



# Oregon

Kate Brown, Governor

**Department of Land Conservation and Development**

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[www.oregon.gov/LCD](http://www.oregon.gov/LCD)



July 12, 2018

TO: Land Conservation and Development Commission

FROM: Jim Rue, Director  
Ellen Miller, Urban Policy Analyst and Legislative Coordinator

SUBJECT: **Agenda Item 7, July 26-27, 2018, LCDC Meeting**

## **2017-19 AMENDED POLICY AGENDA**

### **I. AGENDA ITEM SUMMARY**

The Department of Land Conservation and Development (DLCD or department) will present the amended 2017-19 Policy Agenda to the Land Conservation and Development Commission (LCDC or commission) and ask for commission approval.

For further information about this report, please contact Ellen Miller, Legislative Coordinator and Urban Policy Analyst at 503-934-0020, or at [ellen.l.miller@state.or.us](mailto:ellen.l.miller@state.or.us).

### **II. SUMMARY OF RECOMMENDED ACTION**

The department recommends that the commission approve the 2017-19 Amended Policy Agenda, attached to this report.

### **III. BACKGROUND**

The commission approved the 2017-19 Policy Agenda in September of 2017. Since then rulemaking priorities and workload demands have changed at the department. The department and commission typically amend the policy agenda halfway through the biennium, in July of even numbered years to reflect the shift.

The department requests to amend the 2017-19 Policy Agenda due to a significant increase in department workload from legislation that passed during the 2018 legislative session. During the 2018 February session, the legislature allocated an additional \$2.03 million for the department to provide planning technical assistance to local governments, without providing funds for additional staff.

#### **IV. CITIZEN INPUT**

Prior to the issuance of this report, department staff had not received comments on the proposed 2017-19 Amended Policy Agenda presented to commission at its prior meeting in May. However, the department has received several letters from individuals expressing urgency in revisiting the rules related to solar siting. This solar siting policy project remains as scheduled and scoped from the originally approved 2017-19 Policy Agenda.

#### **V. OVERVIEW OF AMENDMENTS**

The department recommends reducing the work included in the 2017-19 Policy Agenda to accommodate the work load from the 2018 legislative session and adding policy projects to meet the department's coastal program needs. The reduction will be achieved through removing some projects and reducing the scope of work on another project. The 2017-19 Amended Policy Agenda is included as Attachment A to this report. The following summarizes the changes to the department's policy projects.

##### **A. Removed Policy Projects**

###### **1. Housing Supply Bill (SB 1051)**

At a stakeholder meeting on November 1, 2017 the department proposed only entering into rulemaking if counties were required to allow accessory dwellings outside (ADU) of urban growth boundaries (UGB). During the 2018 legislative session the legislature passed HB 4031 that limited the requirement of ADUs to within the UGB, thus removing the need for rulemaking associated with SB 1051.

###### **2. Soil Classifier Qualifications**

Stakeholders continue to be interested in taking a broader look at the soil classifier rule rather than simply amending the rule to add additional soil scientists to participate. Stakeholders are concerned that changes to the rule may ease re-designation of farm and forest lands and increase opportunities for nonfarm dwellings. Stakeholders have also expressed concerns that the scope of the rulemaking does not include addressing the bias of private consultants or the fairness to opponents because they cannot enter the landowner's property. The concerns expressed are beyond the scope of this rulemaking and warrant further consideration prior to proceeding with modifications to the rule

The rulemaking was proposed in part due to concerns about lack of consultants on the east side of the state. Department outreach and the market have helped address that issue. The department added one new soil professional and now has five consultants statewide. The lack of consultants issue is not resolved but it has improved. Staff recommend removing this rulemaking project from this policy agency and to propose a more comprehensive look as part of a future policy agency to improve the overall function of the soil assessment program.

### **3. Farm Capability Dwellings**

The Farm Capability Dwelling Rulemaking was intended to clarify the existing rule. The rulemaking effort will require more research than initially anticipated and a Rulemaking Advisory Committee. Only four counties currently utilize the farm capability dwelling option (Douglas, Jackson, Jefferson, and Multnomah). Staff recommends that this item be removed from the policy agenda due to competing priorities and relatively limited county interest.

