediator or mediation program, mediation communications are not confidential and may
36 be disclosed and may be introduced as evidence to the extent necessary to prosecute or
37 defend the matter. At the request of a party, the court may seal any part of the record of
38 the proceeding to prevent further disclosure of the mediation communications or
39 agreements;

40 (i) To the extent a mediation communication contains information the substance
41 of which is required to be disclosed by Oregon statute, other than ORS 192.410 to
42 192.505, that portion of the communication may be disclosed as required by statute;

43 (j) The mediator may report the disposition of a mediation to the agency at the
44 conclusion of the mediation so long as the report does not disclose specific confidential
45 mediation communications. The agency or the mediator may use or disclose confidential
46 mediation communications for research, training or educational purposes, subject to the

1 provisions of ORS 36.232(4).

2 (8) The terms of any agreement arising out of the mediation of a workplace
3 interpersonal dispute are confidential so long as the parties and the agency so agree in
4 writing. Any term of an agreement that requires an expenditure of public funds, other
5 than expenditures of \$1,000 or less for employee training, employee counseling, or
6 purchases of equipment that remain the property of the agency, may not be made
7 confidential.

8 (9) When a mediation is subject to section (6) of this rule, the agency will provide
9 to all parties to the mediation and to the mediator a copy of this rule or an explanation of
10 where a copy of the rule may be obtained. Violation of this provision does not waive
11 confidentiality or inadmissibility.

12 Stat. Auth.: ORS 36.224

13 Stats. Implemented: ORS 36.230(4)

14 Hist.: LCDD 1-1999, f. & cert. ef. 1-6-99
15

LAND CONSERVATION AND DEVELOPMENT DEPARTMENT

DIVISION 3

**PROCEDURE FOR REVIEW AND APPROVAL OF COMPLIANCE
ACKNOWLEDGMENT REQUEST**

1 **660-003-0005**

2 **Definitions**

3 For purposes of this rule, the definitions contained in ORS 197.015 apply. In addition, the
4 following definitions apply:

5 (1) "Acknowledgment of Compliance" is an order of the commission issued pursuant to
6 ORS 197.251(1) that certifies that a comprehensive plan and land use regulation, land use
7 regulations or plan or regulation amendment [~~conforms~~] **complies** with the goals.

8 (2) "Affected Agencies and Districts" are state and federal agencies, special districts and
9 other local governments having programs affecting land use.

10 (3) "Comments" are opinions, beliefs, or other information which a person, local
11 coordinating body or local government wants the commission to consider in reviewing an
12 acknowledgment request.

13 (4) "Objections" are statements or positions by persons (including the local coordinating
14 body, affected agencies or districts) opposing the granting of an Acknowledgment of
15 Compliance.

16 (5) "Compliance Schedule" is a listing of the tasks which a local government must
17 complete in order to bring its comprehensive plan, land use regulations and land use
18 decisions into initial [~~conformity~~] **compliance** with the goals, including a generalized
19 time schedule showing when the tasks are estimated to be completed and when a
20 comprehensive plan or land use regulations which comply with the goals are estimated to
21 be adopted.

22 (6) "Urban Planning Area" is a geographical area within an urban growth boundary.

23 (7) "Continuance" is an order of the commission issued pursuant to ORS 197.251(1) that
24 certifies that a comprehensive plan, land use regulations or both do not comply with one
25 or more goals and certifies that section(s) of the plan or regulation or both comply with
26 one or more of the goals. The order specifies amendments or other action that the local
27 government must complete within a specified time period for acknowledgment to occur.
28 The order is final for purposes of judicial review of the comprehensive plan, land use
29 regulation or both as to the goals with which the plan, regulation or both the plan and
30 regulation are in compliance.

1 (8) "Denial" is an order of the commission issued pursuant to ORS 197.251(1) that
2 certifies that a comprehensive plan, land use regulations or both do not comply with one
3 or more goals. The order specifies amendments or other actions that the local government
4 must complete for acknowledgment to occur. The order is used when the amendments or
5 other changes required in the comprehensive plan, land use regulation or both affect
6 many goals and are likely to take a substantial period of time to complete.

7 (9) "Record of Proceedings Before the Local Government", as used in ORS 197.251,
8 means the materials submitted to the director as part of an acknowledgment request in
9 accordance with OAR 660-003-0010(2)(a), (b) and (c), supporting evidence and
10 documents and any official minutes or tapes of meetings leading to the adoption of a
11 comprehensive plan, land use regulations or amendments thereto. Supporting evidence
12 and documents listed, but not submitted with the acknowledgment request as provided in
13 OAR 660-003-0010(2)(b) shall be considered part of the record of proceedings before the
14 local government and part of the record of proceedings before the local government and
15 part of the record before the commission. Notwithstanding the requirements of OAR 660-
16 003-0010(2)(b) the director may require that such evidence or documents, or a copy, be
17 provided to the department for convenience or if required for judicial review. This
18 definition applies to all acknowledgment requests, corrections submitted pursuant to a
19 commission's continuance order and new acknowledgement requests subsequent to a
20 commission's denial order submitted to the director after the effective date of this rule.

