



OREGON

Department of Land Conservation & Development

August 28, 2023

2023-2025 DRAFT POLICY AGENDA

The Department of Land Conservation and Development (DLCD or department) 2023-2025 Policy Agenda consists of rulemakings and policy development activities that are:

- Directed by the Governor or Legislature;
- Carried over from previous biennia;
- Department initiatives.

DLCD creates a new Policy Agenda every two years, following the long legislative session when the department's budget for the next two years is determined. In even-numbered years, when there is a short legislative session, DLCD updates the Policy Agenda to reflect new legislation, completed work, and any department or state policy priorities that have emerged or changed in the meantime.

DLCD's 2023-2025 Policy Agenda is scheduled for review and approval by the Land Conservation and Development Commission (LCDC or Commission) at its November 3-4, 2023, meeting.

The period for public comment on the 2023-2025 Policy Agenda is August 28 – September 18, 2023.

Questions about this Policy Agenda may be directed to Alexis Biddle, Legislative and Policy Coordinator, at alexis.biddle@dlcd.oregon.gov or (971) 718-4505.

QUESTIONS & ANSWERS

What is rulemaking?

Rulemaking requires the department to amend or adjust current Oregon Administrative Rules to conform to recently passed legislation, implement new programs, or interpret existing statute. Rulemaking takes two forms: conforming and complex. Conforming rulemaking does not require statutory interpretation by the department. Complex rulemaking requires the department to involve outside input, usually from an appointed “Rulemaking Advisory Committee” or RAC. This Policy Agenda only includes complex rulemaking.

What is the difference between rulemaking and a policy item?

Rulemaking requires a specific process, including public hearings and filing legal notices with the Oregon Secretary of State. Without this specific process, rule updates cannot by law take place. A policy item can take many forms: a workgroup, development of a work plan, development of legislative recommendations or policy development work that engages outside parties. All of these could ultimately lead to policy development or program changes and may eventually result in rulemaking or proposed legislation.

What if something isn't on the policy agenda but I would like to see it added?

DLCD hopes to capture these ideas in the public comment period! Before commission approval of the Policy Agenda, DLCD staff will present commissioners with a full list of additional ideas that were presented in the comments. If the commissioners and department agree that a new idea merits inclusion in the policy agenda for the coming biennium, it will be added. Providing feedback on the development of the agency's biannual Agency Recommended Budget is another opportunity for stakeholders to influence the longer term direction of DLCD.

Why is there an opportunity for public comment?

DLCD's Policy Agenda builds on the department's core work. It includes policy development and rulemaking that reflect the priorities of the department, Land Conversation and Development Commission, Governor, and Legislature, which ultimately should reflect the priorities of all Oregonians. The opportunity for public comment provides a space for our local government partners, stakeholders and community members to engage in this conversation, provide feedback and support, and help call attention to priorities that may be missing or need refinement.

When is the opportunity to comment?

DLCD engages our local government partners, the public and stakeholders in an opportunity to comment each time a new Policy Agenda is written or updated. The period for public comment on the 2021-2023 Policy Agenda is **August 28, 2023 to September 18, 2023**. All comments submitted during this time will be included in Commission materials at the November 2021 LCDC meeting.

Comments may be submitted in letter form, by email, or by addressing the Commission at a Commission meeting. A [public comment sign-up form](#) is available on the DLCD website.

POLICY ITEMS

Legislatively Directed Policy Work

Legislatively directed policy work is the result of legislation that passed in the 2023 Oregon Legislative Session. This section describes the resulting analysis, grant programs, and complex rulemaking where the department will contribute original work and value-added policy development. (By comparison, for conforming rulemaking, the department lacks authority to influence outcomes and simply prescribes in rule what is already written in statute.)

HB 2001 – Oregon Housing Needs Analysis

Division: Housing

In March 2023, the Oregon Legislature adopted, and Governor Tina Kotek signed into law, the “Affordable Housing and Emergency Homelessness Response Package” – (House Bills 2001 and 5019) to help address the state’s housing and homelessness crisis. Among other policies and investments in housing and homelessness response, the legislation codifies the [Oregon Housing Needs Analysis \(OHNA\)](#) policy. This policy will fundamentally shift Oregon’s approach to housing planning in a way that empowers cities to take actions that meaningfully increase housing production, affordability, and choice.