#### **B. Modified Policy Projects**

##### **1. Simplified UBG - Minor Revisions**

The proposal for the Simplified UBG rulemaking in the 2017-19 Policy Agenda included two parts, the first to make some technical fixes and the second was to further research other issues or concerns about the rule. Due to the need to focus subject matter expert time on the housing planning technical assistance work directed by the 2018 legislature, the department will limit this rulemaking with to only the technical fixes.

#### **C. Additional Policy Projects Not Previously Presented**

##### **1. Territorial Sea Plan (TSP) – Part 5**

*DLCD Strategic Plan Goal 1  
Medium Effort, Rule Reconsideration  
Advisory Committee*

A recent Court of Appeals decision invalidates the commission's 2013 adoption of Part 5 Amendments to the Territorial Sea Plan (TSP). Part 5 of the TSP addresses marine renewable energy. While demand for marine renewable energy permits has significantly decreased since work on Part 5 started ten years ago, the amendments do include significant improvements such as a Visual Assessment Methodology which will be applied to each application. It was also the first marine spatial plan adopted on the west coast. Staff anticipates bringing several alternatives for moving forward with rule re-adoption to the September LCDC meeting, with an anticipated adoption date later in 2019.

##### **2. Goal 18 Workgroup**

*DLCD Strategic Plan Goal 1  
Large Effort, Research  
Workgroup*

The department will initiate and lead a policy work group of relevant stakeholders to review the policies contained in and related to Statewide Planning Goal 18: Beaches and Dunes. With the increase of erosion and flooding potential on the Oregon coast due to climate change, private and public investments along the oceanfront are increasingly at risk of damage or ruin. It has been demonstrated in certain instances that the policies encompassed by Goal 18, specifically those relating to the allowance of shoreline armoring (e.g. riprap, seawalls), may not be flexible or comprehensive enough to deal with the realities of a changing climate. A policy work group will be convened by the department to analyze the

current policy framework in order to proactively address identified issues and discuss potential recommendations, which may include concepts for goal amendments or rule-making.

**VI. RECOMMENDED ACTION**

While this document does not require commission adoption, staff recommends the commission consider public testimony, suggest necessary language adjustments and approve the amended policy agenda attached to this report.

***Recommended motion:*** I move the commission approve the 2017-2019 Amended Policy Agenda, as attached to this staff report.

***Optional motion:*** I move the commission approve the 2017-2019 Amended Policy Agenda, attached to this staff report, with the following changes: [describe requested changes, whether additions, deletions, or refinements to the proposed policy agenda].

**VII. ATTACHMENTS**

- A. 2017-19 Amended Policy Agenda**
- B. Amended 2017-19 Policy Agenda Staffing and Scheduling**
- C. Public Comment**



# Oregon

Kate Brown, Governor

## Department of Land Conservation and Development

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July 26, 2018

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: **Amended 2017-2019 Policy Agenda**

The Department of Land Conservation and Development (DLCD) recently amended the 2017-19 Policy Agenda to accommodate the workload required to complete the prioritized policy projects the department will pursue over the next year. The Policy Agenda is revised annually, to reflect any changes that are needed as a result of the 2018 (short) legislative session and shifting policy priorities.

When the policy agenda is created and amended, 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.

This Policy Agenda was amended by the Land Conservation and Development Commission (LCDC) at its July 26, 2018 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](http://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](mailto:ellen.l.miller@state.or.us).

## **Ongoing Projects**

The list below includes projects that are on-going from the 2015-17 Policy Agenda or recently added to the 2017- 2019 Policy Agenda:

**1. Citizen Involvement and Land Use Program Outreach Improvements (with CIAC) - *In Progress***

*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- *In Progress***

*DLCD Strategic Plan Goal 1  
Large Effort, Research [Anticipate  
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](#)<sup>1</sup> 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.

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<sup>1</sup> [http://www.oregon.gov/LCD/docs/meetings/lcdc/031116/Item\\_5\\_Rocky\\_Shores\\_Mgt\\_Report.pdf](http://www.oregon.gov/LCD/docs/meetings/lcdc/031116/Item_5_Rocky_Shores_Mgt_Report.pdf)

### **3. Territorial Sea Plan, Part 5 – *New***

A recent Court of Appeals decision invalidates the commission’s 2013 adoption of Part 5 Amendments to the TSP. Part 5 of the TSP addresses marine renewable energy (MRE). While demand for MRE permits has significantly decreased since work on Part 5 started ten years ago, the amendments do include significant improvements such as a Visual Assessment Methodology which will be applied to each MRE application. It was also the first marine spatial plan adopted on the west coast. Staff anticipates bringing several alternatives for moving forward with rule re-adoption to the September LCDC meeting, with an anticipated adoption date later in 2019.