21 (10) "Filing" or "Submitted" for purposes of these rules shall mean that the required
22 documents have been received by the ~~[D] department [of Land Conservation and~~
23 ~~Development]~~ at its Salem, Oregon office.

24 Stat. Auth.: ORS 183 & ORS 197

25 Stats. Implemented: ORS 197.015 & ORS 197.251

26 Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-
27 1981, f. & ef. 12-15-81; LCDC 3-1985, f. & ef. 7-2-85

28 **660-003-0010**

29 **Acknowledgment Procedures**

30 (1) When a local government has adopted a comprehensive plan and land use regulations,
31 as provided by ORS 197.175 and 197.250 prepared corrections pursuant to a
32 commission's continuance order, or prepares a new acknowledgment request subsequent
33 to a commission's denial order, it may request the commission to grant an
34 acknowledgment of compliance. An acknowledgment request shall be sent to the director
35 of the department, **635 Capitol Street NE, Salem, OR [97310] 97301.**

36 (2) The acknowledgment request shall include:

37 (a) A list by ordinance number and adoption date and six copies of the plans and
38 implementing ordinances or land use regulations, inventories and other factual

1 information to be reviewed, provided that two additional copies shall be required by the
2 director for counties and coastal jurisdictions;

3 (b) Six copies of a list of all supporting documents, including minutes and tapes which
4 comprise the "record of proceedings" provided that two (2) additional copies shall be
5 required by the director for counties and coastal jurisdictions. The list of all supporting
6 evidence and documents shall identify any items not included with each plan copy,
7 briefly describe the contents of the items not included and identify where those items may
8 be examined by the commission, [D]department, affected agencies and districts and
9 interested persons. The local government shall make such supporting evidence and
10 documents available at the hearing before the commission held pursuant to OAR 660-
11 003-0025;

12 (c) Six copies of a written statement setting forth the means by which a plan for
13 management of the unincorporated area within the urban growth boundary will be
14 completed and by which the urban growth boundary may be modified (unless the same
15 information is incorporated in other documents submitted in the acknowledgment
16 request), provided that two additional copies shall be required by the director for counties
17 and coastal jurisdictions;

18 (d) The name and address of the person representing the local government to receive
19 notice of commission consideration of the acknowledgment request and to receive a copy
20 of the director's report required under OAR 660-003-0025;

21 (e) A list of all affected agencies and districts, including addresses, identified in the local
22 government's agency involvement program;

23 (f) A list of the names and addresses of the chairperson of the Committee for Citizen
24 Involvement and other citizen advisory committees, if any; and

25 (3) The local government requesting acknowledgment shall send a single copy of the
26 materials described in section (2) of this rule to the appropriate local coordination body as
27 defined in ORS 195.025.

28 (4) Upon receipt of a compliance acknowledgment request, the department shall review
29 the request to determine whether the request for acknowledgment contains each of the
30 documents and information required by section (2) of this rule. The department may
31 decline to accept an acknowledgment request submitted for only a portion of the area of a
32 local government.

33 (5) If the request is complete, the department shall commence its review of the request as
34 required by OAR 660-003-0025 and shall provide the public notice required by OAR
35 660-003-0015.

36 (6) If the request is not complete, the department, within 14 days of receipt of the
37 acknowledgment request, shall in writing, notify the local government what specific

1 requirements of section (2) of this rule have not been met. If, after 30 days from receipt
2 of an acknowledgment request a city or county has not provided the department with the
3 required documents or information, the department shall advise the local government that
4 the request is not complete and shall in writing inform the local government and local
5 coordinating body of such determination.

6 (7) For purposes of the 90 day period as used in ORS 197.251(1), "request" means an
7 acknowledgment request determined by the department to include all the necessary
8 materials required by subsections (2)(a) through (f) of this rule, and thus be complete.

9 (8) Notwithstanding any of the provisions of section (1) of this rule, when the director
10 determines that a modification of any of the above rules is consistent with the applicable
11 laws and in the best interests of the public, he may make exceptions to the application of
12 section (2) of this rule. However, in waiving or modifying the above rules, the director
13 must assure a reasonable opportunity to review documents and prepare and submit
14 comments and objections.