Specifically, House Bill 2001 (2023 Session) directs the commission to adopt and amend rules related to Goals 10 (Housing) and 14 (Urbanization) as well as housing- and urbanization-related sections of Oregon Revised Statute (ORS 197.286 to 197.314). The intent of this rulemaking is to refocus the implementation of Goal 10 from a narrow focus on housing capacity towards a more comprehensive framework that emphasizes local actions to promote housing production, affordability, and choice within their community and across the state. This includes adopting or amending rules related to the following issues outlined in Section 8 (3) of the bill:

- “(a) Needed housing;
- (b) Housing production strategies or housing coordination strategies;
- (c) Buildable lands or housing capacity;
- (d) Amendments to urban growth boundaries, including under ORS 197.296 (6)(a), 197.299, 197.764 and 197A.300 to 197A.325 and section 22 (5)(a) of this 2023 Act; or
- (e) Adoption or amendments to urban reserves or rural reserves under ORS 195.137 to 195.145.”

That rulemaking could be categorized into three major topic areas, with direction and deadlines specific to each:

1. Housing Needs and Production
2. Housing Capacity and Urbanization
3. Housing Accountability

For **Housing Needs and Production**, DLCD and LCDC have been tasked with several major changes to the implementation of Goal 10. This includes changing the determination of “needed housing” to align with the Oregon Housing Needs Analysis and planning for a greater

diversity of housing choices with flexibility in location and characteristics. Additionally, the bill changes the Housing Production Strategy statute (ORS 197.290) to align with fair housing planning, which will require further operationalization in rule and guidance. Finally, the bill directs DLCD and LCDC to develop “adoption ready” policy options cities can consider that increase housing production, affordability, and choice, ranging from a variety of policy options, from zoning to development review, to public facilities planning, and beyond. The rules for this topic area must be adopted by January 1, 2025, but supplemental guidance materials may be completed at any time if they are not adopted as an attachment to the rule.

For **Housing Capacity and Urbanization**, the bill directs LCDC to provide greater clarity and certainty in the adoption and acknowledgement for both housing- and urbanization-related planning processes. This includes providing robust rules and guidance to provide clarity and certainty on appropriate methodologies to inventory buildable lands and calculate housing capacity as well as in relationship to urbanization processes to facilitate a UGB amendment where a need is identified. This includes work related to the buildable lands inventories, UGB amendments, UGB land exchanges, and urban reserves. Where possible, this work should be closely coordinated with public facilities planning to ensure that land within or brought into the Urban Growth Boundary is development ready. The rules for this topic area must be adopted by January 1, 2026, but supplemental guidance materials may be completed at any time if they are not adopted as an attachment to the rule.

For **Housing Accountability**, the bill amends the “Housing Accountability” statute (ORS 197.293) to establish a framework by which DLCD evaluates local government progress towards housing production targets and outcomes. Where a local government is underperforming relative to their regional and market peers, the statute requires DLCD to refer the local government to a “Housing Acceleration Program”, in which DLCD conducts an audit of state and local barriers to housing production, affordability, and choice in that community and prepares recommendations to address those barriers. The local government may either be required to address this in their next HPS or, if the barriers are the result of policies and practices directly within the cities control, they may be required to amend their HPS and adopt actions on an expedited timeframe. DLCD and LCDC will need to articulate a clear and consistent framework by which local governments’ progress is tracked and evaluated, as well as when cities are referred into the acceleration program, the scope and extent of issues that are evaluated, and the steps necessary to ensure that cities are taking meaningful actions within their control to facilitate housing production, affordability, and choice. The rules for this topic area must be adopted by January 1, 2025.

To accomplish this rulemaking, the department will set-up and facilitate a rulemaking advisory committee (RAC) with a diverse array of members representing various interests in housing and local governance. The three areas of policy described above will each have a technical advisory committee to make recommendations on policy details and implementation to the RAC. Ultimately, the RAC will provide critical input into the final set of recommendations to implement the OHNA to the Land Conservation and Development Commission before adoption by January 1, 2025.

HB 2727 – Early Childhood Education Facility Siting Study**Division: Community Services**

HB 2727 requires DLCD to convene a work group to study land use and building code barriers to the development of early childhood education facilities statewide. It includes funding to contract with a facilitator and support work group participation but does not include additional staff funding for the agency. The work group will include at least 15-20 members representing early childhood education providers, advocates, land use and building code agency experts, and local governments. A report from this work group is due by December 31, 2024, and will include both administrative and legislative recommendations to improve early childhood education facility siting.

