



Oregon

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TO: Land Conservation and Development Commission
FROM: Sadie Carney, Communications Manager and Policy Analyst
SUBJECT: **Agenda Item 5, September 23-24, 2021, LCDC Meeting**



2021-2023 DRAFT POLICY AGENDA

I. AGENDA ITEM SUMMARY

The Department of Land Conservation and Development (DLCD or department) 2021-2023 Policy Agenda consists of rulemakings and policy items that resulted from the 2021 Legislative Session. It also includes department initiatives, ongoing policy items that have carried over from the 2019-2021 Policy Agenda, new policy items that have been directed by the Governor or through legislative funding, and longer-term policy items that may have policy beginnings in the coming biennium but are unlikely to see policy action.

At the July Land Conservation and Development Commission (LCDC or commission) meeting, commission adopted the Legislatively Directed Policy Agenda (Attachment A) concurrent with the 2021-2023 Conforming Rulemaking Policy Agenda (Attachment B). These are both important parts of the 2021-2023 Policy Agenda. This staff report details the full draft Policy Agenda for commission. Staff will facilitate public review of the draft Policy Agenda from September 27, 2021, through October 14, 2021. Staff will also invite comment and consultation from Oregon's nine federally recognized Tribes and will coordinate with the Commission's Citizen Involvement Advisory Committee to gather feedback on the proposed Policy Agenda. Staff expect to bring the recommended full draft 2021-2023 Policy Agenda back to commission for consideration and adoption in November.

Purpose. To brief the commission on new sections of the 2021-2023 Policy Agenda.

Objective. To inform Commissioners and take comments on proposed 2021-2023 Policy Agenda and associated community engagement process.

For further information about this report, please contact Sadie Carney, Policy Analyst and Communications Manager, at 503-383-6648 sadie.carney@dlcd.oregon.gov.

II. BACKGROUND

The DLCD Policy Agenda is developed after the odd-numbered year's legislative session when the state's biennial budget is set. The Policy Agenda is updated mid-biennium, after the short legislative session that occurs in even-numbered years.

Previously, the DLCD Policy Agenda has been presented as a single item and included conforming rulemaking, other legislatively directed policy items, agency initiatives, and ongoing policy work. This biennium, DLCD is introducing the Policy Agenda in distinct parts, as stand-alone items for commission consideration and public comment. This is in response to the time sensitive nature of some of the policy items. In July, the department introduced the DLCD conforming rulemaking and policy items that have been legislatively directed to the commission. At the current meeting, staff is introducing the remainder of the Policy Agenda, which includes ongoing policy work, agency initiatives, and long-term projects. Staff will lead a public engagement and review process from September 27, 2021, to October 14, 2021 (Attachment C). DLCD staff will review and consider all comments submitted, and, where necessary, will make changes to the proposed Policy Agenda. Staff will ask commission to review a revised draft of the 2021-2023 Policy Agenda for adoption in November.

The Policy Agenda items included in this report are distinct from legislatively directed and conforming rulemaking. The policy items introduced in this report are either ongoing policy items that have carried over from previous biennia, new agency initiatives, or are being proposed as longer-term projects for eventual policy development.

The Policy Agenda is not intended to be inclusive of all policy items taken up by the department and commission over the coming biennium, though it is an attempt to include a majority of substantive policy items that will be considered by the commission. There are circumstances in which the department will take on additional rulemaking or policy development activities. For example, responding to emergency or temporary situations, responding to the Governor's direction, or in response to case law.

Oregon Revised Statute (ORS) 197.040 requires the commission to:

- Adopt, amend, and revise goals consistent with regional county and city concerns;
- Adopt and amend policies that the commission considers necessary to carry out state land use laws;
- Prepare, collect, or provide land use inventories (or cause to be provided);
- Appoint advisory committees to aid the commission in carrying out ORS chapters 195, 196, and 197, and to provide technical and other assistance, as

the commission consider necessary to each such committee; and

- Review the land use planning responsibilities and authorities given to the state, regions, counties, and cities, review the resources available to each level of government and make recommendations to the Legislative Assembly to improve the administration of the statewide land use program.

While LCDC approval of a policy agenda is not required, it does provide a mechanism to fulfill the requirements described above.