15 Stat. Auth.: ORS 183 & ORS 197

16 Stats. Implemented: ORS 197.251

17 Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 6-1979(Temp), f. & ef. 9-6-79; LCD 1-
18 1980, f. & ef. 1-14-80; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-1981, f. & ef. 12-
19 15-81; LCDC 3-1985, f. & ef. 7-2-85

20 **660-003-0015**

21 **Notice**

22 The [~~director of the~~] department shall, in writing, provide notice of the procedures and
23 time limits for making comments or objections and of the locations where the
24 acknowledgment request documents can be inspected by the general public and
25 specifically to the following (except as provided in OAR 660-003-0032 through 660-003-
26 0050):

27 (1) Affected agencies and districts identified by the local government or the department;

28 (2) The Local Officials Advisory Committee (LOAC) and the State Citizen Involvement
29 Advisory Committee (CIAC);

30 (3) The county or regional planning agency acting as the local coordination body
31 pursuant to ORS 195.025;

32 (4) The chairpersons of the local Committee(s) for Citizen Involvement and other citizen
33 advisory committees identified in the acknowledgment request pursuant to OAR 660-
34 003-0010(2)(f);

35 (5) Any other person(s) who have in writing to the department requested notice.

1 Stat. Auth.: ORS 183, ORS 196 & ORS 197
2 Stats. Implemented: ORS 197.251
3 Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-
4 1981, f. & ef. 12-15-81; LCDC 3-1990, f. & cert. ef. 6-6-90

5 **660-003-0020**

6 **Comments and Objections**

7 (1) After notice of receipt of the acknowledgment request has been mailed there shall be
8 a 45 day period to submit written comments or objections together with any additional
9 evidence to the department. However, after notice of receipt of the acknowledgment
10 request resubmitted subsequent to a continuance order has been mailed there shall be a
11 time period determined by the director of at least 20 days to submit written comments or
12 objections together with any additional evidence to the department.

13 (2) Any person(s) commenting or objecting to an acknowledgment request are urged to
14 send written copy of their comments or objection(s) to the local government which has
15 requested acknowledgment. When an objection is based upon site-specific goal
16 requirements as applied to particular properties, the person objecting is urged to send a
17 written copy of the objection to those persons owning the property which is the subject of
18 the objection. State agency and special district comments or objections shall be subject to
19 the requirements of ORS 197.254.

20 (3) The commission shall consider only those comments and objections to an
21 acknowledgment request [~~in which the commentor or objecting person~~] **that** allege[s]
22 that the local government's plan, ordinances or land use regulations do or do not
23 [~~conform~~] **comply** with one or more of the goals.

24 (4) Any comments and objections or additional evidence which is not received by the
25 department within the time required by section (1) of this rule shall not be considered by
26 the commission unless the commission determines that such evidence could not have
27 been presented as required by section (1) of this rule.

28 Stat. Auth.: ORS 183 & ORS 197

29 Stats. Implemented: ORS 197.251 & ORS 197.254

30 Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-
31 1981, f. & ef. 12-15-81; LCDC 3-1985, f. & ef. 7-2-85

32 **660-003-0025**

33 **Acknowledgment Review**

34 (1) When an acknowledgment request, corrections submitted pursuant to a commission's
35 continuance order or a new acknowledgement request subsequent to a commission's
36 denial order has been received by the [~~commission, the~~] director **the department** shall
37 conduct an evaluation of the submitted plan, ordinances or land use regulations in order
38 to advise the commission whether or not they comply with the Statewide Planning Goals.

1 The ~~[director]~~ **department** may investigate and resolve issues raised in the comments
2 and objections or upon the ~~[director's]~~ **department's** own review of the comprehensive
3 plan and land use regulations. The ~~[director]~~ **department** may collect or develop
4 evidence which rebuts any supporting documents, comments, objections or evidence
5 submitted pursuant to OAR 660-003-0010(2) or 660-003-0020(1). The results of this
6 evaluation including response to all objections timely submitted shall be set forth in a
7 written report. However, the failure to respond to an objection which was timely filed
8 shall not be grounds for invalidation of a commission order issued under this rule. Copies
9 of the ~~[director's]~~ **department's** report shall be sent to the local government requesting
10 acknowledgment, the local coordination body, any person who has in writing commented
11 or objected to the acknowledgment request, within the time period required by OAR 660-
12 003-0020(1), and any other person requesting a copy in writing. The department shall
13 send out copies of the report on an acknowledgment request at least 21 days before
14 commission review of the acknowledgment request. However, the department shall send
15 out copies of the report on corrections submitted pursuant to a commission's continuance
16 order at least 14 days before commission review of such request.

