



Oregon

Kate Brown, Governor

Department of Land Conservation and Development

635 Capitol Street NE, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5518

www.oregon.gov/LCD



November 27, 2017

TO: Land Conservation and Development Commission and Stakeholders

FROM: Jim Rue, Director
Sadie Carney, Rural Policy Analyst and Communications Manager
Ellen Miller, Urban Policy Analyst and Legislative Coordinator

SUBJECT: **Approved 2017-2019 Policy Agenda**

The Department of Land Conservation and Development creates a Policy Agenda each biennium to assist in identifying and prioritizing the policy items the department will pursue over the coming two years. When the policy agenda is created, it is done so with an approach that considers a variety of inputs:

- If the policy work is legislatively directed,
- If the policy work can be accomplished within the existing authority of the department and commission,
- Whether or not sufficient staff capacity exists to accomplish the work in a timely and well-executed fashion,
- And whether or not there is need for the change to help local governments better carry out their land use planning activities.

In some cases, legislatively directed policy work comes with funds to support the work, but in many cases it does not.

The Policy Agenda is revised annually, to reflect any changes that might need be made as a result of the 2018 (short) legislative session, but major revisions to the policy agenda are made on a biennial basis, as is the case with this policy agenda.

This Policy Agenda was approved by the Land Conservation and Development Commission at their September 21, 2017 meeting. For complete information, the staff report, public and written comments, and an audio recording of the meeting are available at the meeting link on our website.

www.oregon.gov/LCD/Pages/meetings.aspx

For additional information about this report please contact Ellen Miller, Legislative Coordinator/Urban Policy Analyst at 503-934-0020 or ellen.l.miller@state.or.us.

Ongoing Projects from the 2015-2017 Biennium

The list below includes projects that are already underway or recently concluded from the 2015-2017 policy agenda:

1. Citizen Involvement and Land Use Program Outreach Improvements (with CIAC)

*DLCD Strategic Plan Goal 3
Small Effort, CIAC recommendation and input*

The commission's Citizen Involvement Advisory Committee has been tasked with recommending methods to further citizen involvement in the department's work, specifically as citizen involvement applies to inclusive and thoughtful outreach, rulemaking (advisory committees and process), and the DLCD website.

2. Rocky Shores Rulemaking

*DLCD Strategic Plan Goal 1
Large Effort, Research [Rulemaking 2019-21]
Workgroup and Advisory Committee*

The Oregon Territorial Sea Plan (TSP) was adopted in 1994 and provides detailed guidance to state and federal agencies to manage uses within the state's territorial sea. State ocean resources are governed by multiple authorities at different government scales, and the TSP acts as a coordinating framework from which individual agencies establish regulations and management activities. The current Rocky Shores Management Strategy was included as a chapter of the initial TSP. The Oregon Ocean Policy Advisory Council (OPAC) has the responsibility to steward and periodically amend the plan as needs and conditions change, and as new information becomes available. Much has changed since the plan was adopted. The OPAC has determined it is time to assess and amend the Rocky Shores Management Strategy to reflect these changes and proactively manage Oregon's rocky shores. The commission received this information in a [briefing](#)¹ at the March 2016 LCDC meeting. The OPAC working group has been tasked with conducting the review and recommendation process which is envisioned to require at least three years to complete. DLCD staff will assist the OPAC in the policy process of amending the TSP.

3. Non-Resource/Other Resource Lands

*DLCD Strategic Plan Goal 1
Large Effort, Research and Possible Rulemaking
Workgroup and Advisory Committee*

¹ http://www.oregon.gov/LCD/docs/meetings/lcdc/031116/Item_5_Rocky_Shores_Mgt_Report.pdf

Consider development of a “non-resource/other resource lands” policy that is integrated with resource lands protection strategies, including consideration of carrying capacity, environmental and habitat protection, infrastructure requirements and availability, and other factors. There are currently no standards to guide counties in identifying and zoning lands which do not meet the definition of agricultural or forest resource lands. To date, several stakeholder conversations have helped further define the issue. State agencies, in particular, are identifying issues of mutual interest.