III. POLICY WORK

A. ONGOING POLICY PROJECTS

Territorial Sea Plan Part 3: Rocky Shores
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Division: Coastal

<p>The proposed rule will incorporate by reference the updated text of the Territorial Sea Plan (TSP) Part Three drafted by the Rocky Shores Working Group. The Ocean Policy Advisory Council (OPAC) recommended updated text for approval at its April 3, 2019 meeting. Additional updated text is expected to be recommended for approval at the Fall 2021 OPAC meeting. The updated text of the Rocky Shores section of the TSP replaces “Rocky Shores” with “Rocky Habitat.” The complete rewrite of the Part 3 chapter will replace pages 65-94 of the TSP Part Three (1994). The amendment of the TSP will conclude a complex, multi-year rulemaking effort by DLCD in conjunction with OPAC.</p>

Agency Impact: Large Effort

Policy Action: Rulemaking and Adoption

Implementation funding: Agency base budget

Territorial Sea Plan Part 4: Telecommunication Cables, Pipelines, and Other Utilities
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Division: Coastal

<p>HB 2603 (2021) directs DLCD to perform a study on the placement of cables, pipelines and other utilities in the territorial sea. The review will consider fee structures and state and federal review processes, including permitting. The results of DLCD’s study will be provided to the Ocean Policy Advisory Council (OPAC) for recommendations. The amendment of TSP Part Four was originally recommended by the OPAC in May 2020. DLCD staff did not have the capacity to initiate a rulemaking process for Territorial Sea Plan (TSP) Part Four at the time, due to the ongoing TSP Part Three amendment, which is slated to finish in March 2022. As this review/study will inform the future amendment to TSP Part Four, staff recommends initiating rulemaking at the time the study is complete.</p>
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Agency Impact: Large Effort
Policy Action: Rulemaking (2023-2025)
Implementation funding: Agency base budget

Goal 18: Public Ocean-Fronting Road Protection Rulemaking

Division: Coastal

This rulemaking is narrowly focused to create a reasons exception pathway under Goal 2: Land Use Planning for public, ocean-fronting roads that are subject to coastal erosion hazards. Currently, public roads are not included in the definition of development eligible for shoreline armoring under [Goal 18: Beaches and Dunes](#). Shoreline armoring is the placement of structural material on the oceanfront with the intention of minimizing the risk of coastal erosion to development (e.g., riprap, seawalls). These specific reasons exception will provide an option for public roads and highways (such as Highway 101) along the oceanfront and built as of January 1, 1977 to seek protection from coastal erosion through shoreline armoring permits. LCDC approved initiation in May.

Agency Impact: Medium Effort
Policy Action: Rulemaking
Implementation funding: Agency base budget

Climate Friendly and Equitable Communities Rulemaking

Division: Planning Services

The Climate-Friendly and Equitable Communities program is an effort to transform how we coordinate land use and transportation planning in Oregon's metropolitan areas. The changes proposed by the rulemaking seek to reduce climate pollution and improve equitable outcomes. Commission initiated rulemaking in September 2020. The rule development process is underway.

The new rules will help create safe, equitable, sociable, and pleasant places where driving is not required, and the amount of driving is reduced. This will be accomplished by:

- Requiring cities and counties to create more places where walkable, mixed-use development is allowed and encouraged;
- Prioritizing investment in high-quality, connected, and safe pedestrian, bicycle, and transit networks;
- Right-sizing parking requirements;
- Changing the methods of planning for transportation, including which standards are used to determine success or failure; and
- Requiring local governments in metropolitan areas to plan regionally to meet climate pollution reduction targets.

Agency Impact: Large Effort
Policy Action: Rulemaking
Implementation funding: Legislatively adopted budget for 2021-2023 added one planning position and \$770,000 for local grants.

Every Mile Counts Work Program

Division: Planning Services

The Every Mile Counts initiative is a multi-agency collaboration between DLCD, DEQ, ODOE, and ODOT to work to implement the Statewide Transportation Strategy through cross-agency efforts. The agencies are presently using a work program for 2020-2022, and will prepare a new work program for 2022-2024.

DLCD expects to begin work with the other Every Mile Counts agencies in early 2022 to develop the 2022-2024 work program. The work program will include tasks for DLCD, which may include rulemaking.