HB 3409 – Reduced Conflict Photovoltaic Siting Rulemaking**Division: Community Services**

HB 3409 directs DLCD to conduct two rulemakings related to the siting of solar energy facilities. The first is a conforming rulemaking to include photovoltaic energy facilities as a “rural industrial use” for purposes of goal exceptions by November 3, 2023. The second rulemaking will establish conditions for local governments in Central and Eastern Oregon to voluntarily prioritize areas for photovoltaic energy facilities siting least likely to conflict with natural and cultural resource values by July 1, 2025.

The bill requires DLCD to establish a rules advisory committee consisting of at least 17 members representing interests specified in the legislation to advise DLCD on adoption of rules related to photovoltaic solar power generation facility siting. DLCD is to provide an initial report to an appropriate interim committee of the legislative assembly by September 15, 2025, and a final report to certain entities by December 31, 2025.

The measure requires DLCD to contract with a third party to support the rules advisory committee, including to facilitate and coordinate meetings, and furnish maps, data, and technical assistance. Members of the rules advisory committee are entitled to compensation and expenses. These portions of the measure sunset January 2, 2026. The RAC timeline is still being determined.

HB 3409 – Community Green Infrastructure**Division: Planning Services**

In addition to the Photovoltaic Siting Rulemaking discussed above, HB 3409 establishes the Community Green Infrastructure Grant Program, which is to be administered by DLCD for the purpose of awarding grants to offset the cost of planning and developing community green infrastructure projects or green infrastructure economic development projects, developing and supporting native seed banks or native plant nurseries, and for implementing green infrastructure master plans.

The measure establishes the Community Green Infrastructure Fund with moneys in the fund appropriated to DLCD to award grants, with 30 percent for grants for planning and developing green infrastructure economic development projects, 40 percent for grants to entities or projects located in green infrastructure improvement zones, and 30 percent for grants for entities or projects in tribal, rural, remote, or coastal communities.

In establishing this grant program, DLCD staff will design an application process and establish criteria for selecting grant projects according to the framework set out in the legislation.

The measure requires DLCD to enter into an intergovernmental agreement with ODF for assistance with the design and implementation of the program, acquiring and administering federal funding related to green infrastructure projects, or technical advice or feedback on the grant review process.

DLCD will appoint an Advisory Committee on Community Green Infrastructure Investments to provide consultation on the implementation of the grant program. No later than September 15 of each even-numbered year, the Advisory Committee is to submit a report on the implementation of the program to the appropriate interim Committee of the Legislative Assembly.

Ongoing Policy Work

Ongoing policy work represents policy projects that have carried over from a previous biennium. While these projects are already underway, it is useful to get feedback through the community engagement process about potential shifts in course, to share support for the work with our Commission, or to help refine outcomes.

Climate Friendly and Equitable Communities Rulemaking **Division: Planning Services**

The Climate-Friendly and Equitable Communities program was adopted in rule in July 2022. The new rules help create safe, equitable, and accessible places where driving is not required, and the amount of driving is reduced. This will be accomplished by:

- Requiring cities and counties in the state's eight metropolitan areas (rural communities are not impacted by this rule) to create more places where walkable, mixed-use development is allowed and encouraged in urban areas;
- 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.

The Legislature invested \$3 million in DLCD's Climate Change and Equitable Communities (CFEC) program. This funding will support DLCD's efforts to refine CFEC rules, add clarity, and respond local government's implementation barriers. In addition, most of this investment (\$2.7M) will directly fund local governments' work to implement the CFEC rules. LCDC will continue to consider updates to the CFEC program as implementation proceeds.

A RAC was established in May 2023 to advise LCDC on its adoption of rules to make clarifications and corrections to the CFEC rules by November 2023. A technical advisory committee was also created to inform the RAC in their update to CFEC rules. Issues that go beyond the scope of corrections and clarifications may be taken up after the adoption of the updated CFEC Rules in November 2023.

Agency Directed Policy Work

This section includes initiatives recommended by staff distinct from legislatively directed initiatives. This section includes only new policy items for the 2023-2025 Policy Agenda.

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 but remained silent on 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. However, 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. It would emphasize that appropriate confidentiality measures must be maintained for data on archeological sites and 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, while maintaining appropriate confidentiality measures;

- 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.

The Goal 5 Cultural Areas Tribal work group will be making recommendations in the fall of 2023 about the scope and process for this rule update. DLCD will also be taking input from local government stakeholders on these recommendations before they are presented to the commission this fall.