4. Farmland Protection Improvements

DLCD Strategic Plan Goal 1

Large Effort, Research Only

As proposed in the 2015-2017 Policy Agenda, this policy project was structured to include minor and technical rule revisions to EFU (which were completed), followed by a department led research forum envisioned to help develop rulemaking proposals to define and potentially develop review criteria for commercial activities in conjunction with farm use and private parks, consider potential new agritourism related uses and conflicts, perform revisions and specify intent of some definitions. In the same vein, the department has long received requests to seek to create a firm understanding and quantifiable measures for the “cumulative impacts” of non-farm uses on long term preservation of exclusive farm use land in Oregon. Some progress was realized in the 2015-2017 biennium on this project. However, due to more limited staff capacity in the 2017-19 biennium, the department now recommends extending the timeline of this work, and continuing data collection, analysis, and other research as staff capacity permits. The department will determine the best and most productive policy efforts to pursue in addressing this large and complex issue.

5. Metropolitan Transportation Planning Rulemaking

DLCD Strategic Plan Goal 2

Medium Effort, Rulemaking

Advisory Committee appointed

In January 2017, the commission adopted updated targets for reducing greenhouse gas emissions from transportation in metropolitan areas. The commission also endorsed a policy approach for further rulemaking. The Transportation Planning Rule, requires cities and counties within metropolitan areas to plan for increasing transportation choices. The rulemaking will streamline these requirements and create additional options for local governments to satisfy the requirement. Rulemaking was initiated for this project at the commission meeting in July 2017.

B. New Policy Projects Required by the 2017 Legislature

At the close of each legislative session, there are typically a number of bills that have passed into law that require the department to adjust or amend their rules. Below is a list of the bills requiring department rulemaking that passed during the 2017 Oregon legislative session.

1. HB 2743 – Airport UGB Pilot Program

*Large Effort, Rulemaking
Advisory Committee anticipated*

Directs the Land Conservation and Development Commission to implement a process to select one pilot program site from a city located not less than 100 miles from a city with a population of 300,000 or more and located in a county with at least eight percent unemployment over the preceding five-year period. The site must satisfy specific location criteria. The bill exempts the selected pilot site from the usual urban growth boundary need and location justification process. The bill prohibits nomination, selection and inclusion of a site consisting of high-value farmland. The site must be planned, zoned and maintained for economic development purposes. The bill requires the commission and department to track the economic and employment impact on the city and region, and report back to the legislature in 2022. The bill requires significant rulemaking by LCDC on the development of the pilot program and an expedited process for amending urban growth boundaries to include the pilot program site. While not specified in the bill, the impetus and desire for such policy revisions comes from the City of Madras. The department did not receive additional budget for this policy work. The bill created a special fund for the department and increases the department spending limitation \$90,660, which will enable the department to receive financial support from the selected city to conduct this work.

2. SB 418 – UGB Sequential Submittal/Approval

*Medium Effort, Rulemaking
Advisory Committee anticipated*

Provides an additional process for cities to expand urban growth boundaries. The process allows a city to submit adopted land needs analyses for DLCDC approval, to be followed by a subsequent submittal of an action to address any land need. A city may make separate submittals of an economic opportunities analysis or a residential lands need analysis and housing needs analysis, to be followed by a subsequent submittal of any actions to accommodate any land found to be needed. Each submittal must be approved by the DLCDC director, remanded by the director, or referred to LCDC, all within 90 days of submittal by the local jurisdiction. The bill requires an amendment to statewide land use OAR chapter 660-025 (periodic review) and OAR chapters 660-024 and 660-038 (urban growth boundaries). The department did not receive additional budget for this policy work.

3. SB 1051 – Housing Supply Bill (originally HB 2007)

*Small Effort, Rulemaking
No Advisory Committee*

This bill mandates local governments to implement several practices with the intent to increase housing supply. The bill requires local governments to expedite affordable housing project permits, prohibits denial of urban residential development based on discretionary design guidelines, prohibits the reduction of residential density, requires local governments to allow urban accessory dwelling units, and allow religious institutions to build affordable

housing in conjunction with the institution. The bill amends ORS 197.303, the statute defining needed housing and ORS 197.307, the statute on clear and objective standards for needed housing. This will require that LCDC amend rules in OAR chapter 660, divisions 7 and 8, in order to conform rule to statute.

4. HB 3012 – Old House ADUs on Rural Residential Lands

*Small Effort, Rulemaking
No Advisory Committee*

This bill provides authorizes counties to allow construction of a new, additional single-family dwelling if the existing dwelling was built between 1850 and 1945, is on a lot at least two acres in size and is converted to an accessory dwelling unit (ADU). Additional limitations regarding land divisions, replacement, etc., are also proposed. The bill allows a county to impose additional conditions. This will require that LCDC amend rules in OAR 660, division 4, in order to conform rule to statute.