Agency Impact: Large Effort
Policy Action: Rulemaking and Policy Development
Implementation funding: Agency base budget

Update of Employment Tables

Division: Community Services

The Simplified UGB methodology found in OAR 660-038 requires regular update of employment tables that are used to determine employment land need. Every time the Employment Department updates these tables the commission must adopt the new numbers, in a table, as part of the rules in OAR 660-038.

Agency Impact: Small Effort
Policy Action: Conforming Rulemaking
Implementation funding: Agency base budget

Climate Change Adaptation – Vulnerability Assessment

Division: Coastal

The Oregon legislature provided DLCD with \$275,000 to conduct a comprehensive vulnerability assessment during the 2021-23 biennium. DLCD expects this assessment to result in follow-on actions. The purpose of this policy concept is to prepare a multi-agency strategic plan for implementing follow-on actions, including preparation of a set of multi-agency policy option packages for the 2021-23 biennium. It also calls on DLCD staff to update the DLCD climate change action plan and statewide Natural Hazards Mitigation Plan with new information and actions identified in the vulnerability assessment.

The State of Oregon has a poor understanding of who is most vulnerable to the effects of climate change and where they live and work. Several state agencies have prepared climate change vulnerability assessments focused on the assets within their control or regulatory authorities. However, only a few assessments focus on the vulnerabilities of the people served. When agencies do examine the effects of climate change on the people, information is hard to locate and different climate change effects are evaluated, making it hard to truly understand vulnerabilities statewide. This coordinated effort will help Oregon efficiently direct resources to achieve significant reductions in vulnerability.

Agency Impact: Large Effort

Policy Action: Policy Development

Implementation funding: \$275,000 for the vulnerability analysis. Staff support provided by the agency's base budget.

Climate Action Plan

Division: Agency wide

This policy concept for the 2021-23 biennium is for staff to examine current policies, practices, and guidance to identify opportunities to address climate change within the existing land use planning program. Using this information, staff will prepare an agency-specific climate change action plan. The 2021 Climate Change Adaptation Framework calls on all state agencies to undertake such a project during the 2021-23 biennium. The rapid speed of climate change demands that DLCD complete the assessment and implement the action plan as soon as possible so that we can effectively advise local government to act towards development and conservation practices that assure livability and wellbeing for all residents given future climatic conditions.

The Climate Action Plan that results will be updated as new techniques for greenhouse gas emission reductions and adaptive responses emerge. Like the Climate Adaptation Vulnerability Assessment, the Climate Action plan will account for the fact that climate change will affect different populations differently, with currently underserved, under-represented, and medically fragile people feeling the effects first and worst.

Agency Impact: Medium Effort

Policy Action: Policy Development

Implementation funding: Agency base budget

Study on Infrastructure to support Middle Housing in Master Planned

Communities: Division 46

Division: Community Services

During the HB 2001 (2019) rulemaking in 2020, establishing rules related to how cities regulate middle housing in new and existing master planned communities became a major point of contention, especially towards the end of the process. Staff proposed a set of master planned communities rules that implemented the intent of HB 2001 but that may be difficult for local governments to achieve in practice. In recognition of this and as part of the rule adoption process, the commission directed staff to study the feasibility and reasonableness of the rules and to propose potential rule recommendations to fix issues identified by the study.

Staff is in the process of conducting this study in partnership with the City of Wilsonville. The study focuses on existing processes for estimating infrastructure capacity in Master Planned Communities and will determine whether those processes accurately depict the real infrastructure demands of particular housing types. Understanding how these issues are grounded in practice will result in the formation of more realistic expectations for infrastructure planning that can resolve the issues raised by local governments in OAR 660-046-0205.

Agency Impact: Medium Effort

Policy Action: Policy Development

Implementation funding: Agency base budget

B. AGENCY-DIRECTED POLICY WORK

This section includes initiatives recommended by staff as distinct from legislatively directed or conforming rulemaking.

Updated Resources for Housing Production Strategies

Division: Community Services

The Housing Production Strategy Rulemaking in 2019 resulted in the creation of a “menu of options” cities could reference as they are determining which housing production strategies may be appropriate to deploy to accommodate future housing need. The list was adopted as an attachment in OAR 660-008-0050. DLCD has committed to curating this list of strategies to solidify it as a useful resource for cities. This requires updating, editing, adding to, and maintaining the list on an annual basis.