17 (2) The local government, persons who have submitted written comments or objections
18 under OAR 660-003-0020(1) or persons who own property which is the subject of site
19 specific objections received under OAR 660-003-0020(1) shall have ten calendar days
20 from the date of mailing of the ~~[director's]~~ **department's** report to file ~~[with the director]~~
21 written exceptions to that report. Except as provided in section (3) of this rule, written
22 exceptions shall not include additional evidence. Persons or local governments
23 submitting exceptions are urged to file a copy with the affected local government ~~[or]~~
24 **and** ~~[affected]~~ **persons who submitted** comment~~[or]~~s or object~~[or]~~s. The ~~[director]~~
25 **department** shall promptly submit exceptions to the commission.

26 (3) Written exceptions to the ~~[director's]~~ **department's** report filed pursuant to section (2)
27 of this rule may include evidence to rebut any additional evidence submitted pursuant to
28 OAR 660-003-0020(1) or developed by the ~~[director]~~ **department** pursuant to section (1)
29 of this rule. Written exceptions which include rebuttal evidence pursuant to this section,
30 shall clearly identify the additional evidence being rebutted and shall be limited to
31 rebuttal evidence. Final rebuttal evidence allowed under this section shall not create a
32 right to submit additional evidence to the commission under section (5) of this rule.

33 (4) The ~~[director]~~ **department** may submit a written or oral opinion to the commission
34 regarding any evidence, comments, objections, or exceptions submitted to the
35 commission concerning an acknowledgment request. Persons submitting comments,
36 objections, or exceptions within the time periods set forth in OAR 660-003-0020(1) or
37 section (2) of this rule shall be permitted to submit evidence to rebut any new evidence
38 submitted for the first time pursuant to section (4) of this rule.

39 (5) The commission may allow any person who filed written comments or objections
40 within the time period set forth in OAR 660-003-0020(1) to appear before the
41 commission to present oral argument on their written comments, objections or
42 exceptions. The commission shall not allow any additional evidence and testimony, that

1 could have been presented to the local government or to the director in accordance with
2 OAR 660-003-0020(1) or section (3) of this rule, but was not. Any new evidence
3 submitted during, or as part of, oral argument shall not be considered by the commission
4 unless the commission determines that such evidence could not have been presented to
5 the local government or to the director in accordance with OAR 660-003-0020(1) or
6 section (3) of this rule.

7 (6) The commission may allow any interested person who has not filed written comments
8 or objections pursuant to OAR 660-003-0020 to comment on evidence, testimony or the
9 director's report that has already been presented to the commission. Such comments shall
10 not be part of the record before the commission and shall not be considered comments or
11 objections submitted pursuant to ORS 197.251(2).

12 (7) At the time of consideration of the acknowledgment request, the commission shall
13 either grant, continue, postpone for extenuating circumstances or deny the
14 acknowledgment request, **or any combination of these actions including partial**
15 **acknowledgment,** pursuant to ORS 197.251(1).

16 (8) Commission orders for acknowledgment, continuance or denial shall be provided to
17 the local government requesting acknowledgment, and [*commentors and objectors*]
18 **persons who filed comments or objections.**

19 (9) When the commission resumes its consideration of the acknowledgment request,
20 submitted subsequent to a continuance order, it shall limit its review to a determination of
21 whether the corrections submitted bring the acknowledgment submission into
22 [~~conformance~~] **compliance** with the Statewide Planning Goals found not to be complied
23 with in the previous review, unless [~~conformance~~] **compliance** with other goals is
24 affected by the corrections.

25 Stat. Auth.: ORS 183 & 197

26 Stats. Implemented: ORS 197.251, 197.254, 197.340, 197.747 & 197.757

27 Hist.: LCD 8-1978, f. 6-30-78, ef. 7-2-78; LCD 9-1981(Temp), f. & ef. 10-1-81; LCD 13-
28 1981, f. & ef. 12-15-81; LCDC 3-1985, f. & ef. 7-2-85; LCDD 3-2004, f. & cert. ef. 5-7-
29 04

30 **660-003-0032**

31 **Expedited Review Upon Reconsideration or Consideration of a Subsequent Request** 32 **for Acknowledgment**

33 (1) When the commission reconsiders an acknowledgment request pursuant to a
34 continuance order, the commission may expedite the acknowledgment procedure: By
35 waiving, reducing or otherwise modifying the requirements of OAR 660-003-0010, 660-
36 003-0015, and 660-003-0020; provided, however, that notice will be provided to the local
37 government, the coordination body, those persons who have submitted comments or
38 objections on this portion of the acknowledgment request in accordance with the
39 requirement of OAR 660-003-0020(1) and (2), those persons who request notice in

1 writing, and a general newspaper notice. Upon resubmittal such notice shall state that
2 there is at least a 20 day period to be determined by the director for submission of written
3 comments or objections from the mailing of the notice of the receipt of the
4 acknowledgment request. However, in the judgment of the director, where continuances
5 involve relatively complex issues, the notice shall provide the maximum notice possible,
6 up to 45 days.

