



**OREGON**

Department of Land Conservation & Development

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RELEASED: November 22, 2021

## **2021-2023 POLICY AGENDA**

The Department of Land Conservation and Development (DLCD or department) 2021-2023 Policy Agenda consists of rulemakings and policy items that are:

- A result of the 2021 Legislative Session;
- Department initiatives;
- Ongoing projects carried over from the 2019-2021 Policy Agenda;
- New projects directed by the Governor or through legislative funding; or
- Longer-term projects that may be undertaken in the coming biennium depending upon available staff and resources..

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, finished work, and any department or state policy priorities that have emerged or changed in the meantime.

**DLCD's 2021-2023 Policy Agenda was approved by the Land Conservation and Development Commission (LCDC or Commission) at their November 18-19, 2021, [meeting](#).**

The period for public comment on the 2021-2023 Policy Agenda was **September 27, 2021 to October 14, 2021**.

Questions about this Policy Agenda may be directed to Sadie Carney, Policy Analyst and Communications Manager, at [sadie.carney@dlcd.oregon.gov](mailto:sadie.carney@dlcd.oregon.gov)

## HELPFUL QUESTIONS & ANSWERS

### *What is rulemaking?*

Rulemaking requires the department to amend or adjust current Oregon Administrative Rules to conform to recently passed legislation 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.

### *What is the difference between rulemaking and a policy item?*

Rulemaking requires a specific process, including public hearings and filing certain legal notices with the Oregon Secretary of State. Without this specific process, rule updates cannot 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 policy items 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 final adoption, 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.

### *Why is there an opportunity for public comment?*

DLCD's Policy Agenda builds on the department's core work. It includes policy and rulemaking that reflects the priorities of the department, Governor, and Legislature, which ultimately should reflect the priorities of all Oregonians. The opportunity for public comment provides a space for 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 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 was **September 27, 2021 to October 14, 2021**. 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.

Comments may be directed to Sadie Carney, Policy Analyst and Communications Manager, at [sadie.carney@dlcd.oregon.gov](mailto:sadie.carney@dlcd.oregon.gov)

## POLICY ITEMS

### ***Legislatively Directed Policy Work***

Legislatively directed policy work is the result of legislation that passed in the 2021 Oregon Legislative Session. For purposes of community engagement, “conforming rulemaking” is addressed separately from other legislatively directed work. The reason for this is that the department has some authority to influence the approach and policy outcomes for legislative work. However, for conforming rulemaking, the department lacks authority to influence outcomes and simply prescribes in rule what is already written in statute.

#### **HB 2160 – City of Pendleton UGB Expansion**

##### **Division: Community Services**

HB 2160 allows LCDC to consider and approve plans for an affordable housing pilot project nominated by the City of Pendleton, subject to certain conditions. The bill requires that application must be submitted to, and approved by, the commission on or before June 30, 2023. The affordable housing program is given a sunset date in the legislation of January 2, 2028.

The 2016 Oregon Legislature passed HB 4079, which limited the affordable housing pilot project to two pilot projects. The original legislation offered this pilot project to two cities – a large and a small one. This pilot project allowed for a limited expansion to a selected city’s urban growth boundary (UGB) of no more than 50 acres. Pursuant to administrative rules, a substantial portion of housing units within the UGB expansions must be dedicated to long-term affordable housing and the application must meet other conditions. LCDC selected projects in Bend and Redmond for the pilot project resulting from HB 4079. Both Bend and Redmond had populations qualifying them as large cities. No communities defined as small cities applied at that time.

Bend and Redmond are in the initial phases of this pilot project. Now Pendleton, considered a small city, would have the opportunity to participate in the affordable housing pilot project pending commission approval.

#### **HB 2603 – Undersea Cables**

##### **Division: Coastal**

HB 2603 directs DLCD, in consultation with the Department of State Lands (DSL) and local and Tribal governments, to review Part Four of the Territorial Sea Plan (TSP) related to the placement of undersea cables and provide the results to the Ocean Policy Advisory Council (OPAC). OPAC must consider the review and develop recommendations for LCDC to amend Part Four of the TSP by rule no later than two years after the effective date of the bill (September 2023).

The bill also requires an applicant for an easement to place an undersea cable within the territorial sea to acquire and maintain, until construction of the undersea cable is completed, financial assurance to ensure that the applicant constructs the undersea cable according to the terms and conditions of the easement.

**HB 2918 – Surplus Property**  
**Division: Community Services**

HB 2918 requires local governments to identify surplus real property within an urban growth boundary or located in a rural residential area to DLCD on January 1 of each even-numbered year. This process is optional for mass transit or transportation districts. DLCD is charged with developing and maintaining an online database but is not responsible for the accuracy of inventory uploaded by local governments. The information must be available to the public online or through a web-based portal. HB 2918 also requires city councils to consider, in the sale of city-owned real property, the potential of a given parcel for affordable housing development.