Updating an attachment in OAR requires a formal rulemaking process including notice of a public hearing and vote to adopt by the commission. This annual update will take place for the first time in November 2021.

Agency Impact: Medium Effort

Policy Action: Rulemaking

Implementation funding: Agency base budget

Public Records Request: Fees Update

Division: Director's Office

The department requests fee reimbursement from persons requesting public records from the department. The current reimbursement request for DLCD does not reflect the department's costs to coordinate and fulfill public records requests. The department may request the reimbursement to recover the part of the cost of fulfilling a records request and may be allowed to request the reimbursement prior to compiling the records.

The department may recover costs in addition to our current fee schedule in department policy DO110.02 and OAR 660-040-0005(1)(a-c). This rulemaking would amend OAR 660-040-0005 to more accurately reflect current costs to the agency to coordinate and fulfill public records requests. Includes costs for: faxing; actual cost of use of material and equipment for producing copies of nonstandard records; CD/DVD/Flash drive; actual cost of delivery of records such as postage or courier fees; actual attorney fees charged to the department.

Agency Impact: Medium Effort

Policy Action: Rulemaking

Implementation funding: Agency base budget

Amendment of Division 1 – Update to DOJ Model Rules

Division: Director's Office

The department is currently referencing an outdated Oregon Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure under the Administrative Procedures Act (2008). This rulemaking is necessary to bring the department's division 1 rule into compliance with DOJ requirements and bring the department current on the Oregon Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure under the Administrative Procedures Act (2019). Amendment to OAR 660-001-0005.

Agency Impact: Low Effort

Policy Action: Rulemaking

Implementation funding: A agency base budget

State Agency Coordination Program – Pilot

Division: Director's Office

Oregon Revised Statutes (ORS) 197.180 requires each state agency to prepare a State Agency Coordination (SAC) Program to assure its "rules and programs affecting land use" comply with the statewide land use planning goals and are compatible with city and county comprehensive plans and state land use regulations. OAR Chapter

660, Divisions 30 and 31 provide guidance for how state agencies may satisfy this obligation. SAC Programs document the results of an agency evaluation to assure compliance and compatibility with relevant land use regulations. Most existing SAC Programs date back to the early 1990's or late 1980's.

Most SAC Programs are close to 30 years old. Out-of-date SAC Programs can limit DLCD's ability to ensure timely decisions and efficient procedures. To evaluate how SAC Programs could be updated and improved, DLCD will work with a partner agency that is a part of the networked partnership that creates the Oregon Coastal Management Program. Together, DLCD and the partner agency will develop recommendations regarding SAC Program updates as well as possible amendments to administrative rules to reflect any changes made since existing rules were last amended.

In addition to reviewing how the administrative rules operate and how they should be updated to account for changes to other administrative rules, the department believes there would be value in exploring how SAC Programs could be used to further advance coordination efforts across the enterprise.

Agency Impact: Medium Effort

Policy Action: Research and Policy Development

Implementation funding: Agency base budget

C. LONG-TERM POLICY PROJECTS

Goal 5 Rule Update for Cultural Resources

Division: Community Services

Administrative rules for Goal 5 were first adopted in 1981 as Chapter 660, Division 16. Division 23 was adopted in 1996 and replaced Division 16 with specific directives for each Goal 5 resource category except for Cultural Areas. A working group convened by DLCD at the time recommended postponing development of a rule for Cultural Areas until Government to-Government relationships between the state and Oregon's nine federally recognized Tribal Nations were better established.

"Cultural Areas" are understood to include archeological sites with Native American artifacts, human remains, and associated funerary objects. Oregon Tribes also consider significant "cultural areas" to include sites used consistently, over centuries for ceremonial activities or food gathering. For various reasons, local protection measures have not manifested as originally envisioned in the goal. Local protections are weak or non-existent in many communities. Since December 2020, DLCD and LCDC have been in discussion with representatives of Oregon's nine federally recognized tribes to explore how a new administrative rule for Goal 5 Cultural Areas could improve protections for areas and items that are sacred to one or more tribes.