### **4. Rural Resource Lands**

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

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.

### **5. 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.

### **6. 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. 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 – *In Progress***

*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 - *In Progress***

*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 DLCD 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 DLCD 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. HB 3012 – Old House ADUs on Rural Residential Lands- *Completed***

*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.

**4. HB 3202 – Southwest Corridor MAX Land Use Final Order (LUFO) - Completed***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

**5. HB 2179 – Biosolids Mixing- Completed***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).

**6. HB 2730 – Golf Course in Curry County- Completed***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.

**7. HB 3456 –Solar Siting in Columbia Valley AVA- Completed***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.

**8. SB 644 – Non-Aggregate Mineral Mining Permits - *In Progress****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.

**9. SB 677 – Cider Business- *Completed****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. 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 - *Modified***

*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.

The department has listed the set of identified issues below. This list below has been modified from the originally approved policy agenda and now only includes minor issues that can be corrected with technical revisions to division 38.

**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]*

**2. Solar Siting on High Value Farmland- *In Progress***

*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, county governments 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.

**3. Goal 5 Rule – Technical Revisions - *Completed***

*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.

**4. Goal 18 Workgroup – *New***

*DLCD Strategic Plan Goal 1  
Large Effort, Research  
Workgroup*

The department will initiate and lead a Policy Work Group of relevant stakeholders to review the policies contained in and related to Statewide Planning Goal 18: Beaches and Dunes. With the increase of erosion and flooding potential on the Oregon coast due to climate change, private and public investments along the oceanfront are increasingly at risk of damage or ruin. It has been demonstrated in certain instances that the policies encompassed by Goal 18, specifically those relating to the allowance of shoreline armoring (e.g. riprap, seawalls), may not be flexible or comprehensive enough to deal with the realities of a changing climate. A policy work group will be convened by the department to analyze the current policy framework in order to proactively address identified issues and discuss potential recommendations, which may include concepts for goal amendments or rule-making.

This Goal 18 Policy Work Group will specifically look to address the provisions of Goal 18, Implementation Requirement #5, relating to shoreline armoring requirements, and will not address any of the other provisions of the Goal. The main issues to be addressed (at this time) are: the protection of Highway 101 and other public assets; private property that is not eligible for shoreline armoring; the impacts of armoring on public beach access; and the management of oceanfront development. Other issues may be identified and agreed upon by the work group.

The results of the group's work will serve as guidance to the department in considering next steps to address identified issues. Next steps may include proposed policy or rule changes related to Goal 18.





**Marion County**  
OREGON

## Community Services Department

July 10, 2018

(503) 588-7975  
(503) 373-4460 - FAX

BOARD OF  
COMMISSIONERS  
Janet Carlson  
Kevin Cameron  
Sam Brentano

Land Conservation and Development Commission  
635 Capitol Street NE, Suite 250  
Salem, OR 97301

RE: LCDC Meeting July 2018  
Item 7 2017-19 Amended Policy Agenda

Dear Chair Lidz and Commissioners,

CHIEF  
ADMINISTRATIVE  
OFFICER  
John Lattimer

I am writing to increase the sense of urgency regarding a request for a rule change to OAR 660-024-0045 and related portions of 024-0040. I have been working with the Governor's RST coordinator and DLCDC staff for many weeks, starting approximately in February 2018. I encourage you to make this change part of the department's immediate work plan.

DIRECTOR  
Tamra Goettsch

Perhaps I did not explain my original request well enough to get a clear answer. I've included a draft staff report with this letter to help things along. I am not asking for a department planning project. The desired change is simply to make this rule available elsewhere in the state. Adoption can be quick and simple with just a public hearing. The work is done. The outcome is capped, pre-negotiated, and modest. Please don't re-open or re-litigate the substance.

Children & Families

County Fair

Dog Services

Economic Development

Marion County Extension &  
4-H Service District

Early on I provided a complete simple revision that could be easily implemented. It changes none of the substance just expands where it can be used. The rule change could have been completed by now. The best of all answer back now would be yes, we get it, we'll start right away, LCDC will act on it at the end of the year, here's how we will limit the scope to prevent mischief. A firm no would be a fine answer, too. The worst possible answer would be something vague and open to mischief. I prefer a straight, reliable answer to inform my work, budget and public process.