**SB 391 – ADUs in Rural Residential**  
**Division: Community Services**

SB 391 allows counties to authorize an owner of a lot or parcel in a rural residential zone served by a fire protection service provider to construct one accessory dwelling unit (ADU) on the lot or parcel, subject to certain conditions and locally adopted land use regulations. Counties must ensure adequate setback requirements when a property is adjacent to land zoned for resource use, as well as adequate access for any wildfire mitigation efforts such as firefighting equipment, safe evacuation, and staged evacuation areas. Additionally, the bill prohibits the ADU from being used for vacation occupancy, and counties must also address water access and use.

**SB 762 – Wildfire Omnibus Legislation**  
**Division: Planning Services**

SB 762 requires LCDC, in consultation with specified state agencies and local governments, to identify and recommend needed updates to the statewide land use planning program, local comprehensive plans, and zoning codes to incorporate a statewide wildfire risk map and to minimize wildfire risk, in a report to the Legislative Assembly by October 1, 2022. The report will include, but is not limited to provisions regarding defensible space, building codes, safe evacuation routes, and development considerations in areas of high wildfire risk.

In response to SB 762, the Oregon Department of Forestry will develop a comprehensive statewide map of wildfire risk, including layers identifying vulnerable populations, locations of critical services such as hospitals, and critical infrastructure, the Wildland-Urban Interface (WUI), and other important data layers. SB 762 directs that the map will be developed and maintained by the Oregon Department of Forestry, with input from Oregon State University, state agencies, the State Fire Marshal, local governments, federally recognized Tribal nations, and other partners and stakeholder entities. The map will include layers and data

sets that will be used by the Oregon Department of Consumer and Business Services for building code application, the Oregon State Fire Marshall, for defensible space requirements and records, and by local governments as they implement the requirements of SB 762 at a local level.

The legislation also calls for .15FTE of DLCD staff time to support the State Wildfire Programs Director and Wildfire Programs Advisory Council. Funding for a permanent position related to Wildfire was included in the department's budget. Hiring for the wildfire position is anticipated to take place this fall.

**Package 90 – Rural Transportation Equity**  
**Division: Planning Services**

DLCD's approved budget for the 2021-23 biennium includes funding from Package 90. These funds were originally included in the 2021-23 Governor's Recommended Budget. Funding includes \$1,000,000 to identify equity driven strategies that will increase resiliency in the rural transportation system. In close partnership with the Oregon Department of Transportation, DLCD staff will provide direct technical and financial assistance to rural communities with transportation disadvantaged populations. This assistance will prepare and equip these communities to participate in and better compete for funding opportunities for pedestrian, bicycle, and transit projects according to the Oregon Department of Transportation's updated equity and social criteria.

**HB 5006 Budget Note – Regional Housing Needs Analysis**  
**Division: Community Services**

HB 5006, the end-of-session budget bill, includes a budget note and one-time appropriation to the department. DLCD, in consultation with Oregon Housing and Community Services, will provide an initial legislative report no later than February 1, 2022, and a final legislative report no later than December 31, 2022, on efforts to develop a legislative proposal for incorporation of a Regional Housing Needs Analysis into future state and local planning processes. The bill provides a one-time appropriation of \$1,306,912 to the department to conduct this work and includes one limited duration position to support administration.

***Ongoing Policy Work***

Ongoing policy work represents policy projects, both rulemakings and other policy items, 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.

**Territorial Sea Plan Part 3: Rocky Shores**  
**Division: Coastal**

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.

#### **Territorial Sea Plan Part 4: Telecommunication Cables, Pipelines, and Other Utilities**

##### **Division: Coastal**

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.

#### **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.

#### **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.

### **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.

### **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.

### **Climate Change Adaptation – Vulnerability Assessment**

#### **Division: Coastal**

In 2021, the Oregon legislature provided DLCD with \$275,000 to conduct a comprehensive vulnerability assessment during the 2021-23 biennium. The vulnerability assessment will 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.

### **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 state agencies and 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.

### **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 Directed Policy Work**

This section includes initiatives recommended by staff distinct from legislatively directed or conforming rulemaking. While some of the ongoing policy work is also agency directed, this section includes only new policy items for the 2021-2023 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 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. 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.

### **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.

### **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.

### **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.

### **State Agency Coordination Program – Pilot**

#### **Division: Coastal**

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.

### ***Long-Term Policy Projects***

Long-term policy projects may have policy beginnings in the coming biennium but are unlikely to see policy action. This is a constraint on policy work that is twofold: agency capacity and funding to perform the work. The outcome of these longer-term policy projects can change if agency capacity and/or funding become available, which may make them feasible to accomplish in the next two years.

### **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 inclusion in 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. Through this process, agency staff will work with stakeholders to explore the related outcomes of environmental and climate justice.

**Farmland Protection Updates****Division: Community Services**

This policy project will include minor and technical revisions to EFU rules based on stakeholder feedback and agency-identified issues. In addition to technical revisions, rule clarifications are anticipated to include updates based on caselaw to the definitions for 'commercial activities in conjunction with farm use' and 'home occupations', and updates addressing covenant requirements for dwellings in farm zones. The department may begin to explore these rulemakings late in the biennium.

***Additional Agency Work***

In addition to the policy items above, the department has identified agency work that will include community engagement efforts and will be reviewed by the Commission in the next two years.

**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.

**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.