7 (2) When the commission reconsiders an acknowledgment request subsequent to a
8 continuance order; the commission shall expedite the acknowledgment procedure by
9 relying on the previous record and limiting additional comments and objections, affected
10 agency comments, and the [~~director's~~] **department's** review to only those aspects of a
11 city's or county's comprehensive plan or implementing ordinances previously identified
12 by the commission as not being in compliance.

13 (3) Upon receipt of corrections made pursuant to a continuance order submitted by a local
14 government the department shall notify all persons who are entitled to notice of the local
15 government's acknowledgment request under subsection (1)(a) of this rule, of the time
16 and place where the corrections may be inspected and the time within which objections or
17 comments to the corrections must be submitted.

18 (4) Written comments or objections to the corrections made pursuant to a continuance
19 order by the commission shall be submitted to the department in accordance with OAR
20 660-003-0020.

21 (5) The commission's review of corrections made pursuant to a continuance order or the
22 commission's review of a new acknowledgment request made subsequent to a denial by
23 the commission will be conducted in accordance with the requirements of OAR 660-003-
24 0025.

25 Stat. Auth.: ORS 183 & ORS 197

26 Stats. Implemented: ORS 197.251

27 Hist.: LCD 9-1981(Temp), f. & ef.10-1-81; LCD 13-1981, f. & ef. 12-15-81

28 **660-003-0033**

29 **Expedited Notice Procedure for Acknowledgment**

30 (1) When during an acknowledgment review, a city or county changes its plan or land use
31 regulations after the comment period provided for in either OAR 660-003-0020(1) or
32 660-003-0032(1), the director may determine that additional notice to the public or
33 persons who have submitted comments or objections is not necessary prior to
34 consideration of the jurisdiction's acknowledgment request by the commission. In making
35 this determination, the director shall carefully consider the complexity of the goal
36 compliance issues involved, the nature and number of comments and objections
37 previously received, the opportunities provided by the jurisdiction for public review and
38 comment on recent amendments and the length of time between the adoption of the
39 recent amendments and the date of commission action on the jurisdiction's

1 acknowledgment request. The department shall work closely with persons who have
2 previously submitted comments and objections and the jurisdiction to resolve any
3 conflicts concerning the additional amendments prior to commission action on the
4 acknowledgment request.

5 (2) The director may forego additional notice to the public and persons who have
6 submitted comments or objections only if the jurisdiction provides general notice to the
7 public and notifies [*previous commentors and objectors*] **persons who submitted**
8 **comments or objections** in writing of an opportunity to participate in the local hearing(s)
9 regarding the adoption of the additional amendments. The jurisdiction shall send a copy
10 of the written notice to all [*previous commentors and objectors*] **persons who submitted**
11 **comments or objections** and to the department in Salem. [*If the jurisdiction fails to send*
12 *a copy of the notice to all previous commentors and objectors, the director shall provide*
13 *notice in the manner established in OAR 660-003-0020(1) or 660-003-0032(1)].*

14 (3) When the commission considers the jurisdiction's request for acknowledgment, the
15 commission shall allow testimony from the public or persons who have submitted
16 comments or objections which allege inadequate opportunity for review of the
17 jurisdiction's amendment adopted after the comment deadline. If the commission
18 determines that further notice and opportunity for comment is needed, or if additional
19 opportunity to file exceptions to the director's report under ORS 197.251(3) is required, it
20 shall instruct the director to provide such notice and opportunity for comment before the
21 commission acts on the jurisdiction's acknowledgment request.

22 Stat. Auth.: ORS 197

23 Stats. Implemented: ORS 197.251

24 Hist.: LCDC 6-1983, f. & ef. 7-20-83

25 **660-003-0050**

26 **Review Upon Remand or Reversal From Oregon Court of Appeals or Oregon**
27 **Supreme Court**

28 (1) The commission shall reconsider an acknowledgment request as a result of a remand
29 or reversal from the Oregon Court of Appeals or Oregon Supreme Court within 90 days
30 of the date the decision becomes final. The director shall review the Court's decision and
31 make written recommendations to the commission regarding any additional planning
32 work that is required for acknowledgment of compliance with the goals as a result of the
33 Court's decision.

34 (2) The director's recommendations shall be sent out at least 14 days before the
35 commission's reconsideration of the acknowledgment request subject to the Court's
36 remand or reversal. The director's recommendations shall be sent to the applicable local
37 government, local coordination body, parties on appeal and those persons who, according
38 to the department's records, were mailed a copy of the commission's acknowledgment or
39 continuance order subject to the Court's remand or reversal.