A new administrative rule for Goal 5 Cultural Areas would correct the lack of implementation of the Goal and would improve protection of areas and items that are sacred to one or more tribes in Oregon.

The objectives of this rule writing are to ensure:

- Existing data on known and suspected archeological sites is used to avoid disturbance from locally permitted development activities;
- Landowners and developers are informed, through the local permitting process, of existing state and federal law pertaining to unintended disturbance of archeological sites;
- Native American artifacts, human remains and associated funerary objects are treated lawfully and with respect.

Agency Impact: Large Effort

Policy Action: Rulemaking

Implementation funding: Agency base budget

Goal 1 Revisions to Improve Community Engagement

Division: Director's Office

The 19 Statewide Land Use Planning Goals were first adopted in 1974. Goal 1: Citizen Involvement requires that local governments, “develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process. The governing body charged with preparing and adopting a comprehensive plan shall adopt and publicize a program for citizen involvement that clearly defines the procedures by which the general public will be involved in the on-going land-use planning process.”

Goals of diversity, equity and inclusion are not mentioned in Goal 1. The goal language does not reflect current communication methods and techniques. Additionally, the name of the goal does not reflect the broad and inclusive intent to engage all Oregonians in the land use decision-making process.

The intent of this policy agenda proposal is to modernize and update Goal 1 to reflect equity and environmental justice through the public process of land use decision-making. By updating Goal 1, either through a goal amendment or rulemaking process, DLCD and LCDC would have the opportunity to ensure local planning processes address equity in the community engagement process.

Agency Impact: Large Effort

Policy Action: Research and Policy Development

Implementation funding: Agency base budget

D. ADDITIONAL AGENCY WORK

DLCD Strategic Framework Plan

Division: Director's Office

The DLCD Strategic Plan was written to guide and prioritize agency action, policy development, and program work in 2014. The plan was written to serve the agency for eight years and will expire in 2022. Beginning in 2021, the department will begin developing an equity-based strategic framework to help guide the agency's work over the next eight years.

Agency Impact: Large Effort

Policy Action: Guidance document

Implementation funding: Agency base budget

Ocean and Coastal Management Program Strategic Plan

Division: Coastal

Ocean and Coastal Management Program staff will lead an update to the existing Oregon Coastal Management Program five-year strategic plan. The current plan is more than five years old and needs to be updated to reflect Diversity, Equity and Inclusion, to better address climate change, and to identify funding priorities if increased federal funding becomes available.

Agency Impact: Medium Effort

Policy Action: Guidance document

Implementation funding: Agency base budget

Covenants for Structures Located on Farmland

Division: Community Services

Covenants for structures located on farmland: Property transfer can lead to a proliferation of non-farm uses on farm zoned property if a new owner is not aware of existing restrictions and suitable uses. Ultimately, this can lead to uses that conflict with farm activities, such as conversion of a building to a short-term rental. One-way future compliance has been addressed in some statutes and rules is requiring the use of covenants that acknowledge the conditions of approval be recorded on the subject property. DLCD staff would propose updates to the rule to require recordation of a covenant for all dwellings established in conjunction with farm use and health hardship dwellings on resource lands. These covenants will acknowledge permit conditions restricting occupancy of the dwelling and the conditions requiring that the

dwelling be removed or formally converted through a new permit review if the allowed occupancy is terminated.

Agency Impact: Under discussion

Policy Action: Potential Rulemaking

Implementation funding: Agency base budget

E. FULL POLICY AGENDA

The full DLCD Policy Agenda for 2021-2023, including all legislatively directed work, conforming rulemakings, ongoing work, agency initiatives, and long-term and other projects is represented in the Policy Agenda Table included as Attachment D. A draft workflow and timeline for work related to these policy agenda items is included in the Workflow and Timeline document as Attachment E.

IV. CONCLUSION

Staff request the commission provide comment and staff direction on the draft 2021-2023 Policy Agenda prior to community review and comment.

V. ATTACHMENTS

- A. 2021-2023 LEGISLATIVELY DIRECTED POLICY AGENDA**
- B. 2021-2023 CONFORMING RULEMAKING POLICY AGENDA**
- C. COMMUNITY ENGAGEMENT PROCESS**
- D. 2021-2023 POLICY AGENDA TABLE**
- E. WORKFLOW AND TIMELINE**