My request is to open up 0045 for use here in the Mid-Valley, although I would also recommend that it be opened for use statewide for reasons I'll mention briefly below. The rule was first promulgated as part of a settlement agreement between local governments in Central Oregon and the 1000 Friends group. The local governments wanted to make sure that the agreement was memorialized and applied when UGB adjustments came to LCDC. Hence - the rule.

As noted in the staff report at the time, the rule doesn't change land use law. It merely provides a bit more clarity and a bit more certainty to local governments thinking of using a regional process to



Marion County  
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## Community Services Department

include specialized industrial land. It should come as no surprise that other local governments, including those in the Mid-Valley, want more certainty as well. I worked on the Central Oregon project and the original rule. Now I am advocating for its use elsewhere.

The effect of the original rule and now the revision is minimal. As mentioned before, the rule doesn't change land use law. It's not a safe harbor. Counties could and perhaps should do an analysis and design a regional agreement on their own. Industrial land demand is somewhat different today than it was in 2011-12 before the current economic recovery.

The true effect of the rule is to point counties toward an optional path with a limited regional outcome that may transcend the acrimony of individual cities pursuing traditional UGB amendments for industrial land. The Mid-Valley, in particular, has seen plenty of that acrimony already.

A change to the rule will provide a framework for local governments to work on the employment land supply at the regional scale. That is where we can best align workforce, transportation, infrastructure and federal funding opportunities. Marion County and the Mid-Valley generally have enough demand and resources to pursue something more aggressive on our own. However, a modest workable alternative that has already been negotiated in leaner times with the usual objectors is a tempting option. Hence – the request for a rule change.

As I have drafted the rule revision, two or more adjacent counties can use the rule. Councils of Government, where they exist, or other regional decision bodies by mutual consent, would ensure sensible regional outcomes guided by local leaders. Interested counties would adopt a site analysis and establish a specialized land need using their statutory land use coordinating authority under ORS 195.025. Cities that don't have a site opt-in if they wish to add a site using the process. Cities that proceed would still do the usual Goal 14 location analysis and UGB amendment process. Cities may be saved the fight over land need and can focus on community objectives, location, and infrastructure.

This approach is already in place and working – modestly and deliberately – in Central Oregon. It hasn't triggered a land grab precisely because it is designed to encourage regional deliberation as it could be practiced elsewhere. Cities can't use it to add redundant sites to their inventory. So while I care most about Marion County, this rule change would provide a benefit statewide and a good win for the commission this year. It makes more sense to apply it statewide rather than explain why only selected parts of the state have access.

Best regards,

Thomas Hogue, Marion County  
Economic Development Coordinator

Enclosures: 2  
CC: James Labar

November xx, 2018

TO: Land Conservation and Development Commission

FROM: xx, Director  
xx, staff

SUBJECT: **Agenda Item nn, November xx, 2018, LCDC Meeting**

**I. AGENDA ITEM SUMMARY**

**A. Type of Action and Commission Role**

The commission will conduct a public hearing on proposed administrative rule amendment regarding implementation of regional large lot industrial land analyses. Following the public hearing, the commission must either:

- (a) Adopt new rule amendment as recommended;
- (b) Adopt new rule amendments with specific changes; or
- (c) Decline to adopt the rule amendment.

**B. Staff Contact Information**

If you have questions about this agenda item, please contact staff (email phone).

**II. SUMMARY OF RECOMMENDED ACTION**

The department recommends that the commission adopt amendments to Oregon Administrative Rule OAR 660-024-0045, Regional Large Lot Industrial Land, and related portions of OAR 660-024-0040 Land Need. The recommended rule amendments expand the area of application to the entire state.

The existing rule reflects the terms of settlement negotiations related to an appeal to LUBA of Deschutes County's adoption of Ordinance 2011-017. The proposed rule amendment

opens the same option for cities statewide eligible to implement the same Central Oregon regional large-lot industrial site program limited outcome. The amendments do not change existing land use policy. The changes do not create a safe harbor. The amendments create an outcome cap for those regions electing to use the rule. The department believes that the rule is generally unnecessary – counties have the authority to act without using the rule. Use of the rule is optional. However, the other existing administrative rules are silent on how the process for regional coordination and implementation of regional employment land need should work between counties and cities.