1 (3) The persons mailed a copy of the director's recommendations under section (2) of this
2 rule shall have ten calendar days from the date of mailing of the director's
3 recommendations to file with the director written exceptions to those recommendations.

4 (4) The director may submit a written or oral opinion to the commission regarding
5 exceptions submitted to the commission concerning the remand or reversal.

6 (5) The commission may allow any person who received a copy of the director's
7 recommendation under section (1) of this rule or who filed written exceptions within the
8 time period set forth in section (3) of this rule to appear before the commission to present
9 oral comments on the director's recommendation or their written exceptions. The
10 commission shall not allow additional evidence to be presented which was not part of the
11 record of the commission's initial acknowledgment review subject to the Court's remand
12 or reversal.

13 (6) The commission may allow any interested person who was not mailed a copy of the
14 director's recommendation or did not file a written exception pursuant to sections (1) and
15 (3) of this rule to comment on the director's recommendation or submitted written
16 exceptions.

17 (7) Following review of the director's recommendation and any exceptions, the
18 commission shall enter a continuance order for those parts of the comprehensive plan or
19 land use regulations for which the court determined that goal compliance had not been
20 demonstrated. The commission may also enter a limited acknowledgment order for parts
21 of the comprehensive plan and land use regulations not affected by the continuance order.

22 (8) The commission's review of corrections made pursuant to an order issued pursuant to
23 section (7) of this rule will be conducted in accordance with the requirements of OAR
24 660-003-0025 or 660-003-0033.

25 Stat. Auth.: ORS 183 & ORS 197

26 Stats. Implemented: ORS 197.251

27 Hist.: LCDC 6-1985, f. & ef. 11-15-85

Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Oregon Department of Land Conservation and Development		660
Agency and Division		Administrative Rules Chapter Number
Casaria Tuttle	635 Capitol St. NE, Suite 150, Salem, OR 97301	503-373-0050 ext. 322
Rules Coordinator	Address	Telephone

RULE CAPTION

Minor and technical amendments to conform to law, clarify wording and correct references
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

December 2, 2010	Meeting begins 9:00AM	635 Capitol Street, Salem; Basement Hearing Room	LCDC
Hearing Date	Time	Location	Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

- AMEND:** OAR chapter 660, division 1 (Administrative Procedures)
- OAR chapter 660, division 3 (Acknowledgment Process)
- OAR chapter 660, division 4 (Interpretation of Exceptions Process)
- OAR chapter 660, division 6 (Forest Lands)
- OAR chapter 660, division 11 (Public Facilities Planning)
- OAR chapter 660, division 18 (Plan and Land Use Regulation Review Rule)
- OAR chapter 660, division 21 (Urban Reserves)
- OAR chapter 660, division 23 (Natural Resources)
- OAR chapter 660, division 25 (Metro Urban and Rural Reserves)
- OAR chapter 660, division 27 (Metro Urban and Rural Reserves)
- OAR chapter 660, division 30 (State Agency Coordination)
- OAR chapter 660, division 33 (Agricultural Lands)

REPEAL:

- Stat. Auth.: ORS 197.040; 195.145; ORS 195, 197, 215 & 227
- Other Auth.: Statewide planning goals (OAR 660, div 15)
- Stats. Implemented: ORS 195, 197, 215, 227

RULE SUMMARY

The proposed amendments would modify rules to make minor and technical amendments to: conform to statutes, laws and rules; respond to Land Use Board of Appeals or other court opinions; clarify ambiguous or unclear wording consistent with the intent of the rule; update or correct rule, statutory or other references; and correct grammar.

The Commission may consider other minor amendments to rules in the divisions specified above based on testimony and comments received during the public comment period, and may adopt minor clarifications or technical corrections and amendments to these divisions that may be proposed during the public comment period.

Under ORS 183.335(2)(b)(G), the agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

December 2, 2010

Last Day for Public Comment

	Casaria Tuttle	10/14/2010
Signature	Printed name	Date

*Hearing Notices published in the Oregon Bulletin must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, upon which the deadline is 5:00 pm the preceding workday. ARC 920-2005

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Agency and Division: Department of Land Conservation and Development

Administrative Rules Chapter Number: OAR 660, chapters 1, 3, 4, 6, 9, 11, 18, 21, 23, 25, 27, 30, 33

In the Matter of: Minor and technical rule amendments for clarity, consistency with statutes and case law, and to correct grammar, spelling and references.

Statutory Authority: ORS 197.040; 195.145; ORS 195, 197, 215, 227

Other Authority: Statewide Planning Goals (OAR 660, div 15)

Statutes Implemented: ORS 195.137 – 195.145; ORS 183; ORS 195, 197, 215, 227

Need for the Rule(s): The proposed minor and technical amendments are needed in order to conform existing rules to new or amended statutes, rules or to other laws, to clarify ambiguous wording and make other adjustments consistent with the intent of law, to update or correct statutory or other references, and to correct grammar and spelling.