5. HB 3202 – Southwest Corridor MAX Land Use Final Order (LUFO)

*Medium Effort
No Advisory Committee*

Requires the Land Conservation and Development Commission to set criteria for a Metro land use decision on the Southwest Corridor MAX Light Rail Project. The measure provides for review of the LCDC decision and allows for appeals to the Supreme Court, gives Metro authority to adopt a “land use final order” in place of individual land use decisions by the cities and counties along the SW Corridor. The amendments require LCDC to adopt criteria that Metro will use to review and approve the order. To implement the amendments to this measure, the department would be required to prepare and present an order to the Land Conservation and Development Commission. The department did not receive additional budget for this policy work

6. HB 2179 – Biosolids Mixing

*Small Effort
No Advisory Committee*

Permits onsite treatment septage prior to application of biosolids on exclusive farm use land using treatment facilities that are portable, temporary and transportable by truck trailer during authorized period of time. The bill requires an amendment to statewide land use rule OAR 660-033-0130(11).

7. HB 2730 – Golf Course in Curry County

*Small Effort
No Advisory Committee*

The bill amends ORS 215.283(2) related to the list of uses conditionally permitted in exclusive farm use (EFU) zones. The bill allows a golf course west of Hwy 101 and

surrounded entirely by an approved golf course on high value farmland in EFU. The bill requires an amendment statewide land use rule OAR chapter 660, division 33.

8. HB 3456 –Solar Siting in Columbia Valley AVA

Small Effort

No Advisory Committee

Permits the establishment of photovoltaic solar power generation facility on certain high value farmland in the Columbia Valley Viticulture Area under specific conditions, including located outside an irrigation district and has not had water applied to the land for the immediately preceding 20 years. The bill requires an amendment to statewide land use rule OAR chapter 660, division 33.

9. SB 644 – Non-Aggregate Mineral Mining Permits

Small Effort

No Advisory Committee

Creates special, preferential treatment for non-aggregate mining that largely replace existing county comprehensive plans and state land statutes and rules governing non-aggregate mining. Section 1 would have the most impact on the land use program. This section makes substantial changes to how mining of a “significant mineral resource site” is authorized in EFU zones located in Baker, Grant, Harney, Lake, Malheur, Union and Wallowa Counties. The bill requires an amendment to statewide land use rule OAR 660-023-0180.

10. SB 677 – Cider Business

Small Effort

No Advisory Committee

Establishes standards for establishment of cider businesses on land zoned for exclusive farm use or on land zoned for mixed farm and forest use. SB 677 allows cider businesses to be permitted outright with the same allowances for marketing, food service, agritourism events, and bed and breakfasts that are allowed for wineries under ORS 215.452. The bill requires an amendment to statewide land use rules OAR 660-033-0130 and OAR 660-033-0130.

C. New Policy Projects Recommended by the Department

Each biennium, the department works with staff and stakeholders to identify policy projects and rule revisions that are timely, necessary, and appropriate for address in the coming biennium. The policy items listed below are included in this policy agenda because they meet the criteria outlined above.

1. Simplified UGB – Minor Revisions

*DLCD Strategic Plan Goal 2
Medium Effort, Research and Rulemaking
Advisory Committee anticipated*

The rules establishing the Simplified Urban Growth Boundary (UGB) Method became effective in January 2016 (OAR chapter 660, division 38). Through subsequent analysis, as well as practical application working with cities, the department has identified minor revisions that could be made to make the rules function better. In addition, there are issues that have been raised and/or identified by the department that merit additional evaluation, and potentially rulemaking.

Some of these issues concern only the Simplified UGB Method in division 38 relating to determination of land need; the others concern the location analysis for UGB expansions in both division 38 and the “standard” UGB method found in division 24.

The department has listed the set of identified issues below. As above, the first set is a list of minor issues that can be corrected with technical revisions to division 38. The second set of issues require additional analysis, and may result in recommendations for rulemaking. Therefore, prior to the initiation of rulemaking, the department will present the results of our evaluation, and a proposed scope of rulemaking, to the commission for review.