It is understandable that local governments want clarity in rule before proceeding. Changes to OAR 660-024-0045 and OAR 660-024-0040 maintain the process for city implementation and the limits on application of the rule with sideboards that were important to the original settlement and rules advisory committee participants.

The department recommends approval and adoption of the rule amendments presented in Attachment A.

### **III. BACKGROUND**

Deschutes County was awarded two Technical Assistance Grants from the department in 2010 to evaluate Central Oregon's opportunities, competitiveness, and ability to recruit new and local firms requiring larger scale development models. Johnson-Reid LLC was selected from a pool of consultants to develop a Regional Economic Opportunity Analysis (REOA). Over the course of eleven months, the REOA went through several iterations with the assistance of a Regional Advisory Committee. The Regional Advisory Committee consisted of Central Oregon cities, counties, Johnson-Reid LLC, Business Oregon, DLCD, Department of State Lands, Central Oregon Intergovernmental Council (COIC), 1,000 Friends of Oregon, Economic Development for Central Oregon (EDCO), Central Oregon Association of Realtors and private area developers. The Regional Advisory Committee met six times and reviewed several iterations of the REOA before it was finalized on May 31, 2011.

Deschutes County exercised its statutory coordinating authority (ORS 195.025) to address an unmet regional need for large-lot industrial sites by adopting Ordinance 2011-017. Draft comprehensive plan policies and the REOA provided the policy framework for designating lands among coordinating jurisdictions in a mutually agreed proportion. Ordinance 2011-017 attempted to integrate comprehensive plans between the county and its respective cities by encouraging them to address a short- and long-term specialized employment land need. Adopted in November 2011, Ordinance 2011-017 was subsequently appealed to the Land Use Board of Appeals by 1,000 Friends of Oregon (1,000 Friends). The appeal however, was stayed in early 2012 to allow Deschutes County, the Governor's Office, the department, and 1,000 Friends to explore a settlement. Spanning three months, a settlement was ultimately reached in April 2012 in collaboration with the Regional Advisory Committee. The settlement consisted of policy concepts focusing entirely on Central Oregon's short-term need for large-lot industrial sites as well as a commitment from DLCD to initiate rulemaking that summer.

Deschutes County received a commitment from DLCD that they would initiate the rulemaking process. Rulemaking was to consist of narrowly crafted amendments to OAR chapter 660, division 24 that reinforce the short-term need for large-lot industrial sites and guides how Central Oregon cities may utilize a regional large-lot industrial analysis as the justification.

The commission initiated rulemaking and appointed a rules advisory committee at its meeting in May 2012. The rules advisory committee met four times in Bend from June through August of that year. Rulemaking was intended to provide a framework for local governments in Central Oregon to address a known deficiency of large-lot industrial sites. The recommended text specifically acknowledged Central Oregon's short-term need for large-lot employment land and described a process a city applies to address this specific land need. The rules advisory committee concluded its work in August 2012 with recommend draft rule language. The new rules were adopted in November 2012.<sup>1</sup>

In 2018 the department was approached by the Governor's Regional Solutions coordinator on behalf of Marion County economic development staff. County staff expects to initiate an industrial land supply project in 2018-19. County staff believes the regional approach and modest outcome outlined in the existing 0045 rule will be of great interest and assistance to the Mid-Valley if it is enshrined in rule before the county work begins on their project and if it provides a reliable alternative to the contentious land need procedures that are too common in the region. County staff believes that a new Mid-Valley analysis will demonstrate this regions site demand greatly exceeds that determined in Central Oregon in 2011 before the economic recovery. Even so, county staff believes a well-defined modest reliable alternative with a cap may be an attractive option to all parties.

The proposed revisions to apply the rule statewide for two or more adjacent counties that are not part of Metro. Councils of Government, where they exist, or other regional decision bodies by mutual consent, would ensure sensible regional outcomes guided by local leaders. Interested counties would adopt a site analysis and establish a specialized land need using their statutory land use coordinating authority under ORS 195.025. Cities that don't have a similar site opt-in if they wish to add an eligible site using the process. Cities that proceed would still do the usual Goal 14 location analysis and UGB amendment process. Cities may be saved the fight over land need and can focus on community objectives, location and infrastructure. This will be helpful for smaller cities with few resources.