The Commission may consider other minor and technical amendments to rules in the divisions specified above based on testimony and comments received during the public comment period, and may adopt amendments to these divisions that may be proposed during the public comment period.

Effective date: Rules will be effective upon filing with the Secretary of State Office, or by a time specified in the adopted rules.

Documents Relied Upon: ORS 195.137-195.145; Statewide Planning Goals (OAR 660, division 15);

Fiscal and Economic Impact: Statutory provisions (ORS 183.335(2)(b)(E) and (G), 183.540) require the agency to consider whether a proposed rule amendment will have any significant economic impact on business and whether options should be considered to reduce any negative impacts of the rule on business:

The proposed amendments will not have economic affects on business because the proposed amendments will generally clarify rather than amend current policies established by the rules. Where the amendments conform rules to existing statutes the department cannot propose alternative rules that would achieve the underlying lawful governmental objective because amendments to rule requirements would only be in conformance with current law. The proposed rule amendments would primarily be applied in local land use decisions, and as such, economic and property interests will be considered in the local decision making process. Although not determinative, this will help assure the proper balance of economic and property interests, consistent with the purpose of the statutes or rules.

Statutory provisions also require the agency to estimate the effect of proposed rules on the cost to construct a 1,200 square foot dwelling on a 6,000 square foot parcel (ORS 183.534).

The proposed amendments would not affect approval standards for dwellings and thus will not affect the cost to construct a dwelling.

ORS 183.335(2)(b)(E) and 183.530 require the agency to prepare a Housing Cost Impact Statement on a form prepared by the State Housing Council and incorporate that statement into this statement of need required by ORS 183.335(5) (*See* ORS 183.534).

The Housing Cost Impact Statement is attached and is incorporated into this statement by this reference.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The amendments will not have impacts to state agencies, units of local government and the public because the proposed amendments will generally clarify rather than amend current policies established by the rules.

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

The rules subject to this rulemaking affect small businesses throughout the state. However, it is not possible to estimate the number and type of such businesses. In general, all businesses in the state are subject to the statewide planning rules proposed for amendment. The proposed amendments will generally clarify rather than amend current policies established by the rules, and as such, there should be no or hardly any affects on small business.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The department generally monitors plan amendments, new uses in farm and forest land (through annual reporting required of counties), and destination resorts. These rule amendments will not change current monitoring, and no professional service costs are anticipated for such monitoring,

c. Equipment, supplies, labor and increased administration required for compliance:

No additional costs of supplies, labor and administration are anticipated as a result of these rule amendments.

How were small businesses involved in the development of this rule?

Because these amendments primarily concern clarification of current policy, conformance with amended statutes or court decisions, or other minor and technical changes, the department did not consult with small businesses.

Statutory provisions (ORS 197.040) also require the agency to “Assess what economic and property interests will be, or are likely to be, affected by the proposed rule; ... assess the likely degree of economic impact on identified property and economic interests; [and] assess whether alternative actions are available that would achieve the underlying lawful governmental objective and would have a lesser economic impact.” These requirements “shall not be interpreted as requiring an assessment for each lot or parcel that could be affected by the proposed rule.”:

Economic interests and property owners will not be affected by the amended rules because the proposed minor and technical amendments are for clarification, conformity to existing rules or statutes.

Administrative Rule Advisory Committee consulted?: No If not, why?: For the same reasons provided above concerning small business involvement.

Richard Whitman

Signature

Printed Name

Date

HOUSING COST IMPACT STATEMENT

FOR ESTIMATING THE EFFECT OF A PROPOSED RULE OR ORDINANCE ON THE COST OF DEVELOPING
A *TYPICAL 1,200 SQ FT DETACHED SINGLE FAMILY DWELLING ON A 6,000 SQ FT PARCEL OF LAND.
(ORS 183.534) FOR ADMINISTRATIVE RULES

*Typical-Single story 3 bedrooms, 1 ½ bathrooms, attached garage (calculated separately) on land with good soil conditions with no unusual geological hazards.

AGENCY NAME:

Department of Land Conservation and Development

HEARING DATE:

December 2, 2010

ADDRESS: 635 Capitol Street NE

CITY/STATE: Salem, OR 97301

PHONE: (503) 373-0050

PERMANENT:

TEMPORARY:

EFFECTIVE DATE: Upon Filing

**BELOW PLEASE PROVIDE A DESCRIPTION OF THE ESTIMATED SAVINGS OR ADDITIONAL COSTS THAT
WILL RESULT FROM THIS PROPOSED CHANGE.**

PROVIDE A BRIEF EXPLANATION OF HOW THE COST OR SAVINGS ESTIMATE WAS DETERMINED.
IDENTIFY HOW CHANGE IMPACTS COSTS IN CATEGORIES SPECIFIED

Description of proposed change: (Please attach any draft or permanent rule or ordinance)

Minor or amendments to conform rules to statutes, rules or to other laws, to clarify ambiguous or unclear wording consistent with the intent of the rule, to update or correct rule, statutory or other references, and to correct grammar.