Minor Issues:

- Clarifying exclusions of publicly-owned land such as schools, privately-owned facilities such as religious institutions, and also privately-owned land held in common such as condominium open space areas from buildable lands inventories. *[Division 38 only]*
- Updating the list of measures to accommodate needed housing found in the simplified UGB rules, which has been augmented by subsequent work on the Affordable Housing Pilot Project (OAR chapter 660, division 39). *[Division 38 only]*
- Updating employment projection tables. *[Division 38 only]*

Issues Recommended for Further Evaluation:

- How to classify parcels with split plan designations in an analysis of capacity or buildable lands. *[Division 38 only]*
- Calculation of constraints on residentially designated land, specifically deductions for water bodies and floodplains, and methods for measuring slope percentage. *[Division 38 only]*
- The appropriate land value-to-improvement value ratio threshold for determining whether employment land is partially vacant. *[Division 38 only]*
- The size of the preliminary UGB study area; current rules specify minimum distances from the existing UGB, which appear to result in excessively large study areas, especially for smaller cities, requiring more analysis and therefore cost than is necessary. *[Division 24 and 38]*

- What constitutes an “employment” use for purposes of the boundary location analysis; whether uses such as private recreational facilities constitute “employment” uses for purposes of site suitability analysis of a UGB expansion. *[Division 24 and 38]*
- Whether the preliminary study area exclusions should include provisions for wildfire danger, and if so, whether there is a suitable dataset available for use (as for other study area exclusions). *[Division 24 and 38]*

2. Farm Capability Dwellings

*DLCD Strategic Plan Goal 1
Medium Effort, Rulemaking
Advisory Committee Anticipated*

OAR 660-033-0135(2) allows counties to approve farm dwellings on non-high-value farmland based on potential gross sales figures. Prior to approving farm capability dwellings, a county must first provide estimated potential gross sales per acre for each county assessors’ land class to DLCD for review. Four counties currently use this method (Douglas, Jackson, Jefferson, and Multnomah).

The Oregon counties not listed above previously used Oregon State University’s (OSU) Commodity Data Sheets which estimated crops sales and acreage data annually to satisfy the crop data requirements in OAR 660-033-0135(2)(c). However, OSU discontinued that program in 2014 and there is no other source of annual crop data. The best remaining source of crop data at the county level is the Census of Agriculture which is published at five year intervals. Rulemaking is necessary to ensure data is current and that the statute continues to be useful to and useable by counties.

While the farm capability dwelling option is infrequently used, it can provide housing opportunities for beginning farmers who have not earned farm income, or farmers working land that is not large enough to meet income standards.

3. Soil Classifier Qualifications

*DLCD Strategic Plan Goal 4
Small Effort, Rulemaking
No Advisory Committee*

OAR 660-033-0030(5) allows more detailed soils capability data than is provided by the Natural Resources Conservation Service to be used for determining whether land qualifies as agricultural land. Site specific soils assessments are utilized in applications for zone changes, non-farm dwellings, etc. OAR 660-033-0045 requires requests for such soils assessments to be performed by an authorized consultant. There are currently four soil scientists authorized by DLCD to prepare soils assessments; all four of whom are located in the Willamette Valley. The department is beginning to hear concerns, especially in eastern Oregon, that it is difficult to retain a consultant from DLCD’s current list. This rulemaking would amend OAR 660-033-0045(1) to include Certified Soil Technicians (CST) in addition to the Certified

Professional Soil Scientists and Certified Professional Soil Classifiers, with the goal of increasing the number and geographic diversity of qualified consultants. CST is a new certification by the Soil Science Society of America; consequently there are not yet and certified soil technicians. However, the department is hopeful that this new program will increase the number of geographic diversity of professionals who can conduct a soil assessment.

4. Solar Siting on High Value Farmland

DLCD Strategic Plan Goal 1

*Large Effort, Research and Possible Rulemaking
Advisory Committee anticipated*

The development of utility scale solar projects on high-value farmland has become a concern for some farmland protections advocates, commercial farmers and state agencies. LCDC has received letters and a variety of public comment on this topic, some urging rulemaking on this subject and others encouraging the commission to allow rules as written to stand. The Oregon Farm Bureau has expressed concerns and introduced legislation in the 2017 session (HB 3050) in an attempt to create additional safeguards for high-value farmland. This policy project will consider whether the existing rules for siting utility scale solar projects through a local conditional use process provide adequate protections for high-value farmland, and if not, to consider rulemaking.

5. Goal 5 Rule – Technical Revisions

Small Effort, Rulemaking

No Advisory Committee

In January 2017, the commission adopted amendments to OAR 660-023-0200, the rule addressing protection of historic resources under Goal 5. The department has identified an error in the amended rule at OAR 660-023-0020(10), resulting in the rule requiring a 120-day demolition delay in unintended circumstances. The rule was intended to implement ORS 197.772(2) only, but as written applies in other situations. The department proposes to amend the rule in order to give it the intended effect.