This approach is already in place and working – modestly and deliberately – in Central Oregon. It hasn't triggered a land grab precisely because it is designed to encourage regional deliberation as it could be encouraged elsewhere.

#### **IV. DEPARTMENT RECOMMENDATION AND DRAFT MOTIONS**

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<sup>1</sup> See Deschutes County webpage <https://www.deschutes.org/cd/page/central-oregon-large-lot-industrial-lands-project>

**A. Recommendation**

The department recommends that the commission approve the amendments to OAR chapter 660, division 24 as presented in Attachment A.

**B. Proposed Motion**

***Recommended Motion:*** I move that the commission approve the amendments to OAR 660-024-0045 and OAR 660-024-0040 as presented in Attachment A of the staff report.

***Alternative Motion:*** I move that the commission approve the amendments to OAR 660-024-0045 and OAR 550-024-0040 as presented in Attachment A of the staff report with the following amendments: \* \* \*

**ATTACHMENTS**

- A. Recommended rule text
- B. Comment letters and other communications.
  - xxx

DRAFT

**Attachment A**

660-024-0040  
Land Need

(1) The UGB must be based on the appropriate 20-year population forecast for the urban area as determined under Rules in OAR 660, div 32, and must provide for needed housing, employment and other urban uses such as public facilities, streets and roads, schools, parks and open space over the 20-year planning period consistent with the land need requirements of Goal 14 and this rule. The 20-year need determinations are estimates which, although based on the best available information and methodologies, should not be held to an unreasonably high level of precision. [~~Local governments in Crook, Deschutes or Jefferson Counties~~] **Counties** may determine the need for Regional Large-Lot Industrial Land by following the provisions of OAR 660-024-0045 for areas subject to that rule.

(5) Except for a metropolitan service district described in ORS 197.015(13), the determination of 20-year employment land need for an urban area must comply with applicable requirements of Goal 9 and OAR chapter 660, division 9, and must include a determination of the need for a short-term supply of land for employment uses consistent with 660-009-0025. Employment land need may be based on an estimate of job growth over the planning period; local government must provide a reasonable justification for the job growth estimate but Goal 14 does not require that job growth estimates necessarily be proportional to population growth. Local governments [~~in Crook, Deschutes or Jefferson Counties~~] may determine the need for Regional Large-Lot Industrial Land by following the provisions of 660-024-0045 for areas subject to that rule.

660-024-0045  
Regional Large Lot Industrial Land

(1) Local governments in **eligible counties** [~~Crook, Deschutes or Jefferson Counties~~] may determine a need for large lot industrial land in the region and provide sites to meet that need in accordance with this rule.

(2) In addition to the definitions in OAR 660-024-0010, the following definitions apply to this rule:

(a) "Analysis" means the document that determines the regional large lot industrial land need within **eligible counties** [~~Crook, Deschutes, or Jefferson County~~] that is not met by the participating local governments' comprehensive plans at the time the analysis is adopted. The analysis shall also identify necessary site characteristics of needed land.

(b) [~~"COIC" means the Central Oregon Intergovernmental Council.~~] **"Coordinating Review Board" means a body identified in the agreement to represent the eligible counties and cities within eligible counties, and includes but is not limited to:**

**(A) The Central Oregon Intergovernmental Council;**

**(B) Any Council of Governments organization representing the eligible counties;**

**(C) Any other representative organization acceptable to the eligible counties and identified in the agreement.**

(c) [~~“Intergovernmental”~~Agreement [~~(IGA)~~]” means the document adopted by the **eligible counties** [~~three counties~~] and any participating city to implement the provisions of the analysis.

(d) “Participating city” means a city within **eligible counties** [~~Crook, Deschutes, or Jefferson County~~] that has adopted the analysis and entered into the [~~intergovernmental~~] agreement to implement the provisions of the analysis.

(e) “Participating local government” means **eligible counties** [~~Crook, Deschutes, and Jefferson Counties~~], and participating cities.

(f) “Regional large lot industrial land need” means the need for a specific type of 20-year employment land need, as described in OAR 660-024-0040(1) and (5), that is determined based upon the analysis.

(g) “Site” means land in the region that:

(A) Provides the site characteristics necessary for traded sector uses as set forth in the analysis;

(B) Is 50 acres or larger as provided in section (3) of this rule; and

(C) Is determined to be "available," as that term is defined in OAR 660-009-0025(7), for regional large-lot industrial users and for purposes identified by the analysis.