Description of the need for, and objectives of the rule:

These minor and technical rule amendments are needed in order to conform existing rules to statutes, rules or to other laws, to clarify ambiguous or unclear wording consistent with the intent of the rule, to update or correct rule and statutory references, or to correct grammar and spelling.

List of rules amended: OAR chapter 660, division 1 (Administrative Procedures); OAR chapter 660, division 3 (Acknowledgment Process); OAR chapter 660, division 4 (Interpretation of Exceptions Process); OAR chapter 660, division 6 (Forest Lands); OAR chapter 660, division 9 (Economic Development); OAR chapter 660, division 11 (Public Facilities Planning); OAR chapter 660, division 18 (Plan and Land Use Regulation Review Rule); OAR chapter 660, division 21 (Urban Reserves); OAR chapter 660, division 23 (Natural Resources); OAR chapter 660, division 25 (Metro Urban and Rural Reserves); OAR chapter 660, division 27 (Metro Urban and Rural Reserves); OAR chapter 660, division 30 (State Agency Coordination); OAR chapter 660, division 33 (Agricultural Lands)

Materials and labor costs increase or savings: The amendments will not affect the cost of housing materials or labor costs because the amendments will not create new substantive or procedural provisions not already required by rule, statute or other law with respect to housing.

Estimated administrative, construction or other costs increase or savings: The amendments will not affect administrative, construction, or other housing costs, for the same reasons described above concerning materials and labor costs, above.

Land costs increase or savings: The amendments will not affect land costs, for the same reasons described above concerning materials and labor costs.

Other costs increase or savings: None anticipated

PREPARERS NAME: Bob Rindy, Senior Policy Analyst **EMAIL ADDRESS:** bob.rindy@state.or.us



Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development

635 Capitol Street, Suite 150
Salem, OR 97301-2540
(503) 373-0050
Fax (503) 378-5518
www.lcd.state.or.us

November 15, 2010

TO: The Honorable Peter Courtney, President of the Senate
The Honorable Dave Hunt, Speaker of the House

FROM: Richard Whitman, Director
Department of Land Conservation and Development (DLCD)

SUBJECT: Notice of Proposed Minor and Housekeeping Amendments to DLCD Rules

Enclosed are notices announcing that the Land Conservation and Development Commission (LCDC) is considering minor amendments to administrative rules. The proposed minor or technical amendments to the agency's administrative rules are necessary to conform rules to current statutes, laws and rules, respond to Land Use Board of Appeals or other court opinions, clarify ambiguous or unclear wording consistent with the intent of the rules, and update or correct references or to correct grammar. LCDC may consider other minor amendments to rules in the divisions specified based on testimony and comments received during the public comment period, and may adopt minor clarifications or technical corrections and amendments to these divisions that may be proposed during the public comment period. The rules subject to proposed amendments are as follows: OAR 660, divisions 1, 3, 4, 6, 11, 18, 21, 23, 25, 27, 30 and 33.

LCDC will hold a public hearing to consider the proposed rule amendments in Salem on December 2, 2010. The meeting, which includes other agenda items, will begin at 9:00 a.m. at the Agriculture Building, 635 Capitol Street NE, Salem. Interested persons may address LCDC concerning the proposal at that time, or may provide written comments. Written comments are encouraged, and will be accepted until the close of the hearing. After completion of public testimony, LCDC may amend these rules, and if so, the amendments would become effective upon filing with the Secretary of State. A draft and other information about the proposed rules will be posted on DLCD's website at: <http://www.oregon.gov/LCD/rulemaking.shtml>

Address written comments to the Chair of the Land Conservation and Development Commission care of Casaria Tuttle at the department's address above, or email comments to casaria.r.tuttle@state.or.us. Fax comments to 503-378-5518. If you have questions about the proposed rules, contact Bob Rindy at (503) 373-0050 Ext. 229; email bob.rindy@state.or.us.

This notice is also being provided to the chairs of interim or session committees with authority over the subject matter of these rules, as required by ORS 183.335(15)(b).

Copies:

- Sen. Dingfelder
- Rep. Clem
- Rep. Riley
- Rep. VanOrman
- Rep. Read
- Sen. Atkinson
- Rep. Krieger
- Rep. Cannon
- Rep. Smith
- Rep. Bentz

Enclosures