Goal 9 – Updating guidance/rules on Economic Opportunity Analyses

Division: Community Services

The “Target Industry” approach has been used by several local governments in Economic Opportunities Analyses to justify Urban Growth Boundary (UGB) expansions. An appropriate application of this approach would identify a specific industry with specific site needs, while also connecting that industry’s expected land demand to job growth projections. Several cities have inappropriately applied the “Target Industry” approach to forecast land demand by use type rather than industry, such as an industrial business park. When application of the “Target Industry” approach is disconnected from employment or population growth forecasts, it can result in a finding of a large employment land deficit.

The proposed rulemaking would clarify and tighten requirements for using the target industry approach. The Department has identified options for resolving this issue, such as 1) requiring the “target industry” to be a more specific industrial sector; 2) more closely tying expected employment growth to specific site types and sizes; and 3) providing more clarity and guidelines for situations where cities deviate from population or employment growth forecasts when attempting to justify “aspirational” economic development.

The amendments will affect existing rules in OAR 660-009, Economic Development and possibly OAR 660-024, Urban Growth Boundaries. The process will require formation of a rulemaking advisory committee to review draft rules and provide input to the Department and the Commission on the eventual rule language.

DLCD expects this rulemaking to require 6 to 9 month process with up to four RAC meetings to be completed by the end of 2024.

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, such as faxing; producing copies of nonstandard records; CD/DVD/Flash drives; delivery of records such as postage or courier fees; and attorney fees charged to the department. The Department 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 will be adopted during regularly scheduled 2024 LCDC meetings.

Farm and Forest Protection Updates

Division: Community Services

Oregon's zoning-based farm and forest land conservation programs have been in place for more than 50 years. These programs are living, dynamic regulatory structures. The program has been expanded, modified and re-designed to improve the performance of the program and to adapt to changes in public priorities. These adaptations have been made by the state legislature, by the Land Conservation and Development Commission (LCDC), and by the courts. During the past 10 years, many technical issues have been identified by stakeholders, the courts, and DLCD Staff as areas needing attention.

The 2023-2025 Farm and Forest Conservation Program Improvements Project is envisioned as a multi-year effort for the evaluation and improvement of the state's zoning-based farm and forest land conservation program. The first phase of the project, or scoping phase, will result in a report documenting issues with the program and recommendations for future action. Staff will convene a Technical Working Group in Q3 and Q4 of 2023 to refine areas of needed improvement and recommendations.

Work produced in the initial scoping phase will be documented in a Scoping Summary Report that will be posted for public comment in December 2023 and will be presented to LCDC in January 2024 for discussion and direction. It is intended that the Scoping Summary Report will inform further structure and work of the 2023-2025 Farm and Forest Conservation Program Improvement Plan.

Coastal Access Rulemaking

Division: Coastal

Goal 17: Coastal Shorelands contains a provision requiring the protection and improvement of public access to the shoreline by local governments. DLCD convened a Coastal Access Advisory Team (CAAT) throughout 2022 and 2023 to engage tribes and stakeholders on how to help strengthen this provision, and to ascertain whether some ideas were ripe for rulemaking, guidance, grants, or other assistance to local governments. The department proposes to initiate rulemaking related to Goal 17 and public shoreline access to advance some of the ideas and recommendations of the CAAT. These include requirements for greater consultation with related agencies (e.g., Oregon Parks and Recreation Department, OPRD) and tribes, especially regarding rights-of-way; defining terms used in the goal; enhancing the protection of natural and cultural resources; and requiring certain information to be included in programs to provide increased public access. Such a rulemaking will honor our

commitment to the work done by the CAAT and will help clarify public access requirements for coastal local governments.

This rulemaking will likely occur within 4-6 meetings and be presented to LCDC for adoption by the end of the biennium.

Territorial Sea Plan

Division: Coastal

Stewardship of the Oregon Territorial Sea Plan (TSP) occurs through coordination of the Ocean Policy Advisory Council (OPAC) and the Land Conservation and Development Commission (LCDC). OPAC is the legislatively established marine policy rulemaking advisory committee for LCDC. Recommended amendments to the TSP are driven by current events in ocean management and policy. Topics for this rulemaking could include undersea cable siting, offshore renewable energy siting, and updates to Rocky Shores Habitat designations. The need for rulemaking and amendment of the TSP is likely to occur within this biennium as OPAC provides advice and guidance to LCDC on the topics of marine renewable energy and nearshore rocky habitat management.

This work will be completed through OPAC and will be brought to LCDC for adoption by the end of the biennium.

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 and limit our ability to coordinate agency-to-agency across the enterprise. To evaluate how SAC Programs could be updated and improved, DLCD will work with a partner agency or agencies to 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.