(h) “Site characteristics” has the meaning given that term in OAR 660-009-0005(1).

(i) “Traded Sector use” has the meaning given that term in ORS 285B.280.

**(j) “Eligible counties” means two or more adjacent counties that:**

**(A) Are not part of a metropolitan service district described in ORS 197.015(13).**

(3) For purposes of subsection (2)(g) of this rule, a large lot is at least 50 acres if it is:

(a) A single lot, parcel that is at least 50 acres,

(b) An aggregation of existing lots or parcels under the same ownership that comprises at least 50 acres, or

(c) An aggregation of existing lots or parcels not in the same ownership created and maintained as a unit of land comprising at least 50 acres through a binding agreement among the owners.

(4) Participating local governments may adopt the analysis and implement its provisions. The analysis may demonstrate a need for six vacant, suitable and available sites in the region, and up to three additional sites that may be designated in order to replace one of the original six sites that is developed or committed to development as provided in section (12) of this rule. The original six sites must include two sites of at least 100 acres and not more than 200 acres, and one site more than 200 acres.

(5) If a participating city adopts the analysis, it is deemed to provide an adequate factual basis for the determination of regional large lot industrial land need for that city provided:

(a) The city and other participating local governments have entered into an **agreement with the coordinating review board** [*intergovernmental agreement with the COIC*], and

(b) The analysis is adopted by **eligible counties** [*Crook, Deschutes and Jefferson Counties*].

(6) Participating cities may adopt the analysis and enter into the [*intergovernmental*] agreement without amending the Economic Opportunities Analysis adopted by the city prior to the adoption of the analysis.

(7) The [*intergovernmental*] agreement shall describe the process by which the **coordinating review board** [*COIC*] shall coordinate with participating local governments in:

(a) The determination of a qualifying site that a participating city may designate in order to satisfy the regional large lot industrial land need; and

(b) The allocation of the qualifying sites among the participating cities in accordance with section (4) of this rule.

(8) A participating city may amend its comprehensive plan and land use regulations, including urban growth boundaries (UGB), in order to designate a site in accordance with the requirements of this rule, other applicable laws and the [*intergovernmental*] agreement, as follows:

(a) A participating city must show whether a suitable and available site is located within its existing UGB. If a participating city determines that a suitable site already exists within the city's urban growth boundary, that site must be designated to meet the regional industrial land need. Cities shall not be required to evaluate lands within their UGB designated to meet local industrial land needs.

(b) If a site is not designated per subsection(a), then a participating city may evaluate land outside the UGB to determine if any suitable sites exist. If candidate sites are found, the city may amend its UGB in accordance with Goal 14, other applicable laws and the [*intergovernmental*] agreement.

(9) A participating city that designates a site shall apply a regional large-lot industrial zone or overlay zone to the site in order to protect and maintain the site for regional large lot purposes. The zone or overlay zone must:

(a) Include development agreements and other provisions that prevent redesignation of the site for other uses for at least 10 years from the time the site is added to the city's comprehensive plan to meet regional large lot industrial land needs;

(b) Prohibit division or separation of lots or parcels within the site to new lots or parcels less than the minimum size of the site need until the site is developed with a primary traded sector use requiring a large lot; and

(c) Limit allowed uses on the site to the traded sector uses, except as provided in section (10) of this rule.

(10) The zone or overlay zone established under section (9) may allow:

(a) Subordinate industrial uses that rely upon and support the primary traded sector use when a site is occupied by a primary traded sector use; and

(b) Non-industrial uses serving primarily the needs of employees of industrial uses developed on the site provided the zone includes measures that limit the type, size and location of new buildings so as to ensure such non-industrial uses are intended primarily for the needs of such employees;

(11) If a participating city adds a site to its plan pursuant to this rule, it must consider the site in any subsequent urban growth boundary evaluation conducted to determine local industrial land needs and the adequacy of land available to meet local industrial land needs.

(12) A site may be considered developed or committed to industrial development if a large-lot traded sector user demonstrates a commitment to develop the site by obtaining land use approvals such as site plan review or conditional use permits, and

(a) Obtaining building permits; or

(b) Providing other evidence that demonstrates at least an equivalent commitment to industrial development of the site as is demonstrated by a building permit.

(13) The participating local governments shall review the analysis after the regional supply of six sites has either been replenished by three additional sites or after ten years, whichever comes first.